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 HER AMENDED MOTION FOR RELIEF FROM COURT ORDERS AND IN FURTHER SUPPORT OF HER AMENDED MOTION FOR RELIEF

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

1. I am the Petitioner/Plaintiff herein and submit this affidavit in reply to the October 15, 2014 "Personal Representative's Response to Petitioner's Amended Motion for Relief from Orders", signed by William Hennessey, Esq. [hereinafter "Response"], and in further support of my Amended Motion for Relief [hereinafter "Amended Vacatur Motion"]. Assisting me is the same independent reviewer of the record, whose "Procedural History" gave rise to the Amended Vacatur Motion.

2. As hereinafter shown, Mr. Hennessey's October 15, 2014 Response does not deny or dispute my allegations of his fraud, misrepresentation, and misconduct, particularized by my Amended Vacatur Motion, except for those relating to service. These undenied and undisputed allegations are ¶¶1-5, 7, 9-12, 14, 16-17, 25-28 of my Amended Vacatur Motion, all concealed by Mr. Hennessey's Response and all established, *prima facie*, by the cited law and caselaw and by the

annexed orders and transcript excerpts. All these documentarily-established, unrefuted and irrefutable paragraphs entitle me, *as a matter of law*, to vacatur of this Court's November 15, 2013 "Order[s] Compelling Service" and April 2, 2014 "Order[s] Dropping Parties", pursuant to Fla. R. Civ. P. 1.540(b)(3).

3. Even though an evidentiary hearing is in progress, no evidentiary hearing was, or is, necessary as to ¶¶1-5, 7, 9-12, 14, 16-17, 25-28, specifying Mr. Hennessey's fraudulent misrepresentations of fact and law on which this Court relied in signing its Orders – as nothing can be said in mitigation. As stated, unequivocally, in Rule 4-3.3 of Florida's Rules of Professional Conduct, whose title is "Candor Toward the Tribunal":

> "(a) False Evidence; Duty to Disclose. A lawyer shall not knowingly:
>
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> …
>
> (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel" (Exhibit A).

4. The Fifth District Court of Appeal has underscored this duty of candor in *Dean v. Bentley*, 848 So. 2d 487 (2003), where, in the context of factual misstatements by an attorney who was also a personal representative, it affirmed the opening of a closed estate, stating:

> "misstatements of fact are not only violations of the duties of a personal representative, they violate that part of the attorney's oath which provides: 'I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.'[fn5]" (Exhibit A-2).

5. In addition to citing to the 'Oath of Admission to The Florida Bar' in its annotating footnote 5, the Fifth District Court of Appeals stated, in conclusion, in the body of its *Dean v. Bentley* decision:

> "We also direct the trial court's attention to Canon 3D(2), Florida Code of Judicial Conduct, which requires a judge to take appropriate action 'when a judge receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar…" (Exhibit B, at 490-491).

6. As hereinafter shown, Mr. Hennessey's Response is permeated with flagrant misrepresentations of fact and law. These he has presented with full knowledge of the Fifth District Court of Appeal decision in *Dean v. Bentley*, as I highlighted and quoted it at ¶15 of my September 8, 2014 affidavit to the Fifth District Court of Appeal in opposition to his August 25, 2014 motion to that Court wherein he sought to prevent it from relinquishing jurisdiction to this Court for purposes of determining the Amended Vacatur Motion. Mr. Hennessey has had that September 8, 2014 affidavit since September 9, 2014, when I e-served it upon him, simultaneous with my filing it with the Fifth District Court of Appeal. The Fifth District Court of Appeal acknowledged its receipt and consideration of the affidavit in its September 19, 2014 order denying Mr. Hennessey's motion.[1]

7. 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)."

8. For the convenience of the Court, a Table of Contents follows:

[1] Annexed as Exhibit J to my October 14, 2014 Supplementing Affidavit, *infra*. at ¶11.

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The First Half of Mr. Hennessey's Response Does Not Identify or Address ANY of the Allegations of the Amended Vacatur Motion and Regurgitates Deceits Already Exposed by My September 8, 2014 Affidavit

9. The first half of Mr. Hennessey's 15-page Response (pp. 1-7) does NOT identify or address ANY of the allegations of my Amended Vacatur Motion. Consisting of an "Introduction" section (pp. 1-4) and a section entitled "Procedural and Factual History: Nina Has No One [to] Blame But Herself for the Dismissal" (pp. 4-7), these first seven pages are fashioned on bald statements about me, unsupported by record citations, let alone evidence.[2] These Mr. Hennessey knows to be false, as he has not denied or disputed the accuracy of my September 8, 2014 affidavit, or of its three annexed exhibits. The first of these exhibits, Exhibit 1, is my independent reviewer's 32-page "Procedural History", whose full title is "Procedural History of William Hennessey's Fraudulent and Materially-False and Misleading Orders, Signed by the Trial Court".

10. Such fact-specific, record-based "Procedural History" highlights, again and again (at pp. 4, 5, 7, 8, 22, 27), that Mr. Hennessey had NO EVIDENCE to support his repetitive

[2] Although most of Mr. Hennessey's baseless assertions in his "Procedural and Factual History" are exposed by my "Procedural History", *infra*, one that is not is his claim (at p. 7) that I was present at the March 18, 2014 hearing on his motions to drop parties. I was not.

misrepresentations to this Court that I, not my attorneys, was responsible for the failure to effect service. Consequently, it was incumbent upon him, in his Response, to identify his supporting EVIDENCE. Indeed, based on ¶¶28-37 of my September 8, 2014 affidavit and the substantiating chains of e-mails with my attorneys, Kenneth Manney and Patrick Roche, and with Mark Guralnick, annexed thereto as Exhibits 2 and 3, furnishing dispositive EVIDENCE that I did everything in my power to push my lawyers to advance my cases and to comply with court-directives, it is the most despicable fraud for Mr. Hennessey to persist in his canard that I am to blame for the failure to effect service – which is what his Response does.

11. My September 8, 2014 affidavit, the accuracy of which has never been contested by Mr. Hennessey, is free-standing Exhibit I to my October 14, 2014 "Affidavit Clarifying, Supplementing, & Further Supporting My Amended Motion for Relief from Court Orders, Including for Purposes of Summary Determination Thereof" [hereinafter "Supplementing Affidavit"]. In my brief testimony from the witness stand at the October 21, 2014 evidentiary hearing, I emphatically and explicitly attested to the truth of the Supplementing Affidavit, which I herein incorporate by reference, again attesting to its truth. It was e-filed and served on October 16, 2014 and the original was deposited with the Court on October 20, 2014.

12. Established by my September 8, 2014 affidavit is that Mr. Hennessey's "Introduction" (pp. 1-4) regurgitates deceits from his August 25, 2014 motion,[3] already demonstrated as such. Thus, Mr. Hennessey's assertions in his "Introduction" (at pp. 2-3) that my Amended Vacatur Motion "contains nothing new"; that its grounds "are the same as those already raised in [my] Motions for Rehearing" which the Court already "considered and denied"; and that my remedy is by

[3] Mr. Hennessey's August 25, 2014 motion to the Fifth District Court of Appeal is Exhibit H to my October 14, 2014 supplementing affidavit.

way of my noticed appeal are already rebutted by my September 8, 2014 affidavit (¶¶19-23) and, additionally, by its appended Exhibit 1 "Procedural History".

13. In the interest of judicial economy, I rely on and incorporate by reference the recitation in my September 8, 2014 affidavit. Suffice to say that its "Procedural History" summarizes, at pages 22-31, the content of my April 17, 2014 Motion for Clarification and Rehearing, the content of my May 1, 2014 Vacatur Motion, and the content of my August 13, 2014 Amended Vacatur Motion. From this summary – and, of course, from the three motions themselves – it is readily apparent that the May 1, 2014 Vacatur Motion differs from the April 17, 2014 Motion for Clarification and Rehearing in identifying Mr. Hennessey's misrepresentation that it was "[a]s a result of Nina's delay" that service was not effected and that the August 13, 2014 Amended Vacatur Motion differs even more by the inclusions of the following:

> (a) that at the November 12, 2013 case management conference before the Court, Mr. Hennessey knowingly misrepresented the law as to service of pleadings in probate proceedings, Fla. R. Civ. P. 1.070(j) – alleged by ¶3 of my Amended Vacatur Motion;
>
> (b) that Mr. Hennessey wrote orders for the Court to sign – and which the Court did sign on November 15, 2013 – deliberately misrepresenting the Court's oral rulings at the November 12, 2013 case management conference pertaining to service, as well as applicable law, so as to transform the Court's flexible target date for service into an inflexible deadline that would result in unserved parties being dropped – alleged by ¶¶4, 5, 9-10 of my Amended Vacatur Motion;
>
> (c) that at the December 17, 2013 hearing before the Court, Mr. Hennessey both affirmatively misrepresented what the Court had orally ruled on November 12, 2013 and that its November 15, 2013 "Order[s] Compelling Service" were consistent with that oral ruling – alleged by ¶¶16-17 of my Amended Vacatur Motion;
>
> (d) that at the March 18, 2014 hearing before the Court, Mr. Hennessey asserted that "Nina Baum, because of all the – the uncooperative (sic) with her lawyers, this case was never served"… – alleged by ¶18 of my Amended Vacatur Motion.

14. All of this willful and deliberate misrepresentation of fact and law, particularized by ¶¶1-5, 7, 9-12, 14, 16-17, 25-28 of my Amended Vacatur Motion – and constituting fraud on the

court by Mr. Hennessey – was concealed by Mr. Hennessey's August 25, 2014 motion to the Fifth District Court of Appeal. Indeed, the ONLY allegations of the Amended Vacatur Motion that his August 25, 2014 motion revealed were "the allegations that David Baum was 'actively avoiding service' and that service also could not be made on Mr. Hennessey, and that affidavits from the process server and my former attorney supported the motion."[4] These are, essentially, the ONLY allegations that Mr. Hennessey's 15-page Response reveals.

Mr. Hennessey's Response Rests on Inapplicable and Misrepresented Law – and His Cited Caselaw Involving Rule 1.540(b)(3) Motions Fully Supports My Entitlement to Vacatur Relief

15. As he did in his August 25, 2014 motion, citing inapplicable law to mislead the Fifth District Court of Appeal about my Amended Vacatur Motion, so, too, Mr. Hennessey's Response to the Amended Vacatur Motion cites inapplicable law to mislead this Court. The only cases actually relevant are those pertaining to Fla. R. Civ. P. 1.540(b)(3), "fraud…, misrepresentation or misconduct by an adverse party". The most important of these are *Flemenbaum v. Flemenbaum*, 636 So.2d 579 (4th DCA 1994), and *Ford Motor Co. v. Stimson*, 115 So. 3d 401 (5th DCA 2013) – and, additionally, *Greenwich Ass'n v. Greenwich Apartments, Inc*., 979 So. 2d 1116 (Fla. 3d DCA 2008), *In re Estate of Clibbon*, 735 So. 2d 487 (4th DCA 1998), and *Freemon v. Deutsche Bank Trust Co*., 46 So.3d 1202 (4th DCA 2010). All these cases are cited by Mr. Hennessey – and included in his binder – without <u>any</u> commentary as to their applicability to my motion and without <u>any</u> showing as to how they would bar relief pursuant to Fla. R. Civ. P. 1.540(b)(3). In fact, all support my entitlement to vacatur pursuant to Fla. R. Civ. P. 1.540(b)(3).

16. Mr. Hennessey quotes, selectively, from *Flemenbaum*, as follows:

> "Frequently, rule 1.540(b)(3) fraud motions are attempts to rehash a matter <u>fully explored at trial</u>. In many cases, the term 'fraud' is loosely used to label all conduct

[4] So-identified at ¶18 of my September 8, 2014 affidavit.

> which has displeased an opposing party. Requiring rule 1.540(b)(3) fraud to be stated with particularity allows a trial court to determine whether the movant has made a *prima facie* showing which would justify relief from judgment." (at pp. 3-4, underlining added).

17. Mr. Hennessey offers no commentary to this quote. He does not dispute that my Amended Vacatur Motion is "stated with particularity". Nor does he purport that the particulars of the motion were "fully explored at trial". Indeed, as Mr. Hennessey well knows, there was not even the evidentiary hearing pursuant to *Kozel v. Ostendorf*, 629 So. 2d 817 (Fla. Supreme Court 1993), that this Court was REQUIRED to hold before it could lawfully render its April 2, 2014 Order(s) dropping parties, effectively ending my will contest – and which the Court did not hold because of his fraudulent misrepresentations that I, not my attorneys, was responsible for the failure to serve and comply with the Court's November 15, 2013 "Order Compelling Service".

18. Indeed, Mr. Hennessey fraudulently conceals this evidentiary hearing requirement in purporting, at the outset of his Response:

> "The dismissal in this case was unquestionably supported by both the facts and law", (at p. 2, underlining added).

for which his first citation is:

> "Powell v. Madison County Sheriff's Department, 100 So. 3d 753 (Fla 1st DCA 2012), (holding that a trial court has broad discretion to dismiss an action for failure to serve due to undue delay by the plaintiff even if the refiling may be barred by statute of limitations)".

The false implication, intended by Mr. Hennessey, is that the First District Court of Appeal decision in *Powell* – which he includes in his binder – stands for the proposition that the Court has unlimited "broad discretion". The opposite is the case. *Powell* expressly states that "the discretion to dismiss a case for a failure of service under rule 1.070(j)" is "after properly considering the factors pertaining to such dismissal" (underlining added), citing the Fifth District Court of Appeal decision in *Pixton v. Williams Scotsman, Inc.*, 924 So.2d 37 (2006).

19. Mr. Hennessey is well familiar with *Pixton*, as he fraudulently misrepresented it to this Court at the March 18, 2014 hearing on his January 28, 2014 motions to drop parties – doing so in the same breath as he was misrepresenting *Powell* by purporting that what these two decisions "ultimately…say" is that a court can directly dismiss a case where good cause and excusable neglect are not shown for failure to serve or where there is noncompliance with orders and rules. That this is false is clear from the holding of *Pixton*, set forth prominently at the outset of the copy of the *Pixton* decision that Mr. Hennessey furnished the Court in a binder in advance of the hearing[5]:

> "[Holding:] …that trial court was required, in determining whether dismissal was warranted, to conduct evidentiary hearing and to consider factors set forth in *Kozel v. Ostendorf*, including whether plaintiffs were involved or complicit in attorney's conduct in misrepresenting to trial court the basis for requested extension of time for service process."

In the concluding words of *Pixton*:

> "…where the attorney is involved in the conduct to be sanctioned, a *Kozel* analysis is required before dismissal is used as a sanction. …an evidentiary hearing is mandated to determine the clients' involvement or complicity in the attorney's conduct. *See, e.g., Schlitt v. Currier*, 763 So. 2d 491 (Fla. 4th DCA 2000). Lacking such involvement or complicity by the client, the attorney's misconduct should not result in a dismissal of the action. *E.g., Rose v. Fiedler*, 855 So. 2d 122 (Fla. 4th DCA 2003). Indeed, this court has held that '[b]ecause dismissal is the ultimate sanction, it should be reserved for those aggravated cases in which a lesser sanction would fail to achieve a just result.' *American Express Co. v. Hickey*, 869 So. 2d 694, 695 (Fla. 5th DCA 2004). Further, 'it is essential that attorneys adhere to filing deadlines and procedural requirements, sanctions other than dismissal are appropriate in those situations when the attorney, and not the client, is responsible for the error.' *Id.* at 695. Accordingly, we reverse and remand to the trial court for purposes of reconsideration under *Kozel*." (at 40).

20. *Kozel* is black-letter law – and it, too, was in the binder Mr. Hennessey furnished the Court in advance of the March 18, 2014 hearing. Yet, Mr. Hennessey did not see fit to mention it to the Court at that hearing – or any of the mountain of caselaw based on *Kozel* or *Pixton*, especially of

[5] This is further particularized at ¶17 of my October 14, 2014 supplementing affidavit and Exhibit K thereto, being the contents of Mr. Hennessey's binder, its included copies of the decisions in *Pixton* and *Kozel*, and the pertinent transcript excerpt of the March 18, 2014 hearing.

the Fifth District Court of Appeal, as, for instance, *Shortall v. Walt Disney World Hospitality*, 997 So. 2d 1203 (2008):

> "The law is well-settled that '[b]efore dismissing a complaint based on the failure to follow a court order, the trial court must consider the factors set forth in *Kozel*.' *Scallan v. Marriott Int'l, Inc*., 995 So. 2d 1066, 33 Fla. L.Weekly D2704 (Fla. 5th DCA Nov. 21, 2008) (citing *Pixton v. Williams Scotsman, Inc.*, 924 So. 2d 37, 39 (Fla.5th DCA 2006)). In *Kozel*, our supreme court stated:
>
> To assist the trial court in determining whether dismissal with prejudice is warranted, we have adopted the following set of factors . . . : 1) whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience; 2) whether the attorney has been previously sanctioned; 3) whether the client was personally involved in the act of disobedience; 4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; 5) whether the attorney offered reasonable justification for noncompliance; and 6) whether the delay created significant problems of judicial administration. Upon consideration of these factors, if a sanction less severe than dismissal with prejudice appears to be a viable alternative, the trial court should employ such an alternative.
>
> 629 So. 2d at 818. This Court has recognized that '[a] trial court's failure to consider the *Kozel* factors in determining whether dismissal is appropriate is, by itself, a basis for remand for application of the correct standard.' *Pixton*, 924 So. 2d at 39-40." (italics in original *Shortall* decision, underlining added).

21. Mr. Hennessey is a seasoned practitioner, who – according to his Response (at p. 11 – practices with a law firm having "over 160 attorneys in the state of Florida and over 60 attorneys in its West Palm Beach office". As such, he may be presumed knowledgeable of *Shortall* and other cases reflecting the "well-settled law" of *Kozel*. Among these, each from the Fifth District Court of Appeal, *Erdman v. Bloch*, 65 So. 3d 62 (5th DCA 2011); *Sanders v. Gussin*, 30 So. 3d 699 (5th DCA 2010); *Scallan v. Marriott International, Inc.*, 995 So.2d 1066 (5th DCA 2008); and *American Express v. Hickey*, 869 So. 2d 694 (5th DCA 2004).

22. Certainly, Mr. Hennessey's knowledge of this caselaw would explain why his January 28, 2014 motions to drop parties were devoid of ANY caselaw for their requested relief, which, by dropping "David Baum, individually and as Personal Representative of the Estate", would effectively

end my will challenge therein.[6] Indeed, his motions were not only devoid of caselaw, but devoid of material facts, of which Mr. Hennessey had knowledge, establishing my counsel's good faith efforts to effect service. Even if Mr. Hennessey wants to pretend, as his Response does (at pp. 12-14), that his client, David Baum, was unaware that a process server had made repeated attempts to effect service upon him, Mr. Hennessey certainly knew: (a) of his own phone conversations and e-mails with Mr. Manney pertaining to service ("Procedural History", pp. 19, 24); and (b) of Mr. Guralnick's efforts to effect service, as recited by Mr. Guralnick, on the record, at the December 17, 2013 hearing ("Procedural History", pp. 13-14).

23. Certainly, too, the only explanation for Mr. Hennessey's failure to accurately inform the Court of the meaning of *Powell* and *Pixton* – and of its obligations under *Kozel*, including holding an evidentiary hearing – is his knowledge that for the Court to undertake a *Kozel* inquiry and evidentiary hearing would preclude it from granting his motions to drop parties, as it did by the April 2, 2014 Orders, there being NO EVIDENTIARY BASIS for holding me responsible for my attorneys' failure to effect service or to comply with the Court's November 15, 2013 Orders, ONLY Mr. Hennessey's bluster and deceit on the subject.

24. Indeed, Mr. Hennessey would have reason to know that at a *Kozel* evidentiary hearing, Mr. Manney would necessarily be testifying as to the content of his affidavit, annexed to the Amended Vacatur Motion as Exhibit H. This would include as to Mr. Hennessey's refusal to accept service and as to retention of a process server, who repeatedly and unsuccessfully had attempted to serve formal notice upon David Baum. That such would additionally bar the Court from granting Mr. Hennessey's motions to drop parties is clear from *Roberts v. Stidham*, 19 So. 3d 1155, 1158 (5th

[6] Mr. Hennessey's January 28, 2014 motions to drop parties are annexed as Exhibits K-1, K-2 to my Exhibit 1 "Procedural History".

DCA 2009), another Fifth District Court of Appeal decision with which Mr. Hennessey may reasonably be familiar:

> "Additional steps can always be taken to effect service of process. While what was not done may be relevant, the affirmative steps taken in this case were clearly adequate to avoid a dismissal with prejudice. REVERSED."

25. As for *Ford Motor Co. v. Stimpson,* 115 So. 3d 401 (5th DCA 2013), which also involves a Rule 1.540(b)(3) motion, Mr. Hennessey's Response (at p. 4) also provides no commentary to it, simply quoting it, as follows:

> "Fraud on the court occurs where 'it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense.' *Ford Motor Co. v. Stimpson,* 115 So. 3d 401 (Fla. 5th DCA 2013)".

26. "Fraud on the court" is precisely what is established by the record before this Court on my Amended Vacatur Motion – most graphically by the substantiating "Procedural History" that is Exhibit 1 to my September 8, 2014 affidavit, chronicling the deliberate and calculated nature of Mr. Hennessey's misconduct. Especially is this so with respect to Mr. Hennessey's representations to the Court as to the applicability of Fla. R. Civ. P. 1.070(j) to probate proceedings, which, as particularized by my "Procedural History" (at pp. 1-2, 6-7, 14-15, 20), he whipped out when it was in his interest to do so and then slyly concealed so that his fraud might better escape detection.

27. As reflected by the Fifth District Court of Appeal's decision in *Ford Motor Co. v. Stimpson*, this Court's determinations will have to be supported by the record. Thus, notwithstanding the trial court's findings in that case that fraud on the court had been committed on each of four grounds, the Fifth District Court of Appeal carefully reviewed and determined, four times, "The record does not support this ruling" (at 406); "This finding is also not supported by the

record." (at 407); "Again, this finding is not supported by the evidence." (at 407); "The record does not contain evidence supporting this finding either." (at 408).

28. That my 32-page "Procedural History" accurately reflects the record – and overwhelmingly establishes Hennessey's fraud, misrepresentation, and misconduct, entitling me to relief, *as a matter of law* – is manifested by his failure to contest it in any respect.

29. Likewise, Mr. Hennessey furnishes no commentary to show the applicability to my Amended Vacatur Motion of his citation of *Greenwich Ass'n v. Greenwich Apartments, Inc.*, 979 So. 2d 1116 (Fla. 3d DCA 2008), for the proposition: "that the power to reverse a judgment for fraud must be narrowly applied and that broad application of fraud upon the court would frustrate the law's policy favoring the termination of litigation and finality of judgments" (at p. 4). At bar, and unlike the plaintiffs in *Greenwich*, I timely brought my Rule 1.540(b)(3) motion, which, moreover, by reason of the allegations of fraud on the court, constituting "extrinsic fraud", would appear to also support an independent action, should I bring one. As Fla. R. Civ. P. 1.540(b) itself provides:

> "b. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons:
>
> (3) fraud (whether heretofore denominated as intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> …
>
> The motion shall be made within a reasonable time, and…not more than 1 year after the judgment, decree, order or proceeding as entered or taken. A motion under this subdivision does not affect the finality of a judgment or decree or suspend its operation. This rule does not limit the power of a court to entertain an independent action or relieve a party from a judgment, decree, order, or proceeding or to set aside a judgment or decree for fraud upon the court." (underlining added).

The Second Half of Mr. Hennessey's Response Does Not Identify or Address ANY of the Allegations of the Amended Vacatur Motion, Except Pertaining to Service – and This in a Legally-Insufficient, Deceitful Fashion

30. The second half of Mr. Hennessey's Response (at pp. 7-15), consisting of his four-section "Argument" and his "Conclusion", does not identify or address ANY of the allegations of the Amended Vacatur Motion, except pertaining to service – and this in a legally-insufficient, deceitful fashion.

31. As for the **first section of Mr. Hennessey's "Argument" (pp. 7-8)**, it does not identify the allegations of my Amended Vacatur Motion, to which it purports to relate. These allegations – to which Mr. Hennessey is nonresponsive – are contained in ¶¶3-5.

32. This first section begins as follows:

> "Petitioner's first contention is that this Court incorrectly imposed a deadline on her to complete service of her Amended Petition for Revocation of Probate in its November 15, 2013 order based upon 'misrepresentations' by the Personal Representative as to the law. In essence, she argues that this Court misapplied the law." (at p. 7, underlining added).

This is utterly false, distorting my Amended Vacatur Motion to "In essence,…this Court misapplied the law", as if it had nothing to do with Mr. Hennessey. This, because Mr. Hennessey's fraudulent misrepresentation of the law to the Court, embodied by ¶¶1-5 of my Amended Vacatur Motion, is not only a basis for a "Rule 1.540(b) Motion", but *prima facie* grounds for relief pursuant to Fla. R. Civ. P. 1.540(b)(3).

33. Mr. Hennessey then conceals "the law" that ¶¶3-4 of my Amended Vacatur Motion specifies as having been misrepresented by him in procuring the November 15, 2013 Order. It is Fla. R. Civ. P. 1.070(j) whose 120-day time frame for service of pleadings is – as stated by ¶2 of my Amended Vacatur Motion –

> "inapplicable to proceedings governed by the Florida Probate Code. See *Aguilar v. Aguilar*, 15 So. 3d 803 (Fla. 2nd DCA 2009)."

34. Because Mr. Hennessey cannot and does not deny that he misrepresented the applicability of Fla. R. Civ. P. 1.070(j), he instead asserts:

> "As a preliminary matter, this Court was well within its discretion to impose a deadline to complete service of the Amended Petition. Fla. Prob. R. 5.025 (requiring a will contest to be served by formal notice); Fla. Prob. Rule 5.025(d)(3) ('The court on its own motion or on motion of any interested person may enter orders to avoid undue delay in the main administration'); In re Estate Odza, 432 So. 2d at 740 (holding that when an adversary proceeding is filed under Rule 5.025, the petitioner must strictly comply with the procedural requirements of 5.040); In re Estate of Clibbon, 735 So. 2d at 489, quoting In re Williamson's Estate, 95 So. 2d 244 at 246 (it is a 'matter of public policy in this state that the estates of decedents shall be speedily and finally determined with dispatch.')."

This is a flagrant deceit. My Amended Vacatur Motion does not dispute that the Court has discretion to impose a deadline for serving the Amended Petition – or that Fla. Prob. Rule 5.025(b)(3) would have been authority for its doing so. Rather, ¶¶3-4 of my Amended Vacatur assert that Mr. Hennessey misled the Court into believing that Fl. R. Civ. P. 1.070(j) was applicable to these probate proceedings, which he knew to be false.

35. It is by thus transmogrifying and concealing what the actual allegations of my Amended Vacatur Motion are – and that they involve fraudulent misrepresentation by him – that Mr. Hennessy then concludes by purporting that at issue is "legal error" whose remedy is appeal, rather than relief through Fl. R. Civ. P. 1.540 – citing inapplicable cases that do not involve motions pursuant to Fl. R. Civ. P. 1.540(b)(3) "fraud…misrepresentation or other misconduct of an adverse party" or allegations substantiated, *prima facie*, by cited law, caselaw, and transcript evidence and the Court's Orders, as at bar.

36. The **second section of Mr. Hennessey's "Argument" (pp. 8-11)** also does not identify the allegations of my Amended Vacatur Motion, to which it purports to relate. These allegations – to which Mr. Hennessey is nonresponsive – are contained in ¶¶9-12. They recite the

transcript-substantiated facts that at the November 12, 2013 case management conference, the Court set "a tentative deadline for Nina to perfect service" (¶9); "the December 13th deadline was tentative" (¶10); "a tentative deadline to perfect service" (¶11), which Mr. Hennessey then "blatant[ly] misrepresent[ed]" in submitting to the Court a proposed "Order Compelling Service" mandating "Any Respondents not served on or before December 13, 2013 shall be dropped as a party", which the Court signed on November 15, 2013 (¶¶1, 10-12).

37. Rather than confronting these allegations, Mr. Hennessey simply quotes from the November 12, 2013 transcript, without any interpretive comment as to what it documentarily establishes and then blithely states:

> "Following that hearing, this Court entered an Order Compelling Service dated November 15, 2013 requiring all parties to be served with the Amended Petition in this case no later than December 13, 2013 and indicating that any parties not served would be dropped." (at p. 10).

In other words, Mr. Hennessey skips over the patent discrepancy between the Court's oral ruling and the proposed "Order Compelling Service" – which he does not explain in any way – and then compounds his deceit by falsely purporting that the proposed order "indicat[ed] that any parties not served would be dropped" (underlining added) – when its language was mandatory that "unserved parties "shall be dropped". Indeed, only, incidentally, does Mr. Hennessey even acknowledge his authorship of the "Order Compelling Service", which he does only because it is part of an e-mail from my supposed then counsel, Mr. Guralnick, approving Mr. Hennessey's proposed written order.

38. As for Mr. Guralnick's acquiescence to Mr. Hennessey's proffered written order, Mr. Hennessey furnishes NO law for the proposition that an attorney's flagrant misrepresentation of a

court's oral rulings in a proposed written order is mitigated because adverse counsel fails to detect it. Indeed, the law of fraud is to the contrary.[7]

39. That Mr. Hennessey concludes this second section "Argument" by purporting:

> "Petitioner's claims that the Order was submitted fraudulently are completely belied by the record and the facts and cannot support a motion for relief under Fla. R. Civ. P. 1.540" (at p. 11),

when he has not addressed the facts in the record, particularized by the Amended Vacatur Motion, is illustrative of the fraud that permeates his Response. This includes his failure to identify and confront ¶¶16-17 of the Amended Vacatur Motion pertaining to what took place at the December 17, 2013 hearing, wherein – and as verifiable from the transcript excerpt, quoted and annexed, Mr. Hennessey's flagrantly misrepresented to the Court its November 12, 2013 oral ruling and the consistency of the November 15, 2013 written order therewith. Indeed, as highlighted by the "Procedural History" (p. 16), he repeated this misconduct at the March 18, 2014 hearing on his motions to drop parties.

40. The **third section of Mr. Hennessey's "Argument" (pp. 11-12)** does not identify the paragraphs of the Amended Vacatur Motion to which the allegations it summarizes relate. The pertinent paragraphs are ¶¶18, 20-24 – and Mr. Hennessey sums them up as follows:

> "In her Motion for Relief, Petitioner claims that the Personal Representative's attorney, Mr. Hennessey, refused to accept service on behalf of the Personal Representative on several occasions." (at p. 11).

To this, Mr. Hennessey responds:

> "This is simply untrue….At no time was service of the Amended Petition ever attempted or refused. Further, at no time did Mr. Hennessey ever refuse or attempt to avoid service by a process server." (at p. 11).

---

[7] See, for example, *Dean v. Bentley*, *supra*, reciting the "usual elements of fraud", as set forth by the appellants therein: "1. A false statement concerning a specific material fact; 2. The maker's knowledge that the representation is false; 3. An intention that the representation induces another's reliance; and 4. Consequent injury by the other party acting in reliance on the representation." (Exhibit A-2, at fn. 4, underlining added).

41. This denial is insufficient, *as a matter of law*, inasmuch as the allegations of my Amended Vacatur Motion are supported by an affidavit of my then attorney, Kenneth Manney, Esq., stating, in pertinent part:

> "6. I notified opposing counsel, William T. Hennessey, III, on several occasions of the problems that I was having in perfecting service on David Baum and inquired whether he would accept service on behalf of his client.
>
> 7. Opposing counsel refused on multiple occasions to accept service on behalf of his client David Baum."

42. Mr. Hennessey may be presumed to know that faced with Mr. Manney's affidavit, any denial by him also required an affidavit. Certainly, this would explain his failure to identify that my Amended Vacatur Motion annexed an affidavit from Mr. Manney and referred to same at ¶¶23-24.

43. In lieu of an affidavit, which would have to have been from him, this third section of "Argument" states:

> "In fact, on August 27, 2013, Mr. Hennessey specifically told Petitioner's counsel that he would be in the office 'all week except for Wednesday' to be served in accordance with Florida law. *See* Exhibit 'F.'[fn1] Service was **never** attempted or accomplished by the Petitioner on counsel for the Personal Representative." (at pp. 11-12, underlining and bold in original).

The referred-to "Exhibit F" is Mr. Hennessey's August 27, 2013 e-mail to Mr. Manney – and what it says is materially different:

> "I'll be in the office all week except for Wednesday. I am going to have to insist that you serve as required by Florida law. To that end, in response to your note below, I am not authorized to accept service beyond that which is permitted or allowed by Florida law.
>
> On a separate note, I kindly ask that you provide me dates for your client's deposition in Florida. If Nina is going to move forward (which is unfortunate given the many inaccuracies in her pleadings), we need to proceed with discovery." (Exhibit C-1, underlining added).

44. This August 27, 2013 e-mail responded to Mr. Manney's August 26, 2013 e-mail to him, which had stated:

> "As you know, I represent Nina Baum. We are ready to serve your client, David Baum, and I would greatly appreciate your confirming that you will accept service for him by replying to this e-mail. In addition, what is the best address for you and how is your schedule this week so that I can let my server know when you will be at your office?" (Exhibit C-1, underlining added).

45. In other words – and not identified by this third section "Argument" – is that to Mr. Manney's straightforward request that Mr. Hennessey confirm "whether you will accept service", Mr. Hennessey did NOT give a straightforward response. Rather, by his language "I am going to have to insist" and "I am not authorized to accept service", he gave the impression – which he clearly intended – that he would not accept service for David Baum.

46. Nor was this Mr. Hennessey's only e-mail to give Mr. Manney that impression – and Mr. Hennessey well knows this in failing to furnish Mr. Manney's replying e-mail – and his own. Thus, on August 28, 2013, Mr. Manney e-mailed him:

> "I don't think it would be appropriate to take a deposition before everyone has been properly served so that all of the parties can participate in the deposition; and I would expect to have answers from everyone before my client's deposition is taken. Perhaps you can speak with your client and have him authorize you to accept service for him in all his various capacities so that we can move this litigation forward." (Exhibit C-2, underlining added).

Again, a straightforward request from Mr. Manney – to which Mr. Hennessey's August 29, 2013 responding e-mail gave no straightforward answer:

> "I don't mind extending a courtesy to allow you an opportunity to get folks served. Please take care of getting whomever you think it is appropriate to serve within a reasonable amount of time. However, I am pretty confident that there is no prohibition on conducting discovery before all parties are served and clearly no requirement that a party file an answer. Is there any reason why you can't get everyone served within the next couple of weeks?
>
> Let's work on some proposed dates for the deposition next month or in October (assuming, of course, that you are going to be serving the pleadings on David)." (Exhibit C-2, underlining added).

47. That Mr. Manney did not, thereafter, send a process server to serve Mr. Hennessey, while nonetheless repeatedly sending a process server to serve David Baum, is consistent with the misimpression Mr. Hennessey had intended that he would not accept service for his client. Certainly, Mr. Hennessey did not alert the Court to this e-mail exchange so that it could evaluate the legitimacy of his pretense that I was responsible for delay and that my will contest should be dismissed for failure to effect service on David Baum. Indeed, it may be presumed that Mr. Hennessey's concealment of the caginess of his e-mail exchange with Mr. Manney reflects his knowledge that what he did could be deemed trickery and maneuvering, inconsistent with prevailing practice:

> "Under our system of pleading and practice we are no longer concerned with the tricks and technicalities of the trade:
>
> > 'The trial of a lawsuit should be a sincere effort to arrive at the truth. It is no longer a game of chess in which the technique of the maneuver captures the prize.' *Cabot v. Clearwater Construction Company*, Fla. 1956, 89 So.2d 662, 664", *Crystal Lake Golf Course v. Kalin*, 252 So. 2d 379 (4th DCA 1971).

48. This Court's findings with respect to this aspect of my Amended Vacatur Motion would necessarily include a determination as to whether such guile by Mr. Hennessey as to whether he would accept service, serving no purpose but to mislead Mr. Manney, which it did, is "misconduct" within the meaning of a Rule 1.540(b)(3) motion – and whether Mr. Hennessey's concealment of what he did by these e-mails reflects his knowledge that it is.

49. The **fourth section of Mr. Hennessey's "Argument" (pp. 12-14)** also does not identify the paragraphs of the Amended Vacatur Motion to which they relate. The pertinent paragraphs that Mr. Hennessey impliedly addresses are ¶¶6, 8, 19, 29 of my Amended Vacatur Motion. All he states about them is that my "contention that David committed fraud on this Court by

avoiding service is without merit and should fail for multiple independent reasons." (at p. 12). He then gives two reasons – each disingenuous and insufficient, *as a matter of law*.

50. Thus, this fourth section does not reveal that the allegations of my Amended Vacatur Motion that David Baum was "actively avoiding service" are supported by an affidavit of the process server, Ronald Kostin, annexed as Exhibit C to the Amended Vacatur Motion and identified at ¶¶8, 19. Again, this is presumably because it would make obvious that an affidavit from David Baum was required, in response. Yet not only does Mr. Hennessey's Response not append an affidavit from David Baum that he was not "actively avoiding service", but it avoids any affirmative statement to that effect other than in the title of this fourth section ("Petitioner's Contention that David Baum Actively Avoided Service Is Not True…") and in the "Conclusion" by the declaratory assertion "the allegations are untrue" (at p. 15).

51. In lieu of an affidavit from David Baum, Mr. Hennessey purports that if it were true that David Baum had actively avoided service, it would have been brought to the Court's attention "at the November 12, 2013 hearing, the December 11, 2013 hearing, the December 17, 2013 hearing, the March 18, 2014 hearing, or at any point in between." (at p. 12). He also quotes from the December 17, 2013 hearing wherein Mr. Guralnick stated:

> "Unfortunately, we learned in the process that all the summons have expired. **Prior counsel apparently had made no effort [to serve].** The summons that were issued by the Clerk could not be accepted by the sheriff, because there (sic) are outdated, at this point." (at p. 12, bold in Mr. Hennessey's Response)

to further argue:

> "Petitioner cannot claim that the Personal Representative committed fraud on the Court by 'avoiding service' while her own lawyers are representing that no attempts at service had been made. (at p. 12).

51. This essentially reprises the italicized sentences punctuating Mr. Hennessey's "Procedural and Factual History: Nina Has No One [to] Blame But Herself for the Dismissal" (at pp. 4-7) wherein Mr. Hennessey states:

> *"Although Petitioner now claims that she was having difficulty serving the Personal Representative, this issue was never brought to the attention of the Court, the Personal Representative, or his counsel."* (at p. 5)
> ...
> *"No one argued at the hearing or otherwise advised the Court that they were having any difficulty serving the Personal Representative."* (at p. 6)
> ...
> *"No one argued at that hearing that there was any problem serving the Personal Representative. Indeed, Mr. Guralnick, Petitioner's counsel, represented to the Court that '[p]rior counsel apparently had made no effort [to serve].'"* (at p. 6)

52. This is a false argument, in numerous respects:

First, it rests on the assumption that Mr. Manney, who appeared telephonically at the November 12, 2013 case management conference, remained on the line after the Court granted his motion to withdraw, which was at the outset of the conference. As reflected by the transcript,[8] the issue of service was not taken up until the end of the conference and, certainly, had Mr. Manney remained on the line, he would reasonably have believed that any problems that Mr. Guralnick might have in effecting service by December 13, 2013 would be addressed by the Court on December 17, 2013, consistent with its oral ruling.

Second, with respect to the hearings on December 11 and December 17, 2013, it is obvious from Mr. Guralnick's statement to the Court on December 17, 2013, "Prior counsel apparently had made no effort [to serve] that, upon taking over the case", quoted by Mr. Hennessey's Response, that Mr. Guralnick NEVER communicated with Mr. Manney about his efforts to effect service. That is the meaning of the word "apparently", since had he done so he would have learned of Mr. Manney's

[8] The full transcript of the November 12, 2013 case management conference is Exhibit G to my September 8, 2014 affidavit.

efforts to effect service. That Mr. Hennessey simply disregards the word "apparently" to purport that what Mr. Guralnick said on December 17, 2013 establishes that Mr. Manney had made no effort to effect service – when the efforts are attested-to by both Mr. Manney's affidavit and Mr. Kostin's affidavit – underscores the deceit that pervades this fourth section of Mr. Hennessey's "Argument".

Third, with respect to the March 18, 2014 hearing, it rests on the assumption that Ms. Hoffman, upon taking over my representation in January, had contacted Mr. Manney to ascertain why service had not been effected. It seems obvious that she did not, notwithstanding I instructed both Mr. Manney and Mr. Guralnick to furnish Ms. Hoffman with the necessary information about my case – copying her on the e-mails to them on the subject. These e-mails, which are the concluding e-mails on the e-mail chains that are Exhibits 2 and 3 to my September 8, 2014 affidavit, were as follows:

> "Dear Kenneth Manney and Patrick Roche
>
> I am writing to advise you that Teressa Hoffman of Hoffman & Hoffman is my lawyer. I am requesting that you cooperate with her regarding any and all requests she has of you including but not limited to handing over my file and any and all correspondence you have had with The Gunster Firm, William Hennessey, any lawyer affiliated with my matter and the discussions kenneth Manney represented he had with Chabad and the Hadassah lawyers. In addition, please provide to Teressa Hoffman a detailed account as to WHY the parties were not properly served, or in the alternative, IF the parties were served please provide to Teressa Hoffman the proof of service. Also provide all discovery and anything she asks for.
> Please accept this letter as full authority given to Teressa Hoffman.
> Thank You
> Nina baum
> Please respond to this e-mail with confirmation that you will cooperate
> thank you"
> (Exhibit 2, p. 15, capitalization in original January 29, 2014 e-mail, underlining added in exhibit)
>
> "Mr. Guralnick
>
> I am writing to advise you that Teressa Hoffman of Hoffman & Hoffman is my lawyer. I am requesting that you cooperate with her regarding any and all requests

she has of you including but not limited to handing over my file and the discovery responses you represent were sent to Mr. Hennessey.
Please accept this letter as full authority given to Teressa Hoffman.
Thank you
Nina baum"
(Exhibit 3, p. 8, January 29, 2014 e-mail).

Fourth, Mr. Hennessey's assertion that I "never once advised this Court that [I] was having difficulty serving the Personal Representative" assumes that I had some specific knowledge as to why Mr. Manney had not been unable to effect service through the process server. I had none until after this Court's April 2, 2014 Orders dropping parties, when the Hoffman firm apprised me of what it had learned from Mr. Manney and Mr. Kostin – and the affidavits it had obtained from them. Certainly, until my independent reviewer's subsequent examination of the record, I was unaware of the fact that the attorneys who were representing me and who represented themselves as competent to do so, were not furnishing the Court the information germane to the service issue.

53. Mr. Hennessey's fourth section "Argument" asserts, as its second reason for disputing that David Baum was dodging service, that "there is simply no proof that the Personal Representative or his counsel knew that there was a problem with service." (at p. 13). Tellingly, Mr. Hennessey is not stating that he and his client did not know "there was a problem with service", but rather that there is "no proof" they did not know.[9] He then purports to rebut the "proof" presented by the affidavits of Mr. Kostin and Mr. Manney – though without acknowledging that this is what he is doing. Thus he states:

> "Petitioner claims that David Baum's attorney, Richard Bennett, called her process server, Ronald Kostin, with a purported new matter as a 'decoy' to obtain the make and model of the process server's car so that David Baum could avoid service. Mr. Bennett had, in fact, called Mr. Kostin on October 18, 2013, along with several other process servers that same day. However, it was not to assist David Baum in any plan

[9] Mr. Hennessey also asserts (at p. 13) that "The evidence presented will show that the alleged attempts at service by the Petitioner occurred more than a month before the November 13 (sic), 2013 hearing in which the Court set deadlines for completing service" (underlining added). In fact, Mr. Kostin's "Verified Return of Non-Service", annexed to his affidavit, shows attempts made on October 16, October 25, November 2, November 9, and November 13, 2013.

> to avoid service. Mr. Bennett was assisting David Baum's elderly mother, Liza Baum, in hiring a process server to serve Nina Baum (the Petitioner) with a 'Temporary Order of Protection', which had been entered by the New York Court relating to the harassment and abuse at her home in New York (which included attempts to break into her mother's home and severing her mother's utility cables). On the very day Mr. Kostin says he received the call from Richard Bennett and was asked to serve Nina Baum, Nina Baum was served with the 'Temporary Order of Protection' at the Melbourne Civic Theater, which is the very location which Petitioner claims Mr. Kostin was requested to serve in the 'decoy' matter. The Affidavit of Service and papers served on Nina Baum are attached as Exhibit 'G.' There was no 'decoy' to avoid service. Petitioner undoubtedly never told Mr. Kostin, or her own counsel, that she was served with papers that day from the New York proceedings leading to yet another false filing."

54. Mr. Hennessey is correct that I never told Mr. Kostin or my counsel that I was served on October 18, 2013 with a Temporary Order of Protection. However, the reason is because I was never served with the Temporary Order of Protection then or thereafter and was not at the Melbourne Civic Theatre on that date or, in fact, ever. Indeed, the first time I ever saw – or learned of – the October 15, 2013 Temporary Order of Protection and the other "papers" attached as Exhibit G, purportedly served on me on October 18, 2013, was in May 2014, when Mr. Hennessey attached them as his sole exhibit to his May 2, 2014 Response to my original May 1, 2014 Vacatur Motion. None had ever been served upon me: not the October 15, 2013 Summons, summoning my appearance in Queens Family Court for February 14, 2014 – and not the June 11, 2013 Family Offense Petition,[10] which, because I had not been served with it – or with any notice of a hearing thereon – resulted in the Temporary Order of Protection being issued, *ex parte*, on October 15, 2013. Indeed, because I was not served with the Summons and Temporary Order of Protection on October 18, 2013 – or anytime thereafter – I was not present in Queens Family Court on February 14, 2014, with the result that the *ex parte* Temporary Order of Protection became an *ex parte* Permanent Order of Protection.

[10] The June 11, 2013 Family Offense Petition, which purports to be signed by my mother, Liza Baum on

55. Suffice to say, Mr. Hennessey's above-quoted October 15, 2014 Response pertaining to October 18, 2014 is largely identical to what he had written in his May 2, 2014 Response – and both are insufficient, *as a matter of law*. The facts attested-to by Mr. Kostin's affidavit pertaining to Mr. Bennett's October 18, 2013 phone conversations with him required an affidavit from Mr. Bennett in response. Here, too, Mr. Hennessey's knowledge of this is reflected by this fourth section "Argument" which conceals the very fact of Mr. Kostin's affidavit – and the particulars it sets forth. To these particulars, Mr. Hennessey's unsworn hearsay is utterly non-responsive.

56. Mr. Hennessey's only specific reference to the affidavits of Mr. Manney and Mr. Kostin are in his "Conclusion" section (pp. 14-15) – a section whose recapitulation is limited to the allegation of the Amended Vacatur Motion that David Baum was "actively avoiding service", as if that were its only one. As hereinabove particularized, that allegation and Mr. Hennessey's refusal to accept service are the ONLY allegations of the Amended Vacatur Motion for which an evidentiary hearing was required. All the other allegations – particularized at ¶¶1-5, 7, 9-12, 14, 16-17, 25-28 of my Amended Vacatur Motion – documentarily-established by cited law and caselaw and annexed transcript evidence and Orders, are undenied and undisputed by Mr. Hennessey and, in fact, indisputable.

June 11, 2013, includes a "Verification" before a "Chief Clerk or Designee Notary Public", who has signed as "Chris C.", without last name, title, Commission #, expiration date, etc.

ANNEEN NINA GLORIA BAUM

Mailing Address:
229 East 85th Street, Unit/Box #1361
New York, New York 10028
E-Mail Address: anbb@me.com
Telephone: 917-971-8763

Sworn to before me this
30th day of October 2014

Notary Public

Yair Israel Babayoff
New York State Notary Public
Lic# 01BA6077096
Qualified In Queens County State New York
My Commission Expires July 1st 2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document is being served on November 3, 2014, *via* an automatic email generated by the Florida Courts E-Filing Portal to:

David A. Baum, c/o William T. Hennessey, Esq., Gunster, Yoakley & Stewart, P.A., 777 South Flagler Drive, Suite 500 East, West Palm Beach, FL 33401
whennessey@gunster.com; dcarr@gunster.com; eservice@gunster.com

The Women's Zionist Organization of America, Inc., aka Hadassah, c/o William E. Boyes, Esq.,
3300 PGA Boulevard, Suite 600, Palm Beach Gardens, FL 33410
bboyes@boyesandfarina.com; asabocik@boyesandfarina.com;
czill@boyesandfarina.com

Chabad Trustees under the Chabad Trust, c/o David H. Jacoby, Esq.
2111 Dairy Road, Melbourne, FL 32904
d.jacoby@davidhjacobypa.com; j.sanchez@davidhjacobypa.com;
j.cason@davidhjacobypa.com

Friends of Israel Defense Forces, Inc., c/o Jonathan Bernstein,
1430 Broadway, Suite 1301, New York, NY 10018
jonathan.bernstein@fidf.org

Tino Gonzalez, Esq., 1600 Sarno Road, Suite 1, Melbourne, FL 32935
tino@tinolegal.com

s/ Anneen Nina Gloria Baum

ANNEEN NINA GLORIA BAUM

Mailing Address:
229 East 85th Street, Unit/Box #1361
New York, New York 10028

E-Mail Address: anbb@me.com
Telephone: 917-971-8763

TABLE OF EXHIBITS

EXHIBIT A

THE FLORIDA BAR

RULE 4-3.3 CANDOR TOWARD THE TRIBUNAL
4 RULES OF PROFESSIONAL CONDUCT
4-3 ADVOCATE

RULE 4-3.3 CANDOR TOWARD THE TRIBUNAL

(a) False Evidence; Duty to Disclose. A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(b) Criminal or Fraudulent Conduct. A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) Ex Parte Proceedings. In an ex parte proceeding a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(d) Extent of Lawyer's Duties. The duties stated in this rule continue beyond the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by rule 4-1.6.

Comment

This rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See terminology for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, subdivision (a)(4) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

This rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present a disinterested exposition of

Ex A

the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Lawyers who represent clients in alternative dispute resolution processes are governed by the Rules of Professional Conduct. When the dispute resolution process takes place before a tribunal, as in binding arbitration (see terminology), the lawyer's duty of candor is governed by rule 4-3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by rule 4-4.1.

Representations by a lawyer

An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare rule 4-3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in rule 4-1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with rule 4-1.2(d), see the comment to that rule. See also the comment to rule 4-8.4(b).

Misleading legal argument

Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in subdivision (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

False evidence

Subdivision (a)(4) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this rule if the lawyer offers the evidence for the purpose of establishing its falsity.

If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

The duties stated in this rule apply to all lawyers, including defense counsel in criminal cases.

The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact.

The rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court. Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process that the adversary system is designed to implement. See rule 4-1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus, the client could in effect coerce the lawyer into being a party to fraud on the court.

Remedial measures

If perjured testimony or false evidence has been offered, the advocate's proper course ordinarily is to remonstrate with the client confidentially if circumstances permit. In any case, the advocate should ensure disclosure is made to the court. It is for the court then to determine what should be done – making a statement about the matter to the trier of fact, ordering a mistrial, or perhaps nothing. If the false testimony was that of the client, the client may controvert the lawyer's version of their communication when the lawyer discloses the situation to the court. If there is an issue whether the client has committed perjury, the lawyer cannot represent the client in resolution of the issue and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to counsel and as such a waiver of the right to further representation. This commentary is not intended to address the situation where a client or prospective client seeks legal advice specifically about a defense to a charge of perjury where the lawyer did not represent the client at the time the client gave the testimony giving rise to the charge.

Refusing to offer proof believed to be false

Although subdivision (a)(4) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate.

A lawyer may not assist the client or any witness in offering false testimony or other false evidence, nor may the lawyer permit the client or any other witness to testify falsely in the narrative form unless ordered to do so by the tribunal. If a lawyer knows that the client intends to commit perjury, the lawyer's first duty is to attempt to persuade the client to testify truthfully. If the client still insists on committing perjury, the lawyer must threaten to disclose the client's intent to commit perjury to the judge. If the threat of disclosure does not successfully persuade the client to testify truthfully, the lawyer must disclose the fact that the client intends to lie to the tribunal and, per 4-1.6, information sufficient to prevent the commission of the crime of perjury.

The lawyer's duty not to assist witnesses, including the lawyer's own client, in offering false evidence stems from the Rules of Professional Conduct, Florida statutes, and caselaw.

Rule 4-1.2(d) prohibits the lawyer from assisting a client in conduct that the lawyer knows or reasonably should know is criminal or fraudulent.

Rule 4-3.4(b) prohibits a lawyer from fabricating evidence or assisting a witness to testify falsely.

Rule 4-8.4(a) prohibits the lawyer from violating the Rules of Professional Conduct or knowingly assisting another to do so.

Rule 4-8.4(b) prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

Rule 4-8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Rule 4-8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Rule 4-1.6(b) requires a lawyer to reveal information to the extent the lawyer reasonably believes necessary to prevent a client from committing a crime.

This rule, 4-3.3(a)(2), requires a lawyer to reveal a material fact to the tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, and 4-3.3(a)(4) prohibits a lawyer from offering false evidence and requires the lawyer to take reasonable remedial measures when false material evidence has been offered.

Rule 4-1.16 prohibits a lawyer from representing a client if the representation will result in a violation of the Rules of Professional

Conduct or law and permits the lawyer to withdraw from representation if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent or repugnant or imprudent. Rule 4-1.16(c) recognizes that notwithstanding good cause for terminating representation of a client, a lawyer is obliged to continue representation if so ordered by a tribunal.

To permit or assist a client or other witness to testify falsely is prohibited by section 837.02, Florida Statutes (1991), which makes perjury in an official proceeding a felony, and by section 777.011, Florida Statutes (1991), which proscribes aiding, abetting, or counseling commission of a felony.

Florida caselaw prohibits lawyers from presenting false testimony or evidence. *Kneale v. Williams,* 30 So. 2d 284 (Fla. 1947), states that perpetration of a fraud is outside the scope of the professional duty of an attorney and no privilege attaches to communication between an attorney and a client with respect to transactions constituting the making of a false claim or the perpetration of a fraud. *Dodd v. The Florida Bar,* 118 So. 2d 17 (Fla. 1960), reminds us that "the courts are . . . dependent on members of the bar to . . . present the true facts of each cause . . . to enable the judge or the jury to [decide the facts] to which the law may be applied. When an attorney . . . allows false testimony . . . [the attorney] . . . makes it impossible for the scales [of justice] to balance." See *The Fla. Bar v. Agar,* 394 So. 2d 405 (Fla. 1981), and *The Fla. Bar v. Simons,* 391 So. 2d 684 (Fla. 1980).

The United States Supreme Court in *Nix v. Whiteside,* 475 U.S. 157 (1986), answered in the negative the constitutional issue of whether it is ineffective assistance of counsel for an attorney to threaten disclosure of a client's (a criminal defendant's) intention to testify falsely.

Ex parte proceedings

Ordinarily, an advocate has the limited responsibility of presenting 1 side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary injunction, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

[Revised: 02/01/2010]

EXHIBIT B

JONATHAN S. DEAN, ETC., ET AL, Appellant, v. JACKIE BENTLEY, ET AL., Appellee.

CASE NO. 5D02-1077

COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

848 So. 2d 487; 2003 Fla. App. LEXIS 10140; 28 Fla. L. Weekly D 1555

July 3, 2003, Opinion Filed

SUBSEQUENT HISTORY: **[**1]** Released for Publication July 21, 2003.

PRIOR HISTORY: Appeal from the Circuit Court for Marion County, Brian D. Lambert, Judge.

DISPOSITION: Affirmed.

COUNSEL: Jonathan S. Dean of Dean & Dean, LLP, Ocala, for Appellant.

Reuben S. Williams, IV of Wilson and Williams, P.A., Ocala, for Appellee.

JUDGES: THOMPSON, J. PETERSON and PALMER, JJ., concur.

OPINION BY: THOMPSON

OPINION

[*487] THOMPSON, J.

Jonathon Dean, as personal representative, and Mario Lamon Williams appeal the order revoking probate and **reopening** the **estate** of Cecil Gadson a/k/a Cecil Gasden ("decedent"). We affirm the trial court's order because there is evidence that the personal representative committed **fraud** on the court by failing to disclose to the court the possibility of a subsequent will and an "interested person."

Cecil Gadson died on 8 June 2000, and on 26 September 2000, the court admitted to probate a 1974 will in which the decedent **[*488]** devised all his property to his step-grandson, appellant Mario Williams. The petition for administration stated that the only assets of the **estate** were "homestead property valued at $ 11,775.00 and cash in the **amount** of $ 6,000.00." The court appointed attorney Jonathan **[**2]** Dean personal representative of the **estate.** [1] On 20 November 2000, attorney Henry J. Prominski contacted Dean stating that in 1999, he had prepared a power of attorney and a will for the decedent. The will named Jackie Bentley [2] personal representative and sole devisee. Dean informed Prominski that a prior will had been admitted to probate, and Prominski, who was not representing Bentley, replied that he would advise Bentley to take appropriate action.

1 *See § 733.301(1)(a)(2), Fla. Stat.* In the petition for administration, Dean nominated himself to be personal representative. The personal representative named in the 1974 will had predeceased the decedent, and in the petition for administration, the alternate person relinquished her right to serve in favor of Dean. Also, the beneficiary of the 1974 will, Williams, consented to Dean serving as personal representative.

Ex B

2 The record shows that Jackie Bentley was the decedent's nephew and apparently had maintained the decedent's home after the decedent died.

[3]** On 28 November 2000, Dean contacted Detective David Byrd of the Marion County Sheriff's Office, alleging that Jackie Bentley had used the power of attorney given to him by the decedent to remove $ 17,000 from the decedent's bank account and had used the money to open a bank account in his name. Dean told Detective Byrd that the removal of the funds was beyond the scope of Bentley's power of attorney and requested that Detective Byrd investigate to determine if any criminal laws had been violated. On 29 November 2000, Dean told Detective Byrd that Bentley may have a new will naming Bentley the beneficiary of the decedent's entire **estate.** Detective Byrd telephoned Bentley regarding the 1999 will. Bentley told Detective Byrd that he had possession of the original 1999 will, and Detective Byrd told Bentley to file the original with the clerk of the court and to fax a copy to him. Bentley did as he was told and filed the 1999 will on 1 December 2000. [3] Detective Byrd gave a copy of the 1999 will to Dean. Detective Byrd informed Dean that he had found no criminal violations and stated that the matter should be handled civilly. Dean agreed and Detective Byrd **closed** the investigation.

3 At the time that Bentley filed the 1999 will, he was acting pro se and did not retain an attorney until he filed the petition for revocation of probate. In a sworn affidavit, Lisa Booth stated that she was formerly employed by the Probate Division of the Marion County Clerk's Office, had received and filed the 1999 will, and had notified the personal representative of the 1999 will.

[4]** Dean filed a petition for discharge without mentioning the 1999 will to the court. In the petition, Dean stated that "[t]he only persons, other than Petitioner [Dean] having an interest in this proceeding . . . are: Mario Lamon Williams." On 28 February 2001, the court entered an order of discharge. On 3 May 2001, Bentley filed a petition for revocation of probate alleging **fraud** because the personal representative had been aware of the existence of the 1999 will.

The trial court revoked probate of the will and reopened the **estate** because Dean had misrepresented to the court that there were no other interested parties and did not disclose the 1999 will. On appeal, the appellants contend, in essence, that because Dean "decided" that Bentley was not an interested person, he was not required to disclose that the 1999 will had been filed in the probate case or that Bentley was a **[*489]** possible interested person, and therefore that there had been no **fraud** on the court. We disagree.

Bentley was an interested person. *Section 731.201(21), Florida Statutes*, defines an "interested person" as one "who may reasonably be expected to be affected by the outcome of the particular proceeding involved . **[**5]** . . ." If Bentley was the beneficiary of a valid will, he certainly would have been affected by the outcome of the probate proceedings, and the personal representative should have disclosed this possibility to the probate court prior to discharge. *See Grimes v. **Estate** of Stewart, 506 So. 2d 465, 466 (Fla. 5th DCA 1987)* (holding that a person who alleged she was an heir-at-law, the beneficiary of a pour-over will, and the niece of the decedent was an interested person).

The appellants also argue that the **estate** should not have been reopened because a petition for revocation of probate must be brought before discharge, and Bentley did not file the petition for revocation until after the order of discharge was entered. Although sections *733.208* and *733.109*, Florida Statutes, provide that a petition for revocation of probate should be filed before discharge, **fraud** is recognized as justification for **reopening** an **estate,** even after an order for discharge has been entered. *Liechty v. Hall, 687 So. 2d 64, 65 (Fla. 5th DCA 1997)*; *Padgett v. Padgett, 318 So. 2d 484, 485 (Fla. 1st DCA 1975)*. Also, *Rule 1.540(b), Florida Rules of Civil Procedure* **[**6]** provides that "[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: . . . . **fraud** (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." The personal representative contends that he committed no **fraud** under the "standard elements of **fraud,**" [4] but the Florida Supreme Court defines "**fraud** on the court" as:

> [The] prevention of an unsuccessful party [from] presenting his case, by **fraud** or deception practiced by his adversary; keeping the opponent away from the court; **[**7]** falsely promising a compromise; ignorance of the adversary about the

> existence of the suit or the acts of the plaintiff; fraudulent representation of a party without his consent and connivance in his defeat; and so on.

DeClaire v. Yohanan, 453 So. 2d 375, 377 (Fla. 1984), superseded by rule on other grounds, see Lefler v. Lefler, 776 So. 2d 319, n. 1 (Fla. 4th DCA 2001).

> 4 The appellants state in their brief that the usual elements of **fraud** are:
>
> > 1. A false statement concerning a specific material fact;
> >
> > 2. The maker's knowledge that the representation is false;
> >
> > 3. An intention that the representation induces another's reliance; and
> >
> > 4. Consequent injury by the other party acting in reliance on the representation.

In the instant case, Dean concedes in his brief that he was informed by attorney Prominski of the alleged existence of the 1999 will. However, Dean did not disclose the information to the court and stated under oath that there were no other interested parties. As the trial court wrote, Dean's failure to disclose this information prevented the court from addressing what procedures needed to be taken regarding Bentley and the 1999 will. Bentley was an interested person entitled to an opportunity to be heard, and the personal representative prevented this. *See Fritsevich v. **Estate** of Voss, 590 So. 2d 1057, 1058 (Fla. 3d DCA 1991)* (holding that allegations by appellants that the putative beneficiary **[*490]** knew that she was not entitled to inherit any portion of the **[**8]** **estate,** if true, denied the appellants access to the proceedings and constituted **fraud** upon the court). The order stated in part:

> Dean, the Personal Representative, is also an attorney licensed to practice law in the State of Florida and, as an officer of the Court, has specific obligations to the Court. In the present case, Dean became aware of the existence of the 1999 Will filed well prior to the filing of the Petition for Discharge and that the 1999 Will completely altered the distribution plan of the 1974 Will. It is not inconceivable that the Testator, after 25 years, may have changed his mind as to the distribution plan since the sole beneficiary in the 1974 Will and the sole beneficiary in the 1999 Will are different and are neither the children, grandchildren, or surviving spouse of the Testator. Rather than giving the predecessor Circuit Judge, prior to closing the **Estate,** an opportunity to address what, if any procedures should be taken regarding Bentley, the Personal Representative filed a Petition, under oath, representing to the Court that there were no other interested persons in this proceeding other than the Personal Representative and the sole beneficiary under the **[**9]** 1974 Will. *In reviewing the totality of the facts and circumstances that were before the Personal Representative at the time he filed his Petition for Discharge, the Court finds that these statements in the Petition were not correct and that Jackie Bentley was an interested person under the statute and was entitled to receive notice on the Petition for Discharge and an opportunity to be heard before the **Estate** was **closed** .*
> . . .

(emphasis added).

Dean argues that "as a matter of public policy, the reasonable decisions of personal representatives should not be subject to 'Monday morning quarterbacking' by the courts after the **estate** is **closed** and the personal representative discharged." This stance is troubling because the misstatement of material facts cannot be viewed as a reasonable decision. Dean had been notified about the 1999 will by an attorney and a detective, and Dean was aware that the 1999 will was in the court file. The failure to bring the will to the attention of the trial court and the misstatement of fact are not only violations of the duties of a personal representative, they violate that part of the attorney's oath which provides: "I will employ for the **[**10]** purpose of maintaining the causes confided to me such means only as are consistent with

truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law." [5] As the trial court wrote:

> Once he became aware of the 1999 will, under the specific undisputed facts of this case, he had to provide notice of the petition of discharge to the beneficiary under the subsequent will, especially when the subsequent will materially and completely changed the prior distribution plan, prior to seeking the discharge and of *equal importance, was obligated to make the court specifically aware of the existence of Bentley to allow the court to make a reasoned and informed decision as to what, if anything, needed to be done regarding Bentley*."

(emphasis added).

5 *See* Oath of Admission to The Florida Bar.

The order **reopening** the **estate** is affirmed. We also direct the trial court's attention to Canon 3D(2), Florida Code of Judicial Conduct, which requires a judge to take **[**11]** appropriate action "when a judge **[*491]** receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar . . . ."

AFFIRMED.

PETERSON and PALMER, JJ., concur.

EXHIBIT C

Hennessey, William

From: Hennessey, William
Sent: Tuesday, August 27, 2013 9:44 AM
To: 'KENNETH MANNEY'
Subject: RE: Baum Estate

Kenneth-

I'll be in the office all week except for Wednesday. I am going to have to insist that you serve as required by Florida law. To that end, in response to your note below, I am not authorized to accept service beyond that which is permitted or allowed by Florida law.

On a separate note, I kindly ask that you provide me dates for your client's deposition in Florida. If Nina is going to move forward (which is unfortunate given the many inaccuracies in her pleadings), we need to proceed with discovery.

Many thanks.

Bill

William T. Hennessey, III
Gunster, Yoakley & Stewart, P.A.
777 S. Flagler Drive, Suite 500E
West Palm Beach, FL 33401
(561) 650-0663 office
(561) 655-5677 fax

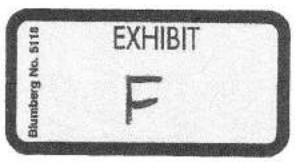
From: KENNETH MANNEY [mailto:kennethmanney@bellsouth.net]
Sent: Monday, August 26, 2013 11:53 AM
To: Hennessey, William; Kenneth Manney
Subject: Baum Estate

Bill,

As you know, I represent Nina Baum. We are ready to serve your client, David Baum, and I would appreciate your confirming that you will accept service for him by replying to this email. In addition, what is the best address for you and how is your schedule this week so that I can let my server know when you will be at your office?

Thanks,
Kenneth

Kenneth J. Manney
Attorney at Law



Ex C-1

Hennessey, William

From: Hennessey, William
Sent: Thursday, August 29, 2013 9:32 AM
To: 'KENNETH MANNEY'; Patrick Roche
Subject: RE: Baum Estate

Kenneth-

I don't mind extending a courtesy to allow you an opportunity to get folks served. Please take care of getting whomever you think it is appropriate to serve within a reasonable amount of time. However, I am pretty confident that there is no prohibition on conducting discovery before all parties are served and clearly no requirement that a party file an answer. Is there any reason why you can't get everyone served with the next couple of weeks?

Let's work on some proposed dates for the deposition next month or in October (assuming, of course, that you are going to be serving the pleadings on David). Thanks.

William T. Hennessey, III
Gunster, Yoakley & Stewart, P.A.
777 S. Flagler Drive, Suite 500E
West Palm Beach, FL 33401
(561) 650-0663 office
(561) 655-5677 fax

From: KENNETH MANNEY [mailto:kennethmanney@bellsouth.net]
Sent: Wednesday, August 28, 2013 11:59 AM
To: Hennessey, William; Kenneth Manney; Patrick Roche
Subject: Re: Baum Estate

Bill,

I don't think it would be appropriate to take a deposition before everyone has been properly served so that all of the parties can participate in the deposition; and I would expect to have answers from everyone before my client's deposition is taken. Perhaps you can speak with your client and have him authorize you to accept service for him in all his various capacities so that we can move this litigation forward.

Kenneth

From: "Hennessey, William" <WHennessey@gunster.com>
To: 'KENNETH MANNEY' <kennethmanney@bellsouth.net>
Sent: Tuesday, August 27, 2013 9:43 AM
Subject: RE: Baum Estate

Kenneth-

I'll be in the office all week except for Wednesday. I am going to have to insist that you serve as required by Florida law. To that end, in response to your note below, I am not authorized to accept service beyond that which is permitted or allowed by Florida law.

On a separate note, I kindly ask that you provide me dates for your client's deposition in Florida. If Nina is going to move forward (which is unfortunate given the many inaccuracies in her pleadings), we need to proceed with discovery.

Ex C-2

Many thanks.

Bill

William T. Hennessey, III
Gunster, Yoakley & Stewart, P.A.
777 S. Flagler Drive, Suite 500E
West Palm Beach, FL 33401
(561) 650-0663 office
(561) 655-5677 fax

From: KENNETH MANNEY [mailto:kennethmanney@bellsouth.net]
Sent: Monday, August 26, 2013 11:53 AM
To: Hennessey, William; Kenneth Manney
Subject: Baum Estate

Bill,

As you know, I represent Nina Baum. We are ready to serve your client, David Baum, and I would appreciate your confirming that you will accept service for him by replying to this email. In addition, what is the best address for you and how is your schedule this week so that I can let my server know when you will be at your office?

Thanks,
Kenneth

Kenneth J. Manney
Attorney at Law
Post Office Box 644324
Vero Beach, FL 32964-4324
772-231-7887 Tel.
772-231-7827 Fax

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