EXHIBIT 1

PROCEDURAL HISTORY
OF WILLIAM HENNESSEY'S FRAUDULENT AND MATERIALLY FALSE AND MISLEADING ORDERS, SIGNED BY THE TRIAL COURT

Appeal # 5D14-1652
***Anneen Nina Gloria Baum v. David Baum, et al.*, 05-2012-CP-048323**
(2012 Case: Administrative Probate Case/Petition)

Appeal # 5D14-1683
***Anneen Nina Gloria Baum v. David Baum, et al.*, 05-2013-CP-028863**
(2013 Case: Adversary Proceeding Case/Complaint)

In Re: Estate of Seymour Baum, Deceased

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I. Mr. Hennessey's Identically-Titled Two "Order[s] Compelling Service", Signed by the Court November 15, 2013 (Exhibits A-1, A-2)

On October 15, 2013, Mr. Hennessey made a motion to dismiss Ms. Baum's probate administration case (hereinafter "2012 case"). Its first ground was her failure to serve the petition and amended petition (Exhibit F).

The brief section of Mr. Hennessey's motion devoted to this ground was successively deceitful. This includes its title: "Failure to Comply with Rules 1.070(j) and 5.025", which should have differentiated the rules as Florida Rule of Civil Procedure 1.070(j) and Florida Probate Rule 5.025, with the latter placed first.

Indeed, his argument gave precedence to Florida Probate Rule 5.025, stating:

> "The Florida Rules of Probate define an action seeking to remove a personal representative or seeking revocation of probate of a will as 'Adversary Proceedings.' Fla. R. Prob. 5.025(a). Thus, Nina's Petition is an adversary proceeding within the meaning of the Florida Probate Rules. The initial pleading in an adversary proceeding is required to be served by Formal Notice. Fla. R. Prob. 5.025(d)(1)."

Without revealing that Florida Probate Rule 5.025 fixes no time frame for service, Mr. Hennessey asserted that Ms. Baum had "failed to serve the Personal Representative with formal notice as required by Fla. R. Prob. 5.025". He then purported that the 120-day time frame for service in Florida Civil Rule of Procedure 1.070(j) governed Ms. Baum's probate administration proceeding, citing, but not quoting, Florida Probate Rule 5.025(d)(2) for the proposition that "adversary proceedings are governed by the Florida Rules of Civil Procedure". This is false.

Florida Probate Rule 5.025(d)(2) states:

> "After service of formal notice, the proceedings, as nearly as practicable, must be conducted similar to suits of a civil nature, including entry of defaults. The Florida Rules of Civil Procedure govern, except for rule 1.525." (underlining added).

In other words, Florida Rules of Civil Procedure do NOT govern probate adversary proceedings until "After service of formal notice" – for which there is no time parameter under Florida Probate Rules.

Thus, there was no legal basis for Mr. Hennessey's October 15, 2013 motion to dismiss for failure to serve the amended petition – and all the more so as his motion did not even claim that his client, David Baum, or any of the other respondents had requested service of Ms. Baum's amended petition – or that her attorneys, Kenneth Manney, Esq. and Patrick Roche, Esq., had refused to make service upon being so-requested – or that

respondents had in any way been prejudiced. Indeed, this first ground of Mr. Hennessey's dismissal motion was not just wholly frivolous, but fraudulent.

On October 25, 2013, Mr. Hennessey noticed the scheduling of a telephonic case management conference for November 12, 2013. On the same day, he filed a motion to dismiss Ms. Baum's amended complaint in her adversary proceeding (hereinafter "2013 case"). It did not include failure to serve as a ground for dismissal of the amended complaint.[1]

On October 30, 2013, Mr. Hennessey noticed Ms. Baum for a November 15, 2013 deposition in her 2013 case. On November 1, 2013, he noticed a December 17, 2013 hearing for a variety of motions, the first of which was his motion to dismiss her amended petition in the 2012 case. On November 4, 2013, he moved to compel her production of documents in the 2013 case.

On November 6, 2013, Messrs. Manney and Roche moved to withdraw as Ms. Baum's attorneys. The motion gave no details, other than that Ms. Baum had advised them on that date that she had "retained new counsel and that, 'effective immediately', their legal services [were] no longer required." Messrs. Manney and Roche noticed their motion to withdraw for a hearing on November 12, 2013 – the same date as the already-scheduled case management conference. On November 7, 2013, they moved for a protective order with respect to Mr. Hennessey's noticing of Ms. Baum's deposition on November 15, 2013. This, they also noticed for a hearing on November 12, 2013.

Notwithstanding Mr. Hennessey had noticed the case management conference as telephonic, Mr. Hennessey physically appeared before the Court on November 12, 2013 – the sole counsel to so-appear (Exhibit G). Messrs. Manney and Roche appeared by phone, as did attorney Mark Guralnick, who, just minutes earlier, had filed a notice of appearance.

Virtually the first words of Mr. Hennessey were:

> "We're here before you first on a status conference to – because we're having a Dickens of a time getting anything scheduled in this case. And through no fault of Mr. Manney or Mr. Roche, their client has been uncommunicative with them in terms of scheduling things before the Court…
>
> …As I said, Your Honor, this – I don't think this is through any fault of our opponents. Ms. Baum on the other side – and I sent over to Your Honor – and I'm not sure if you have it; I don't see it before you – but a notebook. But Ms. Baum herself is a sort of serial litigant. And the U.S. District Court – and I cited it in my response on their motion for

[1] At the November 12, 2013 case management conference, Mr. Hennessey stated, with respect to the adversary proceeding, that "[his] client, as personal representative, appeared voluntarily to have a lis pendens discharge" (Exhibit G: p. 13).

> protective order, you know, basically in quoting, he said, you know, she lies, manipulates, distorts, she defies court rulings, misses countless professional appointments, decides when or when not to be present for court appearances, filed multiple criminal and civil complaints of dubious merit; and fired or alienated closed to ten experienced attorneys. She's clear, concise and rational when it's in her interest to do so. Otherwise, she's vague, circumstantial, evasive and circuitous. This is not mental illness; it's her style of combat.
>
> And so that's – unfortunately the rulings of the New York District Court and the Federal – the Federal Court are playing out again in this case…" (Exhibit G: pp. 4-6).

Mr. Hennessey identified no basis for his assertion that Ms. Baum was responsible for difficulties in "getting anything scheduled" – or for his absolution of Messrs. Manney and Roche. Neither was supported by his e-mail exchange with Messrs. Manney and Roche that he had annexed as Exhibit A to his twice referred-to "response" to their motion for a protective order. Indeed, it is because Mr. Hennessey had no evidentiary basis for his innuendos and aspersions on Ms. Baum as responsible for impeding and delaying her own two cases that at the November 12, 2013 case management conference – the first case management conference for these cases – that he infused his baseless charges against Ms. Baum with the U.S. District Court decision in *USA v. Nina Baum*, and other prejudicial and inflammatory materials[2], designed to mislead the Court as to the true facts in these cases.

To Mr. Guralnick's credit, he interjected:

> "I would also respectfully caution the Court in considering any of these issues by this federal judge. It's over a decade ago. And she was embroiled in a child custody – (indecipherable). It is really quite – (indecipherable) – and unrelated to any of this." (Exhibit G: p. 12).

The Court's response – likewise to its credit:

> "I'm not holding any of that against Ms. Baum. I'll make my own judgments about her in my case." (Exhibit G: p. 12).

The transcript for the November 12, 2013 case management conference shows that Messrs. Manney and Roche did not claim that Ms. Baum had been "uncommunicative" with them in terms of scheduling things before the Court"; or that she was the reason they had moved for a continuance to December 17, 2013 of Mr. Hennessey's motion to strike Ms. Baum's creditor claims, originally calendared for October 3, 2013, which the Court had granted; or that it was on her account that Mr. Hennessey had been unable "for the last three months to get Ms. Baum's deposition set"; or that she was at fault for having

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[2] The precise content of the "notebook", to which Mr. Hennessey referred as having been furnished the Court, is unknown. He did not state if and when he had served it on Ms. Baum's counsel – and the "notebook" is not docketed on the Court's electronic docket.

"never filed a response to" Mr. Hennessey's document demand, which had been due on October 30, 2013. Nor did they claim that she was the reason, as Mr. Hennessey implied, that:

> "...the parties in the estate proceeding, in the will contest, are parties that still have not been served despite the fact that it's been pending since June. There are still parties in the civil case that have not been served despite the fact that the case is pending again since June.
> ... It's been pending for over five months now, and still folks haven't been served despite repeated requests." (Exhibit G: pp. 6-7).

Nor did the Court make inquiry on the subject. Although the Court asked "Is Ms. Baum – is she on the line today?" (Exhibit G: p. 8), it did not inquire of either Manney or Roche – or of Mr. Guralnick – why she was not. The transcript shows that the Court relieved Manney and Roche based on Mr. Guralnick's statement that "just moments ago he had filed an entry of appearance" and was "prepared to jump right in there and assume responsibility for [Ms. Baum's] representation immediately" (Exhibit G: p. 8).

In the complete absence of evidence as to whether Ms. Baum had discharged Messrs. Manney and Roche for cause and whether they, not she, was responsible for having failed to serve the pleadings or other problems purported by Mr. Hennessey, Mr. Hennessey filled the gap by stating:

> "...Your Honor, in the response that I filed I gave you copies of the case law where the courts have made these rulings against Ms. Baum in the past. We're in for a long haul on this. And I just want to start the process of trying to make sure that she's ordered to appear on dates." (Exhibit G: p. 11)

Yet, the Court did not fix hard-and-fast deadlines. Rather, it set target dates for service of Ms. Baum's pleadings, as well as for her deposition and document production [Exhibit G: pp. 12, 15, 16-17]. Each was by language reflecting flexibility, in the event of problems.

The colloquy as to service was as follows:

Court:	...Let's shoot for Friday the 13th. That gives you just over a month.
Guralnick:	Okay.
Court:	And then if not, we can address it on the 17th. Fair enough?
Guralnick:	Fair enough. (Exhibit G: p. 15)

In fact, it was Mr. Hennessey himself who had first suggested flexibility with respect to service:

> Hennessey: And so if you could provide us with – Ms. Baum with two weeks or whatever you think is appropriate to serve, subject to coming back in if she's having difficulties, I think that would be appropriate under the circumstances, Your Honor." (Exhibit G: p. 13).

Mr. Hennessey had reason to assume this posture of generosity because, as he knew, his assertion to the Court at the November 12, 2013 conference that "the 120-day rule" had "long since run" (Exhibit G: pp. 14, 15) was false. Such rule – by which he meant Florida Rule of Civil Procedure 1.070(j) – had no applicability to Ms. Baum's 2012 probate administration case, governed by Florida Probate Rule 5.025, containing no time parameter for service. Indeed, it foreseeably had no applicability to Ms. Baum's amended complaint in her 2013 case – an adversary proceeding to be declared or ordered, upon service with the amended petition, pursuant to Florida Probate Rule 5.025(b) and (c).

It is not known when Mr. Hennessey furnished the Court with the two proposed orders that the Court would sign on November 15, 2013 pertaining to service of the pleadings (Exhibits A-1, A-2). The two orders, identically titled "Order Compelling Service", were also identical in content – except for the different designations of the parties (Petitioner/Plaintiff; Respondents/Defendants) and a misnumbering of the second decretal paragraph in the order for the 2012 case.

Each order opened with a prefatory paragraph reading:

> "THIS CAUSE came before the Court at the Telephonic Case Management conference on November 12, 2013 at 9:15 a.m. The Court having reviewed the file, considered arguments of counsel and being otherwise fully advised in the premises".

This was followed by two decretal paragraphs – neither consistent with what the Court orally ruled at the November 12, 2013 case management conference. These paragraphs were:

> "1. Pursuant to Florida Rule of Civil Procedure 1.070(j), Petitioner [Plaintiff] is hereby required to serve process on any Respondents [Defendants] not yet served in this action on or before December 13, 2013.
>
> 3[2]. Any Respondents not served on or before December 13, 2013 shall be dropped as a party."

Indeed, in furnishing the Court with these two "Order(s) Compelling Service", each "Pursuant to Florida Rule of Civil Procedure 1.070(j)", Mr. Hennessey was leading the

Court into error, *as a matter of law* – and not only as to the 2012 probate administration case, but also as to the related 2013 adversary proceeding case where such rule would also be inapplicable.

II. Mr. Hennessey's Identically-Titled Two "Order(s) Denying Emergency Motion to Extend Deadlines and for Other Relief", which the Court Signed on January 24, 2014 (Exhibits B-1, B-2)

Two weeks after the November 12, 2013 telephonic case management conference (Exhibit G), Mr. Guralnick filed a November 26, 2013 motion to withdraw as Ms. Baum's attorney in her two cases. Three days later, on November 29, 2013, he filed, in each case, an "Emergency Motion to Extend Deadlines and Other Relief". He noticed all of these for a December 11, 2013 hearing.

On December 5, 2013, Mr. Hennessey opposed Mr. Guralnick's motion to extend deadlines (Exhibit H). Referring to the November 12, 2013 conference/hearing, he stated:

> "2. At that hearing, [I] advised the Court that the Plaintiff had engaged in a pattern of delay and obfuscation of the truth relating to the scheduling of hearings in this matter and complying with outstanding discovery requests in the similar civil matter, Baum v. Baum, Case Number 05-2013-CP-028863-XXXX-XX (the 'Civil Matter'). ***The email communications between the lawyers were presented to the court to show this history.*** In addition, the Court was advised that Nina Baum has a history and pattern of engaging in meritless litigation and abusing court process which was playing out in this matter citing to specific court findings in U.S. v. Baum, 380 F. Supp.2d 187 (S.D.N.Y. 2005) among other cases." (bold and italics added).

This was materially false. No "email communications between the lawyers" were presented at the November 12, 2013 conference, nor even referred-to. Rather, Mr. Hennessey had referenced "a notebook" he had "sent over" to the Court (Exhibit G: p. 5), whose content he had not identified, other than, by inference, that it contained his response to the motion that Messrs. Manney and Roche had made for a protective order with respect to Ms. Baum's deposition – and that it had "cited" the U.S. District Court decision in *U.S. v. Baum*. In fact, the decision was not just "cited" by his submission[3], but annexed as Exhibit B – and it followed upon Exhibit A, an e-mail exchange, primarily between Mr. Hennessey and Mr. Manney, not showing any "history", attributable to Ms. Baum, as opposed to Messrs. Manney and Roche, of "delay and obfuscation of the truth relating to the scheduling of hearings in this matter and complying with outstanding discovery requests".

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[3] *See* Mr. Hennessey's November 8, 2013 opposition to the November 7, 2013 motion of Messrs. Maney and Roche for a protective order, postponing Ms. Baum's deposition.

After reciting what the Court was "advised" at the November 12, 2013 conference, Mr. Hennessey's December 5, 2013 opposition did not then recite the Court's oral rulings at the conference. Instead, it skipped to the "several orders" entered "following that hearing" (Exhibit H: ¶3).

Mr. Hennessey did the same at the December 11, 2013 hearing on Mr. Guralick's motions (Exhibit I). After opening with the words:

> "Good morning, Your Honor. If you recall, we appeared before you back on November 12th" (Exhibit I: p. 7),

he did not then reveal what the Court had orally ruled on November 12th, other than that the Court had allowed Messrs. Manney and Roche to withdraw. Instead, he shifted to the Court's subsequent written orders:

> Hennessey: You entered some orders following that hearing compelling Ms. Baum to attend her deposition – it is actually set for tomorrow – and to serve certain parties who have never been served in the two cases that are pending before you by this coming Friday.
>
> And you compelled her to respond to outstanding requests for production by the 12th – I'm sorry, by last Friday, by December 2nd, Your Honor.
>
> And so those three orders were entered following that hearing. ((Exhibit I: pp. 7-8, underlining added).

This was the one and only reference to the issue of service at the December 11, 2013 hearing, whose focus, apart from Mr. Guralnick's withdrawal motion, was Ms. Baum's deposition, scheduled for the next day, December 12, 2013. Mr. Hennessey rested his objection to any continuance on what he purported to be Ms. Baum's "game plan":

> "…if we continue to grant her extensions of time, she will continue. She has abused process up to this point in terms of not cooperating with her own lawyers." (Exhibit I: p. 7).

In fact, there was no evidence before the Court that Ms. Baum had "abused process" in her two cases – or that she was not acting appropriately with respect to her lawyers – and, certainly, there was no evidence that she had ever been given notice that she needed to defend herself in that regard. Nevertheless, as a result of Mr. Hennessey's misleading rhetoric that the withdrawal of Mr. Guralnick was masterminded by Ms. Baum "for the sole purpose of delay" (Exhibit I: p. 8), the Court ruled:

> …I am not going to extend any deadlines at this time.
>
> The deposition is going to stay set for tomorrow. The other deadlines that I set at the last hearing, I thought I made it pretty clear at the last hearing that that was going to

> be the only delay or continuance that I was going to grant. And now I'm being asked to do it again, which I am not inclined to do. So I'm going to leave the deadlines as they were set last time. (Exhibit I: pp. 12-13, underlining added).

Obvious from this is that the Court, in fact, had no independent recollection of what it had made "pretty clear" at the November 12, 2013 hearing, *to wit*, flexibility with respect to the dates being set (Exhibit G: pp. 12-17).

It is not known when Mr. Hennessey furnished the Court with his two proposed orders denying Mr. Guralnick's "Emergency Motion to Extend Deadlines and Other Relief", presumably *ex parte* (Exhibits B-1, B-2). The orders the Court signed, but not until January 24, 2014 – six weeks after the December 11, 2013 hearing – each bore a typed signature date "___ day of December, 2013" – which, in signing, the Court changed, by hand, to "24 day of January, 2014".

Though identically-titled "Order Denying Emergency Motion to Extend Deadlines and for Other Relief", Mr. Hennessey's two proposed orders were materially different. Apart from the difference in designation of Petitioner/Plaintiff – and a third declaratory paragraph in the order for the adversary proceeding directing Ms. Baum to appear for the December 12, 2013 deposition she had already attended – is the second declaratory paragraph in both orders.

The second declaratory paragraph of Mr. Hennessey's proposed order in the 2012 case read:

> "The Court made it clear ***following*** the hearing on November 12, 2013 that a further extension of the time for service of process would not be granted." (Exhibit B-2, bold, italics, and underlining added).

The second declaratory paragraph of his proposed order in the 2013 case read:

> "The Court made it clear ***following*** the hearing on November 12, 2013 that a further extension of the deadlines and discovery would not be granted." (Exhibit B-1, bold, italics, and underlining added).

If, by the word "following", Mr. Hennessey's intended meaning was "consistent with", these second decretal paragraphs were each false. If his intended meaning was "subsequent to", the orders lacked specificity as to when that might have been. Presumably it was at the December 11, 2013 hearing on Mr. Guralnick's "Emergency Motion to Extend Deadlines and Other Relief" (Exhibit I), which the orders were denying. Yet, at the December 11, 2013 hearing, the Court did not make clear what these second decretal paragraphs purported. That Mr. Hennessey may be presumed to know this is reflected by his omission of any reference to the December 11, 2013 hearing in the

prefatory paragraphs of his proposed orders – and their second decretal paragraphs (Exhibits B-1, B-2).

As a result of this conspicuous lack of specificity in Mr. Hennessey's proposed orders, the Court's signing them on January 24, 2014 gave the false impression that it was at the December 17, 2013 hearing that the Court "made clear" what the second decretal paragraphs purported – and, in so doing, that the Court would not entertain a motion for relief from the November 15, 2013 orders. This is contrary to what the Court expressly stated on December 17, 2013 (Exhibit J: p. 137).

III. Mr. Hennessey's Failure to Embody the Court's December 17, 2013 Oral Rulings as to Service & the 60-Day Stay in any Written Order (Exhibit J)

At the December 17, 2013 hearing (Exhibit J), Mr. Hennessey escalated his deceit. Once again blaming Ms. Baum as "the one that's contributed to all of this" (Exhibit J: pp 8-9), he now affirmatively misrepresented to the Court what its November 12, 2013 oral ruling had been – and that the November 15, 2013 orders which it had signed were consistent therewith:

> Hennessey: You had directed Nina Baum to serve the remaining parties in both the Will contest and the Trust contest by last Friday [December 13, 2013].
>
> ...and you told Nina that parties would be dropped and removed, if the complaint in the civil case and the Will contest were not served. (Exhibit J: p. 130)
>
> ...
>
> Hennessey: And so you indicated that if they didn't serve within that timeframe that the parties would be dropped.
>
> Court: And that's the order that's in the case right now, right?
>
> Hennessey: Yes.
>
> Court: That's where we are.
>
> Hennessey: Okay. (Exhibit J: p. 136)

As a result of this two-fold misrepresentation, the Court then orally ruled:

> Court: ...I entered a ruling last time, which I think the 17th was the deadline, and it wasn't met.
>
> So, that order is going to kind of speak for itself, at this point. If anybody needs relief from that, they can file

an (sic) motion for relief from that order... (Exhibit J: p. 137).

No order was ever signed by the Court embodying this December 17, 2013 oral ruling that relief from the November 15, 2013 "Order(s) Compelling Service" would have to be by motion therefor. Presumably, this is because Mr. Hennessey furnished none to the Court. Presumably, too, he also furnished none reflecting the Court's December 17, 2013 oral ruling effectively staying proceedings for 60 days so that Ms. Baum would have time to retain successor counsel:

Guralnick: Your Honor, is there going to be a time limit on my client finding new counsel?

Court: Well, she's not a personal representative. She's not required to be represented by counsel. She certainly should have counsel. I'm not going to delay this case more than sixty days.

So, if you are going to get an attorney, you need to do it within sixty days from now, not from the order relieving Mr. Guralnick. It's sixty days from today.

If you don't have an attorney by then, the case is going to get cranked up and start then, and you'll be representing yourself in this case.

So, it's certainly to your advantage to get another skilled attorney, like you have here, to help you out going forward. So, don't waste any time. You need to get on that right away, and start looking for a lawyer.

All right, Mr. Hennessey, get me the proposed order, please?

Hennessey: Yes, Your Honor.

Guralnick: Thank you, your Honor. (Exhibit J: pp. 139-140).

IV. Mr. Hennessey's Differently-Titled Two "Order(s) Dropping Parties...", Signed by the Court on April 2, 2014 (Exhibits C-1, C-2)

The Court's signing of Mr. Hennessey's "Order(s) Denying Emergency Motion to Extend Deadlines and for Other Relief" (Exhibits B-1, B-2) was on the same day as Hoffman & Hoffman P.A., by Theresa Hoffman, Esq., filed a notice of appearance as Ms. Baum's new counsel – January 24, 2014. Four days later, on January 28, 2014, Mr. Hennessy made motions in the two cases to drop parties (Exhibits K-1, K-2).

Mr. Hennessey's motions to drop parties were not based on Ms. Baum's failure to effect service as of January 28, 2014. Rather, their basis was because: "Despite the denial of the request for an extension" – in other words, the denial of Mr. Guralnick's "Motion to

Extend Deadlines and Other Relief"— she had not effected service "on or before December 13, 2013".

Neither motion purported that Ms. Baum's failure to make service was wilful or deliberate. Nor did they reveal that Ms. Baum had effectively been without counsel to furnish her with unconflicted representation since Mr. Guralnick's November 26, 2013 motions to withdraw, or that Mr. Guralnick had repeatedly raised Ms. Baum's due process rights in that regard[4], or that, on December 17, 2013, Ms. Baum had directly explained the difficulties she was having and had had in finding lawyers because of a course of conduct by David Baum and Mr. Hennessey, impeding her ability to retain new counsel:

> Court: Do you need some time to retain a new attorney?
>
> Ms. Baum: Well, it's a little difficult because so many attorneys that I've contacted have told me that – what did they say, I'm blacklisted, conflict, because apparently David Baum has contacted over twenty lawyers in Brevard County.
>
> Court: So you're having a difficult time finding an attorney?
>
> Ms. Baum: Yes, and then what happened with Mr. Guralnick – I didn't know he was representing me because I didn't get the retainer back. And within that month – within that week, I panicked and I just tried to look for another lawyer because I even marked up the retainer, and I didn't know that he accepted it and signed it. I had no idea he was my lawyer.
>
> So I tried to look for another lawyer, and then I got a letter from him right after I was going to retain someone else.
>
> But this whole confusing conflict, coupled – some of it's my fault because of my injury I have speech problems, and my memory is [not] good. I just don't recall everything all the time right away, but eventually I do, but I need a lawyer desperately.

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[4] As stated, *inter alia*, in Mr. Guralnick's December 16, 2013 emergency motion to continue hearing on motion to strike creditor's claim and renewed motion to withdraw:

> "2. ...Plaintiff's interests are being greatly prejudiced by my inability to represent her, my conflict of interest with her, and my repeatedly stated desire to stop representing her.
>
> 3. Going forward with the hearing on Defendant's motion to strike creditor's claim on December 17, 2013, under the circumstances described herein and in my previous motion, amounts to depriving the Plaintiff of due process of law and imposes a conflict that will inevitably prompt continued litigation over these issues."

And I mean, I can't force someone to represent me. I mean, he already said that – I mean, unfortunately, today he should have gotten me more prepared, I guess. I don't know. I can't force someone to do something. I need a lawyer, because I don't know how [to] get out of this position.

Court: Okay. I understand.

...

Ms. Baum: I'm so sorry.

Court: You don't have any reason at all to apologize, ma'am." (Exhibit J: pp. 128 – 129).

...

Ms. Baum: Your Honor, I forgot something.

Court: Okay.

Ms. Baum: The other thing is, the last few lawyers I contacted, somehow – after I spoke to them, they wanted my case. One, I even signed a retainer with, but then all of a sudden they got bombarded by Mr. Hennessey with all these awful things about me.

Like, horrible, horrible things, and I wouldn't want a client like that either, and told them about motions that I'm unfamiliar with, about sanctions. And one said that it would be – what did he say? It looks like not only are they taking all your money – he said something about going after the jugular.

It was really awful, So, he said –"
(Exhibit J: p. 131).

Indeed, Mr. Henessey's January 28, 2014 motions to drop parties made not the slightest reference to the December 17, 2013 hearing, including Mr. Guralnick's recitation to the Court at that hearing of his efforts to effect service:

Guralnick: ...We made immediate efforts after our last conference with the Court to serve those parties, and prepare the summons and the complaints for submissions to the sheriff, they have never been served.

Unfortunately, we learned in the process that all the summons have expired. Prior counsel apparently had made no effort. The summons that were issued by the Clerk could not be accepted by the sheriff, because there (sic) are outdated, at this point.

> So we went through the process, and we are somewhere in that process now of obtaining the alias summons and serving it through the sheriff.
>
> That paperwork is in the file and available to whomever will take over for me. It's in the works, I paid for it." (Exhibit J: pp. 130-131).

The sole exhibits to Mr. Hennessey's motions to drop parties (Exhibit K) were the November 15, 2013 and January 24, 2014 orders he himself had written and submitted to the Court, possibly *ex parte* – and it was on these orders that his motions to drop parties exclusively rested.

Telling, Mr. Hennessey's two motions now clarified what was missing from the January 24, 2014 orders themselves, namely, when the Court had "made clear" what their second decretal paragraphs differently claimed. According to Mr. Hennessey's motions, it was at the December 11, 2013 hearing – and his motions now put those different claims in quotes, as if that was what the Court had actually stated on December 11, 2013:

> "At a hearing on December 11, 2013, this Court denied a motion to extend the deadlines. The Court specifically ruled as follows 'The Court made it clear following the hearing on November 12, 2013 that a further extension of time for service of process would not be granted.' A copy of the Order confirming the oral ruling is attached as Exhibit 'B'." (Exhibit K-1: ¶7 (2012 case));

> "At a hearing on December 11, 2013, this Court denied a motion to extend the deadlines. The Court specifically ruled as follows 'The Court made it clear following the hearing on November 12, 2013 that a further extension of the deadlines and discovery would not be granted.' A copy of the Order confirming this oral ruling is attached is attached (sic) as Exhibit 'B'." (Exhibit K-2: ¶6 (2013 case)).

Both these paragraphs were materially misleading. At the December 11, 2013 hearing, the Court stated it was "not going to extend any deadlines at this time" and, thereupon made manifest that it had no independent recollection of how it had orally ruled "at the last hearing" – on November 12, 2013 (Exhibit I: pp. 13-14).

Yet, perhaps the most important difference between Mr. Hennessey's two January 28, 2014 motions to drop parties was that his motion in the 2012 case (Exhibit K-1) entirely concealed Florida Rule of Civil Procedure 1.070(j) in the four separate places where it should have appeared based on his October 15, 2013 dismissal motion (Exhibit F) and November 15, 2013 "Order Compelling Service" (Exhibit A-1: ¶¶4, 5, 6, & "WHEREFORE clause) – reflective of his knowledge that Florida Rule of Civil Procedure 1.070(j) was NOT applicable, contrary to his representation that it was by his October 15, 2013 dismissal motion and the November 15, 2013 "Order Compelling Service" he got the Court to sign.

By contrast, his motion in the 2012 case prominently featured Florida Rule of Civil Procedure 1.070(j), mentioning it in three separate places (Exhibit K-2: ¶¶4, 5, & "WHEREFORE clause).

On February 13, 2014, Mr. Hennessey calendared his two January 28, 2014 motions to drop parties for a March 18, 2014 hearing.

On February 18, 2014, Ms. Hoffman filed her opposition, noting that "Florida Statues and Florida Probate Rules do not contain a time requirement for serving formal notice", citing *Aguilar v. Aguilar*, 15 So. 3d 801. 805 (Fla. Dist. Ct. App. 2009) (¶3) and stating that the motion to drop parties:

> "will become moot if the Court grants Petitioner leave to consolidate her pleadings (i.e. the Amended Petition from the probate administration proceeding and the Amended Complaint from the adversary proceeding) into one adversary petition, entitled Petitioner's Second Amended and Consolidate Petition for Revocation of Probate and Other Relief, which only needs to be served by formal notice." (¶2).

Simultaneously, Ms. Hoffman filed a motion for leave to file an amended and consolidated pleading in Ms. Baum's 2012 case, consolidating claims from the amended petition and amended complaint into one adversary probate proceeding. She stated:

> "4. This amendment will not prejudice any other party or otherwise delay the proceeding; to the contrary, this amendment will simply the litigation by consolidating all of the Petitioner's claims into one pleading.
>
> 5. Consolidating the pleadings will also clarify the Petitioner's pleadings and will allow new counsel an opportunity to formally notice all interested parties.
>
> 6. 'An order on a motion to amend is reviewed under the abuse of discretion standard…However, all doubts should be resolved in favor of allowing the amendment and refusal to do so generally constitutes an abuse of discretion unless it clearly appears that allowing the amendment would prejudice the opposing part, the privilege to amend has been abused, or amendment would be futile.' Crown v. Chase Home Fin., 41 So. 3d 978 (Fla. 5th DCA 2010) citing Fla. R. Civ.P.1.190(a)."

On February 24, 2014, Ms. Hoffman formally served the respondents/defendants with the Second Amended Petition.

On March 18, 2014, the Court held its first hearing on the cases since December 17, 2013. Mr. Hennessey began with what he described as "a brief timeline" (Exhibit L: p.

7). His recitation of law basically repeated the materially false and misleading presentation in his October 15, 2013 dismissal motion – once again concealing that Florida Probate Rule 5.025 contains no time parameter for service – and that, pursuant to that Rule, the civil procedure rules are not applicable until "After service of formal notice" (underlining added).

As for his recitation of fact, he repeated falsehoods pertaining to the November 12, 2013 case management conference (Exhibit G), the Court's November 15, 2013 "Order(s) Compelling Service" (Exhibits A-1, A-2), and the December 11 and December 17, 2013 hearings (Exhibits I, J) – paraphrasing and quoting from the transcript of the December 17, 2013 hearing (Exhibit J)[5], so as not to have to recite these falsehoods directly. This includes where he had misrepresented to the Court, on December 17, 2013, that its November 15, 2013 "Order(s) Compelling Service" were consistent with what the Court had said at the November 12, 2013 case management conference (Exhibit L: pp. 11-16). To this he now added a further falsehood: that at the November 12, 2013 conference, the Court had stated that Mr. Guralnick had reviewed the "Order Compelling Service" that the Court would thereafter sign:

> Hennessey: ...in that order you indicated that she needs to serve any respondents not served on or before December 13th 2013, and you said 'shall be dropped as a party.'
>
> That order was reviewed by Mrs. Baum's new counsel, and what had happened at that hearing was her two prior lawyers had withdrawn as counsel. Mr. Guralnick had appeared as counsel. He reviewed this order before it went in. That's what you said at the hearing. About two weeks later Mr. Guralnick filed a motion to withdraw...." (Exhibit L: p. 9, underlining added).

Nothing of the sort is reflected by the transcript of the November 12, 2013 conference/hearing (Exhibit G).

Again and again, Mr. Hennessey reminded the Court of Ms. Baum's violation of its orders, first and foremost the November 15, 2013 "Order(s) Compelling Service" (Exhibits A-1, A-2) – purporting she had shown no good cause therefor and that the unserved parties should be dropped, by reason thereof:

> Hennessey: You entered orders which indicated that she had a deadline within which to serve which she didn't comply with. She's violated your order. This court unquestionably has the ability to control its own docket. You have the ability to enter an order telling parties when they need to complete their service by and, in this case, you exercised your

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[5] In referring to the transcript of December 17, 2013, Mr. Hennessey misleadingly refers to "an evidentiary hearing" (Exhibit L: p. 11). Such related to Ms. Baum's creditor claims only.

> discretion in her favor in the first instance and she continued to violate your order and continued to do so up until today. (Exhibit L: p. 18).

He even used the pretext of Ms. Baum's supposed continued violation of the orders to explain why *Aguilar v. Aguilar* did not control, inserting deceit about the applicability of the 120-day timeframe of the rules of civil procedure to his argument:

> Hennessey: Finally, Your Honor, my opponent cites, in her response to my motion to drop parties, the case of *Aguilar v. Aguilar*, and that's a probate case. She cites that case for the proposition that the probate rules don't require that objections to the validity of a will be served within three months, they just have to be filed.
>
> So, in that case, what happened in *Aguilar* was the defending party, the personal representative, said, 'Well, you filed your will contest timely but you didn't serve it within three months.' And the court in *Aguilar* said, 'Well, you don't have to serve – there's nothing in the probate rule which requires you to serve within three months, or the probate statute, and so therefore I'm not going to dismiss it on that ground.'
>
> That's a very different situation that we have here where the rules of civil procedure govern – first of all, you don't have to serve within three months, but you do have to serve within 120 days. Or even if you don't, you have to serve at least within some reasonable amount of time, and the court here has entered orders directing parties to serve petitions within time certain, and those orders were simply just violated.
>
> And so *Aguilar*, although it discusses issues relating to the time of service, isn't applicable in this particular case because…we're dealing with failure to serve over an extended period of time even after this court directed her to serve. (Exhibit L: pp. 23-24, underlining added).

Relying on the inapplicable language of Florida Civil Rule of Procedure 1.070(j) that:

> "If service of the initial process and initial pleading is not made upon a defendant within 120 days after filing of the initial pleading directed to that defendant the court, on its own initiative after notice or on motion, shall direct that service be effected within a specified time or shall dismiss the action without prejudice or drop that defendant as a party; provided that if the plaintiff shows good cause or excusable neglect for the failure, the court shall extend the time for service for an appropriate period."

Mr. Hennessey stated:

> "The rule 1.070, the other rule that's applicable here, as I said, gives parties 120 days to complete service. And we discussed that fact that if you don't do that, you can either drop the party, you can dismiss a party, or you can exercise discretion and give them some more time.
>
> You've exercised that discretion previously. It's incumbent upon them to come in and demonstrate to you good cause or excusable neglect as to why they didn't comply with your order and serve within the requisite time frames.
>
> When we were before you, the case had been pending already for over six months and had not been served and you gave them another 30 days and they still didn't comply. My client is the personal representative. He's not ducking or dodging service.
>
> Under the formal notice rules, I, as his resident agent, have to accept service for him, and so it's very simple in this case to have completed service. But Nina Baum, because of all the – the uncooperative with her lawyers, this case was never served and so we are here now in a situation where my opponent hasn't done anything to try to get relief from the order, as you indicated she would have to do." (Exhibit L: pp. 19-20).

> "...we have a serial litigant who abuses process. And I have stood before you, Your Honor, and I stood before you flabbergasted over the fact that I can't schedule simple hearings with counsel. And I've had to come before you to try to get things set...
>
> You set deadlines in this case because we were dealing with a litigant who is being incredibly uncooperative. Notwithstanding the deadlines which you set, she still failed to comply with them.
>
> The case law, as it relates to dismissal for failure to serve, makes it clear that the burden is on my opponent to present evidence, evidence in the record, of good cause or excusable neglect for failing to serve process. She didn't do that. She offered you no affidavits, no evidence.
>
> Instead, she stood before you and told you a sordid tale which we just disagree with. At the end of the day, Your Honor, there's been no showing as to why she should be excused from having failed to comply with your orders." (Exhibit L: pp. 41-42).

Despite the considerable motion practice between Mr. Hennessey and Ms. Hoffman, upon her filing her notice of appearance on January 24, 2014, and Ms. Baum having sat for a deposition on December 12, 2013 – and, prior thereto, her attorneys, Messrs. Manney and Roche, having agreed to a "voluntary dismissal" of 8 of the 11 counts of her amended petition, with the Court dismissing her creditor claims on December 17, 2013, after an evidentiary hearing, Mr. Hennessey nonetheless falsely purported:

> "As a result of the unserved petition, we are now here, 10 months, close to 10 months after this case was originally filed. There's been no progress

made in this case. Not one deposition has been taken. The only things we've been addressing in this will contest and petition for removal are these issues relating to when is Nina ever going to serve people." (Exhibit L: p. 19).

Tellingly, it was not until the March 18, 2014 hearing that Mr. Hennessey announced that all that was necessary for service under Probate Rules was "formal notice" which:

> "doesn't have to be served in the same formal manner as service of process. It can go by certified mail or a commercial-signed receipt, like FedEx." (Exhibit L: p. 7),

not revealing that he had never pointed this out to Mr. Manney when, 6-1/2 months earlier, Mr. Manney had sent him an August 26, 2013 e-mail for purposes of effecting service:

> "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 in your office."

Instead, Mr. Hennessey had replied by a cagey and deliberately misleading August 27, 2013 e-mail, stating:

> "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 below note, I am not authorized to accept service beyond that which is permitted or allowed by Florida law."[6] (underlining added).

Indeed, in all his prior appearances before the Court, always blaming Ms. Baum, not her lawyers, for failing to make service, Mr. Hennessey had never pointed out that "Florida law" requires only "formal notice" which could be expeditiously accomplished by mail – even as the Court itself seemed unaware of the ease with which the issue of service could be disposed of.[7]

At the end of the March 18, 2014 hearing, when Mr. Hennessey handed up his two proposed orders dropping parties, it appeared that these had not been previously furnished to Ms. Hoffman (Exhibit L: p. 47).

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[6] Exhibit A to Mr. Hennessey's November 8, 2013 opposition to the November 7, 2013 motion of Messrs. Maney and Roche for a protective order, postponing Ms. Baum's deposition.

[7] Exhibit G: pp. 12-15; Exhibit J: pp. 130-137.

Mr. Hennessey's two proposed orders to drop parties in Ms. Baum's two cases were markedly different from each other. The order for the 2013 case (Exhibit C-2) was entitled: "Order Dropping Parties Pursuant to Florida Rule of Civil Procedure 1.070(j)" – and cited 1.070(j) in two additional places, its first and last decretal paragraphs.

The first three of its decretal paragraphs were:

> "1. Pursuant to Florida Rule of Civil Procedure 1.070(j), service of the Amended Complaint was required to be served on the Defendants within 120 days after filing of the initial pleading.
>
> 2. On November 15, 2013, this Court entered an Order Compelling Service which required the Plaintiff to serve process on any Defendants who had not received service by December 13, 2013.
>
> 3. As of December 17, 2013, the Plaintiff has failed to serve any of the Defendants with Process as required by the Florida Rules of Civil Procedure and as required under this Court's Order of November 15, 2013."

Its fourth and final decretal paragraph as to the parties to be dropped "pursuant to Florida Rule of Civil Procedure 1.070(j) for failure to serve process" listed all defendants except for David Baum as Personal Representative.

By contrast, Mr. Hennessey's proposed order dropping parties in the 2012 case (Exhibit C-1) did not identify Florida Rule of Civil Procedure 1.070(j) in its title, which was "Order Dropping Parties and Dismissing Amended Proceeding" – or elsewhere. Its sole citation to any rule was Florida Probate Rule 5.025, which it cited to twice: in its second and fourth decretal paragraphs and without any identification of time parameters for service fixed thereby, because there is NONE. More conspicuous was its citation to the November 15, 2013 order (Exhibit A-1), which was three times: in its introductory paragraph and first and second decretal paragraphs – and without identifying that the November 15, 2013 order was "Pursuant to Florida Rule of Civil Procedure 1.070(j)". As for the third decretal paragraph, it dismissed all respondents, except for Chabad and Hadassah, with the concluding fourth paragraph then stating:

> "Because the personal representative is a necessary and indispensable party to this action, the Amended Petition is DISMISSED. The Court recognizes that upon this dismissal the Petitioner may be time barred from refiling a petition for revocation of probate. However, Petitioner was given ample opportunity to complete service by formal notice and has demonstrated no good cause or excusable neglect for the delay. The court unquestionably has the ability to control its docket....In In Re Estate of Odza, 432 So. 2d 740 (Fla. 4th DCA 1983), the Court held that when adversary proceeding is filed under Rule 5.025, the petitioner must strictly

> comply with the procedural requirements of 5.040. Service by formal notice is not optional." (capitalization in the original).

In fact, the reference to *In Re Estate of Odza* – which Mr. Hennessey comparably misrepresented at the March 18, 2014 hearing (Exhibit L: p. 19) – was itself deceitful. *Odza* makes no mention of Rule 4.025, let alone hold that "When adversary proceeding is filed under Rule 4.025, the petitioner must strictly comply with the procedural requirements of 5.040. Service by formal notice is not optional". *Odza* is wholly inapposite to the proposition for which Mr. Hennessey cited it.

On April 2, 2014, the Court signed Mr. Hennessey's proposed orders dropping parties (Exhibits C-1, C-2). The only changes the Court made were hand written additions to each. To the prefatory paragraphs of both orders, the Court handwrote:

> "*The Court having painstakingly reviewed the entire court file and the voluminous authorities presented by each side*".

The Court also handwrote – but only to the "Order Dropping Parties Pursuant to Florida Rule of Civil Procedure 1.070(j)":

> "*Furthermore, Plaintiff has wholly failed to show any good cause for her failure to comply with this Ct's previous order which already gave her additional time to serve parties or why her failure to do so is anything other than the dilatory and stall tactics previously noted by this Court.*" (Exhibit C-2)[8].

The referred-to "previous order" was the November 15, 2013 "Order Compelling Service" (Exhibit A) – as to which the Court's handwritten addition furnished no specificity as to what Ms. Baum had, in fact, shown with respect to why she had failed to comply therewith. At minimum, such would have had to recite the evidence that was before the Court: that Ms. Baum had effectively been without counsel since November 26, 2013, when Mr. Guralnick made a motion to withdraw – and, possibly, from the time of the November 12, 2013 case management conference, as there was uncertainty about Mr. Guralnick's actual retention, so-stated by Ms. Baum to the Court on December 17, 2013 (Exhibit J: pp. 128-129) and further reflected by Ms. Hoffman's statement to the Court on March 18, 2014 (Exhibit L: p. 30), and that, even still, Mr. Guralnick had endeavored to effect service, reciting his efforts at the December 17, 2013 hearing (Exhibit J: pp. 130-131). Certainly, too, the Court had before it evidence of Ms. Baum's hospitalization during the period of Mr. Guralnick's representation. Thus, Mr. Guralnick had stated at the December 11, 2013 hearing:

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[8] This handwritten addition annotated the third decretal paragraph:

> "3. As of December 17, 2013, the Plaintiff has failed to serve any of the Defendants with Process as required by the Florida Rules of Civil Procedure and as required under this Court's Order of November 15, 2013."

> ...She apparently was in a taxicab accident where she was a passenger. I don't know the full story, but we reached her at least two or three times in a hospital in New York. So she is having some kind of medical treatment there." (Exhibit I: p. 9).

Certainly, there was no evidence before the Court, either documentary or testimonial, that Ms. Baum was in any way responsible for her counsel's failure to make service. Only Mr. Hennessey's self-serving, inflammatory speculations, innuendos and unsubstantiated assertions.

As for the Court having "previously noted" Ms. Baum's "dilatory and stall tactics". This was false. Apart from the absence of any specificity as to when the Court had "previously noted" this, the record is devoid such "not[ing]" by the Court. It is NOT contained in the transcripts of the case management conferences and hearings (Exhibits G, I, J, L) or in any of the Court's prior orders (Exhibits A-1, A-2, B-1, B-2).

As the true facts would have been revealed upon the Court's "painstaking[] review[]" of the record, Mr. Hennessey may have been the source of these hand-written additions, furnished to the Court, *ex parte*.

V. Mr. Hennessey's Two "Order(s) Denying Petitioner's [Plaintiff's] Motion for Clarification and Rehearing..." and Two "Order(s) Denying Petitioner's [Plaintiff's] Motion for Leave to Amend and Consolidate...", Signed by the Court on May 1, 2014 (Exhibits D-1, D-2/D-3, D-4)

On April 17, 2014, Ms. Hoffman made a motion for clarification and rehearing. The basis for the requested clarification was the language in the Court's April 2, 2014 order dropping parties in the probate administration case that Ms. Baum might be time-barred from refiling – which would not be the case if the Court granted her motion for leave to amend and consolidate, as it related back to the original, timely-filed pleading. The Court had not yet ruled on that motion.

With respect to rehearing, Ms. Hoffman stated:

> "d) Fla. Prob. R. 5.025 provides that the initial pleading for an adversary probate case shall be served by ***formal notice***. Fla. Prob. R. 5.040 specifically provides that formal notice is accomplished by sending a copy of 'any form of mail requiring a signed receipt...to the attorney representing an interested person.' The probate rules ***do not contain a time limitation for formal service*** of the initial pleading.
>
> e) Fla. Prob. R. 5.025 provides that the Florida Rules of Civil Procedure do not apply until ***AFTER formal service***. Fl. R. Civ. P. 1.070(j) provides that an initial pleading in a civil proceeding must occur within 120 days of the filing of such pleading. ***Fla. R. Civ. P. 1.070(j) is inapplicable in***

adversary probate proceedings, including the case at bar, in that it relates to service of process which occurs BEFORE formal service. It was therefore improper for the Court to apply Fla. R. Civ. Pro. 1.070(j) in entering the April 2, 2014 Order Dropping Parties and Dismissing the Amended Petition (hereafter the 'April 2, 2014 Order').

f) This Court based its April 2, 2014 Order on the fact that the Petitioner did not comply with its November 15, 2013 Order Compelling Service on Respondents...This Court's November 15, 2013 Order Compelling Service is founded on an incorrect legal principal that the Petitioner was required to serve the Respondents under Fla. R. Civ. P. 1.070(j) requiring service by process server within 120 days.

g) The November 15, 2013 Order states that "Pursuant to Florida Rule of Civil Procedure 1.070(j), Petitioner is hereby required to ***serve process*** on any Respondents not yet served in this action on or before December 13, 2013." The rule that should have been applied by this Court is Fla. Prob. R. 5.025 which requires Petitioner to serve her petition on all interested persons by formal notice which is perfected by U.S. Mail without time restrictions..." (bold, italics, and capitalization in the original).

The motion included a "Memorandum of Law", whose first section was entitled "It was improper for the Court to apply Fla. R. Civ. P. 1.070(j) in these adversary probate proceedings". Quoting (at p. 10) Fla. Prob. R. 5.025(d)(2) in full,

> "'***After service of formal notice***, *the [adversary] proceedings, as nearly as practicable, must be conducted similar to suits of a civil nature, including entry of defaults. The Florida Rules of Civil Procedure govern, except for rule 1.525.*' [Emphasis added]",

it repeated:

> "Contrary to [Mr. Hennessey's] position, Fla. Prob. R. 5.025 is abundantly clear that the Rules of Civil Procedure do not apply until ***after the service of formal notice***. The Petitioner is not restricted by a time limit to effect service. *Aguilar v. Aguilar*, 15 So. 3d 803 (Fla. 2nd DCA 2009) is directly on point. The *Aguilar* Court recognized that '[n]one of these [probate] rules contain a time requirement for serving formal notice,'...
>
> This Court's Order of November 15, 2013, which required Petitioner to serve process on all Respondents by December 13, 2013, was entered with this Court relying on the authority under Fla. R. Civ. P. 1.070(j) to 'direct that service be effected within a specified time.'
>
> That November 15, 2013 Order was based on improper governing law, as the Florida Rules of Civil Procedure (including Rule 1.070(j)) do not

> apply to adversary probate proceedings until ***after service of formal notice***, and the Florida Probate Rules do not impose time restrictions compelling service..." (p. 11, bold and italics in the original).

Ms. Hoffman's memorandum of law additionally pointed out (at p. 12) that the language in the April 2, 2014 order that "Petitioner was given ample opportunity to complete service by formal notice and has demonstrated no ***good cause*** or excusable neglect for the delay pertaining to "good cause" was:

> "presumably included...because [Mr. Hennessey] ***incorrectly*** argued that *Powell v. Madison County, 100 So.3d 752 (Fla. 1st DCA 2012)* and *Pixton v. William Scotsman, 924 So.2d 37 (Fla. 5th DCA 2006)* both support a dismissal of a time-barred action if there was no good cause or excusable neglect for the Petitioner's delay in serving process. See excerpt from March 18, 2014 hearing transcript attached hereto as Exhibit I). ***In Pixton, the fifth District Court of Appeal actually reversed and remanded the trial court's decision to dismiss an action that was time-barred.*** Moreover, *Pixton* and *Powell* do NOT involve adversary probate proceedings or formal notice pursuant to Fla. Prob. R. 5.025. Rather, these cases deal with civil proceedings which analyze service of process pursuant to Fla. R. Civ. P. 1.070(j) and are completely inapplicable to this Petition to Revoke Probate. Because this 'good cause' requirement seemingly arises from Fla. R. Civ. P. 1.070(j), Petitioner is not required to show cause..." (bold, italics, and underlining in the original).

Insofar as Ms. Baum's "good cause" for not effecting service, Ms. Hoffman recited that she had:

> "...discovered that Global Process Serving, LLC attempted to serve David A. Baum multiple times and that David A. Baum repeatedly and actively avoided service." (p. 7).

In addition to an affidavit of non-service by the process server, annexed to her clarification/rehearing motion as Exhibit F and showing that he had unsuccessfully tried to make service 15 times, Ms. Hoffman also annexed an affidavit from Mr. Manney, as Exhibit G showing that he had had:

> ***"several phone conversation with William T. Hennessey, Resident Agent of the Estate, wherein William T. Hennessey adamantly refused to accept service on behalf of the Personal Representative in direct violation of Fla. Prob. Rule 5.110(b).*** (p. 7, bold and italics in original).

Ms. Hoffman's memorandum of law also discussed the Florida Supreme Court decision in *Kozel v. Ostendorf*, 629 So. 2d 817 (Fla. 1993), enunciating the factors that a court is required to consider in determining whether dismissal is appropriate where an attorney is

responsible for procedural error. Under the title heading: "The Court failed to apply the *Kozel* factors", the memorandum stated:

> "Failure to effect service of process is a procedural error, and Petitioner's former counsel, not the Petitioner, is responsible for that error. In the Florida Supreme Court case of *Kozel v. Ostendorf, 629 So.2d 817 (Fla. 1993)*, the trial Court had dismissed the Plaintiff's complaint with prejudice until five (5) months ***past a deadline set by Court order***. The *Kozel* Court found that although the trial Court 'acted within the boundaries of the law,' the court's 'decision to dismiss the case based solely on the attorney's neglect unduly punishes the litigant and espouses a policy that this court does not wish to promote.' ***Kozel*** at 818.
>
> In the matter at hand, this court has dismissed the Petitioner's Petition to Revoke Probate of her father's purported last will and testament based on her prior attorney's neglect in complying with this Court's November 15, 2013 Order compelling service on Respondents as per the Rules of Civil Procedure. Unlike the *Kozel* trial court however, this court has found its dismissal on inapplicable law. The Supreme Court in *Kozel* adopted the following set of standards that a trial Court ***must*** apply when considering a dismissal with prejudice due to a procedural mistake by an attorney:
>
> 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 attorney 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.
>
> The Fifth District Court of Appeals has since held 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 v. Williams Scotsman, Inc., 924 So.2d 37, 39-40 (Fla 5th DCA 2006)* [Reversed trial court's order dismissing complaint for Plaintiff's counsel's failure to effect service of process on Defendants].

> Dismissal of an action is the ultimate sanction, and it should be reserved for those aggravated cases in which a lesser sanction would fail to achieve a just result. Even though 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. *American Express Co. v. Hickey, 869 So.2d 694, 695 (Fla 5th DCA 2004)*. The ground for dismissal in the matter at hand was the failure of Petitioner's former attorneys to effect service by formal notice on the Respondents. The Petitioner retained counsel to competently represent her interests in this estate, and counted on her attorneys to ensure that procedural deadlines were met. Any delays caused by Petitioner's former counsels' failure to perfect service did not prejudice any of the interested parties, as all parties have been served with all documents filed with the court and all interested parties have been represented at all hearings...The Court must not unfairly prejudice Petitioner for the mistakes of not only her former attorneys, but of the Resident agent and counsel for the Personal Representative as required by law..." (at pp. 16-17, bold and italics in original).

Ms. Hoffman's memorandum of law concluded with a section entitled "The intent behind Fla. R. Civ. Pro. 1.070(j) is to avoid the harsh results of dismissal where the expiration of the statute of limitations would preclude refiling the action" (at p. 18), stating:

> "Fla. R. Civ. P. 1.070(j) previously required a party to show good cause for failing to perfect service of an initial pleading within 120 days of filing. If a party could not show good cause, the court had the option of dismissing the civil action without prejudice, or dropping the defendant to the civil action who wasn't served as a party. *Miranda v. Young, 19 S0.3d 1100, 1101 (Fla. 2d DCA 2009)* citing *Amendment to Fla. Rule of Civil Procedure 1.070(j)-Time Limit for Serv., 720 So.2d 505, 505 (Fla. 1998)*. In 1999, the Florida Supreme Court amended Fla. R. Civ. P. 1.070(j) to remove the 'good cause' language. The removal of the 'good cause' language provided courts with discretion to extend the time for untimely service ***even when good cause had not been shown.*** *See id.* The 1999 amendment to Fla. R. Civ. P. 1.070(j) also allowed courts to ***'avoid the 'harsh results' often exacted under the prior version of the rule 'such as where noncompliance triggered dismissal without prejudice, but expiration of the statute of limitations would preclude refiling of the action.***'' *Miranda*, 19 So. 3d at 1101 *citing Totura & Co., Inc. v. Williams, 754 So.2d 671, 677 (Fla. 2000)*. This Court's April 2, 2014 Order dismissed the Petitioner's Amended Petition and states that Petitioner may be time-barred from re-filing her claims.[fn] Thus the April 2, 2014 Order may have effectively dismissed the Petitioner's Amended Petition with prejudice ***which would accomplish exactly what Fla. R. Civ. P. 1.070(j) was designed to avoid.***" (p. 18, bold and italics in original).

In conjunction with the rehearing motion, Ms. Hoffman filed a "Request for Re-Hearing", identifying that it would be "evidentiary" and requesting two hours, for both sides.

On April 21, 2014, Mr. Hennessey filed his response. Although purporting (at p. 4) that it would address "The impact of the Aguilar decision which was discussed at the [March 18, 2014] hearing and which this Court correctly applied"; and "The law relating to dismissal for failure to serve, which the Petitioner misstates", his response, in fact, did NOT deny or dispute any aspect of Ms. Hoffman's showing that Florida Probate Rule 5.025 has no time parameter for service and that, pursuant to (d)(2) thereof, the Civil Rules of Procedure are not applicable until "After service of formal notice" – including, most particularly, the 120-day time frame of Florida Rules of Civil Procedure 1.070(j). Instead, Mr. Henessey argued that the Court's November 15, 2013 "Order(s) Compelling Service" controlled, as the Court was empowered to regulate its own docket, and that, by reason of those orders and the Court's further orders based thereon, *Aguilar* was not applicable

> "Aguilar is not on point. In this case, the Court specifically ordered the Petitioner to serve the parties by December 14, 2013 (sic) after the Will Contest had been already been (sic) pending more than 120 days." (p. 12).

Much as he had done from the outset of the litigation, Mr. Hennessey predicated his response, in the main, on repeating that Ms. Baum was "a serial litigant with a history of intentionally dilatory and disruptive behavior", falsely asserting:

> "the record demonstrates that the Petitioner's own dilatory conduct of repeatedly terminating lawyers and refusing to communicate and cooperate with her counsel while deadlines were pending were the reason for the delay. The Court found as much in its order" (p. 2).

In fact, the record contained no evidence of Ms. Baum's "own dilatory conduct" or that she terminated any lawyer without cause, or that she had refused to communicate and cooperate with them – or, specifically, that she was in any way responsible for the failure of her attorneys to effect service.

Mr. Hennessey purported (p. 13) that the rehearing motion had "incorrectly" contended that the Court "was required to consider the factors it considered in more detail". Asserting that the April 2, 2014 order was "detailed and clear", he contended:

> "The court specifically found that '*Petitioner was given ample opportunity to complete service by formal notice and has demonstrated no good cause or excusable neglect for the delay.*' No further analysis or findings are required." (p. 13).

Based on this supposed specific finding, Mr. Hennessey asserted (p. 13): "*Kozel* is inapplicable in a case where the Petitioner is at fault or demonstrates *no good cause or*

excusable neglect for the delay", citing *Pixton v. Scotsman, Inc.*, 924 So. 2d 37 (Fla. 5th DCA 2006) for the proposition "when the Plaintiff is the cause for delay, or offers no good cause for delay, the *Kozel* factors do not apply".

Mr. Hennessey also objected to what he purported to be "new unsworn papers and documents which were never presented to the court prior to or at the hearing". Nevertheless, he stated, unequivocally:

> "At no time, did the Personal Representative or his attorney ever attempt to avoid service – indeed the undersigned counsel could have easily been served at any time in his office....
>
> The bottom line is that there is no excuse for Petitioner's failure to serve the personal representative. Although the Petitioner, through unsworn documents never before presented to the court, attempts to show that service was unsuccessfully attempted directly on David Baum, individually, these documents are irrelevant. Petitioner has no good justification or cause for having failed to take the very simple steps necessary of serving Formal Notice upon the personal representative's counsel in accordance with Florida Probate Rule 5.040. Petitioner could have easily served the undersigned counsel at his office and never did so. Instead, Petitioner created irreconcilable differences with her attorneys, refused to cooperate with her attorneys, and repeatedly terminated her attorneys creating delay and chaos." (pp. 8-9, underlining added).

In other words, Mr. Hennessey, on behalf of Mr. Baum, did NOT dispute the accuracy of the process server's verified return of non-service.

On April 23, 2014, Ms. Hoffman filed a counter-response. She did not dispute that the objected-to new matter was improper for rehearing. She did assert, however, that an "***evidentiary hearing***" [p. 8, bold and italics in original] was necessary for Ms. Baum "to present evidence of good cause for the delay in effecting service; an opportunity she has never been afforded" – further stating:

> "The March 18, 2014 hearing was a ***non-evidentiary*** hearing. Where former counsel's conduct is involved in the failure to obtain service of process, 'an evidentiary hearing to present evidence of good cause for the delay in effecting service; an opportunity she has never been afforded.' *Pixton v. Williams Scotsman, Inc.*, 924 So. 2d 37 (Fla. 5th DCA 2006)." (p. 8, bold and italics in original).

Indeed, on April 18, 2014, in conjunction with her motion for rehearing, Ms. Hoffman had filed a "Request for Re-Hearing (Special Set), checking off "evidentiary (requires testimony).

Mr. Hennessey made a "supplemental" filing, on April 24, 2014, asserting that the Court should deny the rehearing motion because of the "failure to comply with this Court's

multiple orders and warnings to complete service, and the failure to demonstrate good cause or excusable neglect for never having done so".

On May 1, 2014, the Court signed orders denying Ms. Hoffman motion for clarification and rehearing (Exhibits D-1, D-2), as likewise an April 24, 2014 motion that Ms. Hoffman had made for leave to amend and consolidate in the 2013 case (Exhibits D-3, D-4). The orders, furnished by Mr. Hennessey to the Court, gave no reasons for their denials and neither identified nor discussed any of the facts or law presented by the motions.

VI. Mr. Hennessey's Order "Granting Personal Representative's Motion to Strike Notice of Hearing for August 28, 2014", Signed by the Court on August 15, 2014 (Exhibit E)

On May 1, 2014, Ms. Hoffman made a motion, in each case, entitled: "Motion for Relief from Court Orders Due to Respondent's Misrepresentations and Misconduct" for vacatur of the Court's April 2, 2014 orders dropping parties – and of the November 15, 2013 "Order(s) Compelling Service" on which they rested – pursuant to Fla. R. Civ. P. 1.540(b)(3). The basis was Mr. Hennessey's "misrepresentation", in his dismissal motion for the 2012 case (Exhibit F), that "[a]s a result of Nina's delay", the parties had not been served, when, as he knew, his client, the Personal Representative, was actively evading service and he, himself, had refused to accept service – the latter two grounds being the "misconduct" grounds for vacatur.[9]

Also on May 1, 2013, Ms. Hoffman gave notice of the filing of an affidavit by Ms. Baum. By the affidavit, Ms. Baum stated, as follows:

> "1. I retained Kenneth J. Manney, Esq. and Patrick F. Roche on or about June 15th, 2013 to contest the 'purported will' of my father, Seymour Baum, deceased.

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[9] The Motion for Relief additionally noted, in its final paragraph in support of vacatur:

> "...the involuntary dismissal of the Amended Petition was improper and should be reversed because: (1) this Court did not make any written findings of the Petitioner's wilful and deliberate refusal to obey the November 15, 2013 Orders; and (2) improper service is not a valid ground for dismissal. See Fla. R. Civ. P. 1.420(b); see also *Lahti v. Porn*, 624 So.2d 765, 766 (Fla. 4th DCA 1993)(trial court abused discretion where it dismissed case with prejudice because there was no 'showing of deliberate and wilful disregard for the trial court's order'); *Hastings v. Estate of Hastings*, 960 So.2d 798, 801 (Fla. 3d DCA 2007)(where missed deadlines are concerned, 'dismissal with prejudice should not be imposed as a sanction unless the lawyer or party has acted in a willful, deliberate, or contumacious manner...'); *Payette v. Clark*, 559 So. 2d 630 (Fla. 2d DCA 1990)(improper service of Petition to re-open estate by registered mail was not valid ground for dismissal of petition at trial court level)." (at ¶21).

2. I was constantly requesting updates as to the status of my file and whether parties had been served.

3. I had no less than 20 communications between myself and Mr. Manney regarding the status of my file and whether the parties had been served.

4. On or about October 15, 2013 I terminated my Attorneys due to their lack of communicating with me as to their inability to perfect service on the Respondents.

5. I had contacted several other attorneys to represent me thereafter and subsequently Mr. Guralnick filed his appearance on my behalf without my consent and I was surprised to learn that he had appeared on my behalf at a telephonic hearing without my knowledge.

6. Mr. Guralnick filed his motion to withdraw but not until after the Judge had ordered him to perfect service on all parties and required me to attend my deposition before he would allow Mr. Guralnick to withdraw. I complied and attended my deposition even though Mr. Guralnick was not present, but they were able to get him on the telephone.

7. To the best of my knowledge Mr. Guralnick did not serve any of the Respondents even though he represented to me that he had.

8. The Judge granted Mr. Guralnick's motion to withdraw on December 17th 2013 and ordered that the proceedings were stayed until February 17th, 2014 to allow me to obtain new counsel.

9. I complied with the Court's Orders as best I could during this transition, attending my deposition and responding to discovery, including producing records.

10. On January 24th the office of Hoffman and Hoffman PA and Teresa Hoffman, Esq. filed their Appearance on my behalf and service on all parties was promptly perfected."

Mr. Hennessey's opposition, on May 2, 2014, purported that the Motion for Relief was "based upon allegedly 'newly discovered evidence'". Ignoring Ms. Baum's affidavit, Mr. Hennessey complained that the affidavits of the process server and Mr. Manney were always readily available. As to these, he disputed their truth and that he had ever been notified of any problem with service. He requested that the motion be denied without a hearing.

On May 5, 2014, Ms. Hoffman filed a motion to strike Mr. Hennessey's opposition, pointing out that he was misrepresenting the Motion for Relief as based on "newly

discovered evidence", which was Fla. R. Civ. P. 1.540(b)(2), and making argument and citing law pertaining thereto – when the Motion for Relief was for "misrepresentation and misconduct" pursuant to Fla. R. Civ. P. 1.540(b)(3).

On July 25, 2014, Ms. Hoffman noticed her May 1, 2014 Motion for Relief and her May 5, 2014 motion to strike Mr. Hennessy's opposition for an evidentiary hearing on August 28, 2014.

On August 13, 2014, Ms. Hoffman filed an "Amended Motion for Relief from Court Orders Due to Respondent's Misrepresentations and Misconduct". It substantially expanded upon the particulars of the original motion to now additionally include:

> (a) that at the November 12, 2013 case management conference before the Court (Exhibit G), Mr. Hennessey knowingly misrepresented the law as to service of pleadings in probate proceedings and purported, by his October 15, 2013 dismissal motion in the 2012 case, that the parties had not been served "[a]s a result of Nina's delay", concealing that Mr. Manney had repeatedly endeavored, through a process server, to effect service, which Mr. Hennessey's client, David Baum, the personal representative, was actively evading and that he himself was not accepting service (amended vacate motion: ¶¶3, 6-8, 13);
>
> (b) that Mr. Hennessey wrote orders for the Court to sign – and which the Court did sign on November 15, 2013 (Exhibits A-1, A-2) – deliberately misrepresenting the Court's oral rulings at the November 12, 2013 case management conference pertaining to service (Exhibit G: pp. 12-15), 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 (amended vacate motion: ¶¶4, 5, 9-12);
>
> (c) that at the December 17, 2013 hearing before the Court (Exhibit J: pp. 130, 136), Mr. Hennessey both affirmatively misrepresented what the Court had orally ruled on November 12, 2013 (Exhibit G: pp. 12-15) and that its November 15, 2013 "Order[s] Compelling Service" (Exhibits A-1, A-2) were consistent with that oral ruling (amended vacate motion: ¶¶16-17);
>
> (d) that at the March 18, 2014 hearing before the Court (Exhibit L: p. 20), Mr. Hennessey asserted that "Nina Baum, because of all the – the uncooperative (sic) with her lawyers, this case was never served" and that David Baum was "not ducking or dodging service" and that he himself, as resident agent, "ha[d] to accept service", knowing that David Baum had actively evaded service and that he himself had refused on multiple occasions to accept service for the personal representative (amended vacate motion: ¶¶8, 18-24).

On August 14, 2014, Mr. Hennessey filed a motion to strike Ms. Hoffman's calendaring of the August 28, 2014 evidentiary hearing, asserting that the Court was without jurisdiction because the same orders that are the subject of the Amended Motion for Relief are also the subject of notices of appeal to the Fifth District Court of Appeal. Mr. Hennessey did not identify the content of the Amended Motion for Relief, other than to purport that it was based on "newly discovered evidence" which would have been previously available. He then reinforced this pretense by annexing his May 2, 2014 opposition to the original Motion for Relief – not revealing that such was the subject of the motion to strike based on its deceit that the vacatur sought was for "newly discovered evidence", rather than, as it was, for "misrepresentation and misconduct". Mr. Hennessey additionally asserted that the Amended Motion for Relief was "entirely without merit" and false.

The next day, August 15, 2014, without affording Ms. Hoffman an opportunity to respond to Mr. Hennessey's motion, the Court signed his proposed order striking the August 28, 2014 hearing, stating:

> "Unless and until the Fifth District Court of appeal (sic) relinquishes jurisdiction, this Court is without jurisdiction to hear Plaintiff's Motion for Relief from Court Orders or Plaintiff's Motion to Strike the Personal Representative's Response. *See* Stoppa v. Sussco, Inc., 943 So. 2d 309, 313 (Fla. 3d DCA 2006); Glatstein v. City of Miami, 391 So. 2d 297, 298 (Fla. 3d DCA 1980)."

Neither of these two cases, which, additionally, were the only cases Mr. Hennessey cited in his motion to strike, is from the Fifth District Court of Appeal or involves, as here, "fraud on the court" – a recognized ground for the Court's exercise of "inherent power".

TABLE OF EXHIBITS

Exhibit F: Mr. Hennessey's October 15, 2013 dismissal motion (2012 case) (pp. 1, 3-4)

Exhibit G: Transcript of November 12, 2013 case management conference/hearing

Exhibit H: Mr. Hennessey's December 5, 2013 "Reply to Emergency Motion to Extend Deadlines and for Other Relief"

Exhibit I: Transcript of December 11, 2013 hearing

Exhibit J: Transcript of December 17, 2013 hearing, pp. 1, 6-9, 127-140

Exhibit K-1: Mr. Hennessey's January 28, 2014 motion for order dropping parties (2012 case)

Exhibit K-2: Mr. Hennessey's January 28, 2014 motion for order dropping parties (2013 case)

Exhibit L: Transcript of March 18, 2014 hearing, pp. 1-25, 41-42

Exhibit M: May 1, 2014 Notice of Filing of Affidavit of Anneen Nina Gloria Baum