

IN RE: ESTATE OF SEYMOUR BAUM,
Deceased,

IN THE CIRCUIT COURT FOR THE
18TH JUDICIAL CIRCUIT IN AND FOR
BREVARD COUNTY, FLORIDA

ANNEEN NINA GLORIA BAUM,

Petitioner,

PROBATE DIVISION

CASE NO. 05-2012-CP-048323

v.

DAVID A. BAUM, individually and as Personal
Representative of the Estate of Seymour Baum,
BRUCE M. BAUM, LIZA
CIOLKOWSKI BAUM, KEVIN P.
MARKEY, CHABAD OF SPACE, INC.,
a/k/a CHABAD JEWISH COMMUNITY CENTER,
a/k/a CHABAD OF SPACE AND TREASURE COAST,
a Florida not for profit corporation, THE WOMAN'S
ZIONIST ORGANIZATION OF AMERICA, INC. a
foreign not for profit corporation, d/b/a HADASSAH, and
FRIENDS OF ISRAEL DEFENSE FORCES, INC., a
Florida not for profit corporation,

Respondents.

**RESPONDENT'S MOTION TO DISMISS AMENDED PETITION, MOTION TO
STRIKE CLAIM FOR ATTORNEYS' FEES IN COUNTS III-XI, AND MOTION TO
STRIKE THE PETITIONER'S DEMAND FOR JURY TRIAL ON ALL COUNTS**

Respondent, David A. Baum, as the Personal Representative of the Estate of Seymour Baum, by and through his undersigned counsel, hereby moves to dismiss the Amended Petition filed by Petitioner, Anneen Nina Gloria Baum, to strike her claim for attorneys' fees in Counts III, IV, V, VII, VIII, and IX, and moves to strike the Petitioner's demand for a jury trial on all Counts, and in support thereof states:

I. INTRODUCTION

The Decedent, Seymour Baum, died in Brevard County on June 17, 2012. His Last Will and Testament dated March 22, 2011 (the "Last Will") was admitted to probate on January 22,

EX F

From a factual perspective, all of the claims in the Amended Petition are completely manufactured and have no basis in fact. However, accepting those facts as true for purposes of the motion to dismiss, the Amended Petition itself is a procedural train wreck. It fails to properly state causes of action. It has never been served in accordance with Florida law. Further, the Petitioner, who is not a beneficiary under the Decedent's Last Will, lacks standing to bring many of the claims alleged. The Amended Petition should be dismissed.

II. ARGUMENT

A. **FAILURE TO COMPLY WITH RULES 1.070(j) and 5.025**

As a preliminary matter, the Amended Petition should be dismissed because it was never even served.

Nina's Petition was filed more than four months ago on June 3, 2013. To date, the Petition has still not been served upon the personal representative.


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).

Nina has failed to serve the Personal Representative with formal notice as required by Florida Probate Rule 5.025. A party seeking revocation of a will or removal of a duly appointed personal representative is required to strictly comply with the procedural requirements. In re

of fiduciary duty) of the Amended Petition is a duplicate of Count III of the Amended Complaint. Count VIII (unjust enrichment) of the Amended Petition is a duplicate of Count IV of the Amended Complaint. Count IX (promissory estoppel) of the Amended Petition is a duplicate of Count V of the Amended Complaint, Count X (exempt property) of the Amended Petition is a duplicate of Count VI of the Amended Complaint. Count XI (emergency funds) of the Amended Petition is a duplicate of Count VII of the Amended Complaint.

Odza's Estate, 432 So. 2d 740, 742 (Fla. 4th DCA 1983) (reversing order for removal of a personal representative due to the lack of formal notice).

Florida has a strong public policy concerning the expeditious, orderly administration of decedents' estates. See In re Estate of Clibbon, 735 So. 2d 487, 489 (Fla. 4th DCA 1998), quoting In re Williamson's Estate, 95 So. 2d 244, 246 (Fla. 1956) (it is a "matter of public policy in this state that the estates of decedents shall be speedily and finally determined with dispatch").

 As a result of Nina's delay, the un-served Petition continues to prevent the Personal Representative from completing distribution of the decedent's estate in accordance with his Last Will.

Furthermore, adversary proceedings are governed by the Florida Rules of Civil Procedure. Fla. Prob. R. 5.025(d)(2). Florida Rule of Civil Procedure 1.070(j) requires that initial service of pleadings occur within 120 days of filing. It has now been more than 120 days since the filing of Nina's Petition. Pursuant to Florida Rule of Civil Procedure 1.070(j), an initial pleading which is not served within 120 days is subject to dismissal if good cause or excusable neglect is not shown for the delay. Powell v. Madison County Sheriff's Dept., 100 So. 3d 753, 754 (Fla. 1st DCA 2012). Nina has no good cause for her failure to serve the Petition.

Nina's Amended Petition should be dismissed because it has never been served as required by law.

B. THIS COURT SHOULD DISMISS COUNT I (REVOCATION OF PROBATE), COUNT II (UNDUE INFLUENCE), AND COUNT VI (REMOVAL OF PERSONAL REPRESENTATIVE) BECAUSE THE PETITIONER LACKS STANDING.

1. Petitioner Lacks Standing to Seek Revocation of Probate of the Decedent's Last Will.