

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

IN RE: ESTATE OF

PROBATE DIVISION

SEYMOUR BAUM,
Deceased,

Case No.:05-2012-CP-048323
Case No.:05-2013-CP-.028863

ANNEEN NINA GLORIA BAUM,
As Daughter and heir at law,
Petitioner,

Vs.

DAVID A. BAUM, Personal Representative, et al.,
Respondent.

PETITIONER'S MOTION FOR DISQUALIFICATION OF JUDGE

The Petitioner, ANNEEN NINA GLORIA BAUM (hereinafter Petitioner), by and through the undersigned counsel, respectfully moves this Court for the entry of an order, pursuant to Florida Statute §38.10; Rule 2.160, Florida Rules of Judicial Administration; and Canon 3(F), Code of Judicial Conduct, disqualifying the Honorable John M. Harris from presiding further over these proceedings. The grounds for this motion, are as follows:

1. The Petitioner fears that she cannot receive a fair trial or hearing because of his Honor's bias or prejudice towards Petitioner. The Petitioner's concerns regarding his Honor's bias or prejudice towards Petitioner is based upon the following:

a. The court while hearing the Petitioner's Motion for Relief from Judgment on October 21, 2014 and continuing on November 3, 2014 made the following statements:

1. "That it did not matter to the court that the case involved a matter with an amount in controversy of One Hundred Million Dollars (\$100,000,000.00) or even if it was just Five Dollars (\$5.00)." This statement was made in regards to counsel for a Petitioner requesting sufficient time to argue on behalf of Petitioner including the presentation of case law on a final argument.

2. The court went on the specifically indicate that "The court had other things to do and did not have time to hear anymore of this case" and the court thereafter left the courtroom.

3. The court refused to allow Petitioner's counsel the opportunity to present case law and argument in support of Petitioner's Motion and informed Petitioner to file a Memorandum of Law. The hearing abruptly ended at 12:00 p.m. Prior to Petitioner's counsel being able to submit a Memorandum of Law, the court upon November 3, 2014 entered an Order denying Petitioner's Motion.

4. The court stated that Petitioner's prior counsel Mark Gurulnick who had been subpoenaed did not have testimony that was relevant to this action. Petitioner asserts that Mr. Gurulnick's testimony regarding Petitioner having no part in efforts to effect formal notice on Respondents was relevant to the issue of misrepresentation on avoidance of service of process on the part of Respondent, DAVID A. BAUM.

b. The Personal Representative has repeatedly asserted in this cause that Petitioner was a serial litigator and has engaged in tactics to purposely interfere with the timely administration of the estate. Counsel for the Personal Representative on Petitioner's Motion for Relief from Judgment testified Petitioner's only dilatory tactic was that she had fired her lawyers. This court has indicated in previous orders that it had noted that Petitioner has engaged in dilatory and stall tactics.

2. Florida Statute §38.10 (1997) provides in pertinent part:

Disqualification of judge for prejudice; application; affidavits; etc. Whenever a part to any action or proceeding makes and files an action affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the application or in favor of adverse party, the judge shall be designated in the manner prescribed by laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

3. Rule 2.160, Florida Rules of Judicial Administration, provides in pertinent part:

Disqualification of Trial Judges

- (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.
- (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.
- (c) Motion. A motion to disqualify shall be in writing and specifically allege the facts and reasons relied on to show the grounds for disqualification and shall be sworn to by the party by signing the motion under oath or by a separate affidavit. The attorney for the party shall also separately certify that the motion and the client's statements are made in good faith.
- (d) Grounds. A motion to disqualify shall show:
 - 1. That the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge; or
 - 2. That the judge before whom the case is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto or is interested in the result thereof, or that said judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to the cause.
- (e) Time. A motion to disqualify shall be made within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a trial must be based upon facts discovered during the trial and may be stated on the record and shall also be filed in writing in compliance with subdivision (c). Such trial motions shall be ruled on immediately.
- (f) Determination-Initial Motion. The judge against whom an initial motion to disqualify under supervision (d) (1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed not further in the action. If any motion is legally

insufficient, an order denying the motion shall be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

4. Canon 3-E of Florida Code of Judicial Conduct governs the impartiality of judges and provides in pertinent part:

1. A judge shall disqualify himself or herself in the proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or party's lawyer

5. The standard for reviewing the legal sufficiency of a motion to disqualify the trial judge is whether the facts alleged, which must be assumed to be true, would cause the movant to form a well grounded fear that he will not receive a fair trial at the hands of the judge. State v. Shaw, 643 So.2d 1163 (Fla.4th DCA 1994). A party seeking to disqualify the trial judge need only show a well grounded fear that he will not receive a fair trial at the hands of the judge, it is not a question of how the judge feels, but rather of what feeling resides in the affiant's mind and the basis for such feeling. Wargo v. Wargo, 669 So.2d 1123 (Fla.4th DCA 1996). The truth of the allegations in the motion to disqualify must be assumed true. Cooper v. Speiser, 651 So.2d 718 (Fla.4th DCA 1995). A judge should know his prejudices and if they can be fathomed, he should recuse himself. Anderson v. State, 287 So.2d 322 (Fla.1st DCA 1973). The prejudice of a trial judge is always a delicate question to raise; but when it is raised as a bar to the trial of a cause and is predicated on grounds with a modicum of reason, the judge against whom raised should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause where neutrality is shadowed or even questions. Dickenson v. Parks, 140 So.459 (Fla.1932). A trial judge must not on be impartial, but he must leave the impression of his impartiality on all who attend his court. Anderson v. State, 287 So.2d 322 (Fla.1st DCA 1973).

CERTIFICATE OF PRO SE LITIGANT

6. The undersigned party hereby certifies that she received notice that this case has been assigned to the Honorable John M. Harris prior to October 21, 2014 when she received formal notice of this proceeding. Following the hearing of November 3, 2014, the undersigned party has attempted with all due diligence to bring this matter before the Court in a timely manner.

7. The undersigned party hereby further certifies that this motion is made in good faith, not for purpose of harassing parties or delaying proceedings, and that no party herein will be unduly prejudiced by the Court's granting of the relieve sought in this motion.

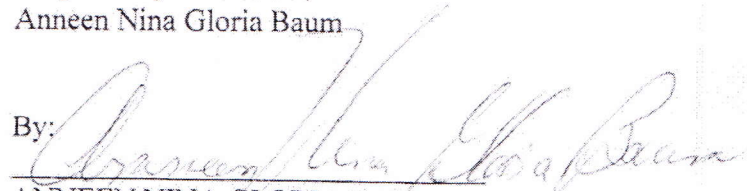
8. The undersigned party states, under oath, that the statements in this Motion are true to the best of her knowledge.

WHEREFORE, Petitioner respectfully moves this Court for the entry of an order, pursuant to Florida Statute §38.10 and Rule 2.160, Florida Rules of Judicial Administration, and Canon 3(E) (1), Code of Judicial Conduct, disqualifying the Honorable John M. Harris from presiding further over these proceedings.

Dated this 13th day of November, 2014

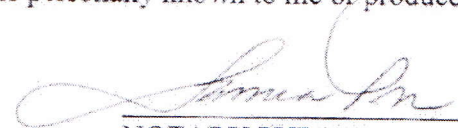
Respectfully submitted ,
Anneen Nina Gloria Baum

By:


ANNEEN NINA GLORIA BAUM

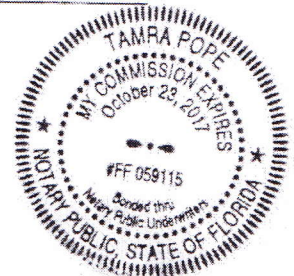
**STATE OF FLORIDA
COUNTY OF BREVARD**

The foregoing instrument was acknowledged before me this 13th day of November, 2014, by Anneen Nina Gloria Baum, who is personally known to me or produced a New York Drivers License as identification.


NOTARY PUBLIC

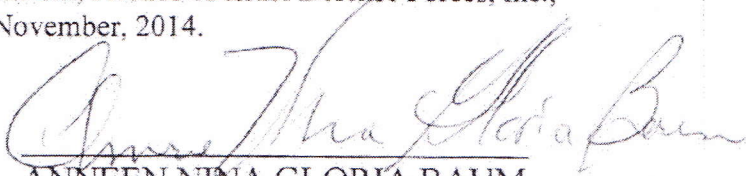
Personally Known _____ Or Produced Identification ✓

Type of Identification Produced _____



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail to William T. Hennessey, Esquire, Attorney for David A. Baum, at whennessey@gunster.com, dcarr@gunster.com, and eservice@gunster.com; Bruce M. Baum, biological son of decedent, at 05-2012-cp-048323@gmx.fr; William E. Boyes, Esquire, Attorney for The Women's Zionist Organization of America, Inc. a/k/a Hadassah, at bboyes@boyesandfarina.com, asabocik@boyesandfarina.com, and czill@boyesandfarina.com; David H. Jacoby, Esquire, Attorney for Chabad Trustees under the Chabad Trust, at j.sanchez@davidhjacobypa.com; and Jonathan Bernstein, Friends of Israel Defense Forces, Inc., at jonathan.bernstein@fidf.org; this 13 day of November, 2014.



ANNEEN NINA GLORIA BAUM

229 East 85th Street

Unit Box 1361

New York, New York 10028

anbb@me.com