

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

PROBATE DIVISION

IN RE: ESTATE OF

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 to 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 Guralnick who had been subpoenaed did not have testimony that was relevant to this action. Petitioner asserts that Mr. Guralnick'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 questioned. Dickenson v. Parks, 140 So.459 (Fla.1932). A trial judge must not only 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

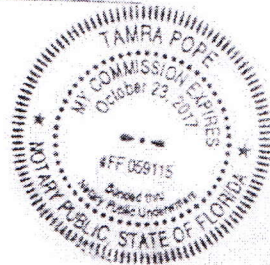
STATE OF FLORIDA
COUNTY OF BREVARD

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

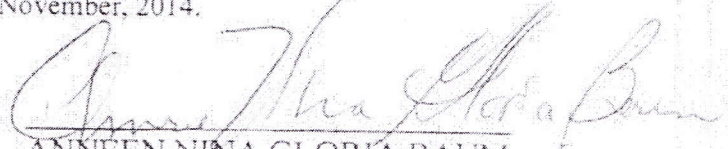
Personally Known _____ Or Produced Identification ☒

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 hboyes@boyesandfarina.com, asabocik@boyesandfarina.com, and ezill@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

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

IN RE: ESTATE OF SEYMOUR BAUM

PROBATE DIVISION

Deceased.

ANNEEN NINA GLORIA BAUM,

Chief Judge John M. Harris

Petitioner/Plaintiff,

v.

Case #: 05-2012-CP-048323

DAVID A. BAUM, et al.,

Case #: 05-2013-CP-028863

Respondents/Defendants.

PETITIONER/PLAINTIFF ANNEEN NINA GLORIA BAUM'S MOTION
FOR REHEARING OF THE COURT'S NOVEMBER 3, 2014 ORDER DENYING HER
RULE 1.540(b)(3) AMENDED MOTION FOR RELIEF FROM COURT ORDERS AND,
IN CONJUNCTION THEREWITH, DISCLOSURE OF FACTS BEARING UPON THE
COURT'S FAIRNESS AND IMPARTIALITY

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

1. I am the Petitioner/Plaintiff herein, unrepresented by counsel, and submit this motion for rehearing of the Court's November 3, 2014 Order denying my Rule 1.540(b)(3) Amended Motion for Relief from Court Orders (Exhibit A) and, in conjunction therewith, disclosure of facts bearing upon the Court's fairness and impartiality, pursuant to the Commentary to Canon 3E of the Florida Rules of Judicial Conduct.

2. Once again, I am assisted by the same independent reviewer of the record whose "Procedural History" gave rise to my August 13, 2014 Amended Motion for Relief from Court Orders [hereinafter "Amended Vacatur Motion"], filed by my then counsel, Hoffman & Hoffman, P.A.

3. The Court's November 3, 2014 Order makes no mention of the "Procedural History", which I furnished to the Court by my October 14, 2014 affidavit clarifying, supplementing, and further supporting my Amended Vacatur Motion, with the express statement (at ¶13) that the "Procedural History" was "dispositive of my entitlement to vacatur, *as a matter of law*", as were my two e-mail chains of correspondence with my former attorneys, which I also furnished. The Court has plainly "overlooked" these in its Order, purporting that it "finds as follows":

"A. Petitioner has been wholly unable to establish any legal or factual basis that would justify granting the relief she has requested in her Amended Motion;

B. Specifically, the Court finds no misrepresentation or misconduct on the part of Mr. David Baum or his attorney(s) regarding effectuating or avoiding service of process; entry of prior orders on the representation that all counsel had agreed that the order accurately reflected the scope and intent of the Court's prior ruling; or any other matter that could even arguably establish a fraud upon the Court that lead to entry of the challenged orders." (Exhibit A).

4. Similarly, the Court has plainly "overlooked" the October 14, 2014 affidavit itself, with its express statement (at ¶28) that the cited law, caselaw, and the transcript excerpts appended to my Amended Vacatur Motion sufficed for its summary granting of vacatur, without an evidentiary hearing – and especially in the absence of rebuttal by Mr. Hennessey to the "Procedural History", e-mail chains, and the further showing made by the affidavit.

5. I swore to the truth of this October 14, 2014 affidavit at the October 21, 2014 evidentiary hearing, responding to the questioning of my hearing counsel, Tino Gonzalez, Esq., as follows:

[October 21, 2014 transcript, p. 197 (Exhibit B)]

Mr. Gonzalez: "You prepared an affidavit clarifying and supplementing your position regarding the motion... did you not?"

Nina Baum: "Yes, I did."

Mr. Gonzalez: "And that's a matter -- you put that in the court record, correct?"

Nina Baum: "Oh, yes.

...
Mr. Gonzalez: "Is that affidavit true and you executed that and that was notarized, was it not?"

Nina Baum: "It was notarized. It's a hundred percent true..."

6. Not only has Mr. Hennessey NOT rebutted this "hundred percent true" October 14, 2014 affidavit, he has not even responded to it.

7. Additionally, the Court has apparently "overlooked" my October 30, 2014 affidavit in reply to Mr. Hennessey's Response to my Amended Vacatur Motion. This I filed in the wee morning hours of November 3, 2014 so that the Court might review it in advance of that day's continued evidentiary hearing. It, too, detailed my entitlement to vacatur, *as a matter of law*, demonstrating that ¶¶1-5, 7, 9-12, 14, 16-17, 25-28 of my Amended Vacatur Motion were all "documentarily-established, unrefuted and irrefutable" as to "Mr. Hennessey's fraudulent misrepresentations of fact and law on which this Court relied in signing its Orders".

8. It was my intention to similarly attest, from the witness stand, that my October 30, 2014 affidavit was also "a hundred percent true". However because the Court refused to allow me to testify in rebuttal – or to put on any rebuttal case at the November 3, 2014 continued hearing – I was precluded from doing so.¹

9. To this October 30, 2014 affidavit, Mr. Hennessey has also not responded, leaving its showing of my entitlement to vacatur completely undenied and undisputed.

¹ This, notwithstanding the Court's October 31, 2014 Order that had stated, as follows, with respect to the November 3, 2014 hearing:

"Should her counsel desire to call Nina Baum in rebuttal to the Personal Representative's case, the Court would allow such testimony to be presented over the telephone..." (Exhibit C).

10. This motion for rehearing, affording the Court a last chance to discharge its duty to render fair and impartial justice, is being filed simultaneously with a motion to disqualify the Court for demonstrated actual bias. As all the facts, law, and legal argument set forth by that motion as to the indefensibility of the Court's Order are germane to this motion for rehearing, a copy of the disqualification motion is annexed hereto and incorporated by reference, in the interest of judicial economy (Exhibit D).

11. Such disqualification motion is additionally germane to the further relief I herein seek in tandem with rehearing: the Court's disclosure of facts bearing upon its fairness and impartiality, consistent with the Commentary to Canon 3E of the Florida Code of Judicial Conduct:

"A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification."

12. In addition to the Court's disclosure of personal, professional, and political relationships with Mr. Hennessey and other adverse counsel and their clients, I specifically request that the Court disclose the basis for its handwritten additions to Mr. Hennessey's proposed orders dropping parties, which the Court signed on April 2, 2014 – and, in particular, its handwritten addition that it had "previously noted" my "dilatory and stall tactics". As stated by my "Procedural History" (at p. 22):

"As for the Court having 'previously noted' [my] '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 of 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*."

13. Moreover, because an order which is conclusory and devoid of findings of fact and conclusions of law is presumptively suspect, the Court, upon rehearing, and unless it vacates the November 3, 2014 Order, must substantiate it with findings of fact and conclusions of law as to each of the paragraphs of my Amended Vacatur Motion. This is its duty to do, to facilitate appellate review. As stated by the Fifth District Court of Appeal in *Kirk v. Edinger*, 380 So. 2d 1336 (5th DCA 1980):

"We would be remiss if we did not point out that our review of this record was made more difficult by the fact that the final judgment herein contains no findings of fact by the trial judge...we must point out, as was done by our sister court in *Turner v. Lorber*, 360 So.2d 101, [(3rd DCA 1978)], that a trial judge should state his findings in a manner which reveals his consideration of each issue necessary to a resolution of the cause. This facilitates appellate review, and avoids our having to guess at the trial judge's findings..."

14. To no avail my October 30, 2014 affidavit in reply to Mr. Hennessey's October 15, 2014 Response to my Amended Vacatur Motion, filed on November 3, 2014 before the 10 a.m. continued evidentiary hearing, highlighted the significance of the Fifth District Court of Appeal's decision in *Ford Motor Co. v. Stimpson*, 115 So. 3d 401 (5th DCA 2013) – a case, like this one, involving a Rule 1.540(b)(3) motion. I stated:

"27. As reflected by the Fifth District Court of Appeal's decision in *Ford Motor Co. v. Stimpson*, this Court's determinations will have to be supported by the record. Thus, notwithstanding the trial court's findings in that case that fraud on the court had been committed on each of four grounds, the Fifth District Court of Appeal carefully reviewed and determined, four times: 'the record does not support this ruling' (at 406); 'This finding is also not supported by the record' (at 407); 'Again, this finding is not supported by the evidence.' (at 407); 'the record does not contain evidence supporting this finding either.' (at 408).

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

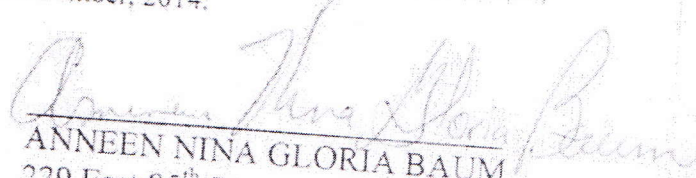
TABLE OF EXHIBITS

- Exhibit A: November 3, 2014 "Order Denying Amended Motion for Relief from Judgment"
- Exhibit B: October 21, 2014 transcript, p. 197
- Exhibit C: October 31, 2014 "Order Denying Motion for Continuance"
- Exhibit D: November 13, 2014 motion to disqualify the Court for demonstrated actual bias
- Exhibit E-1: April 2, 2014 "Order Dropping Parties and Dismissing Amended Petition"
- Exhibit E-2: April 2, 2014 "Order Dropping Parties Pursuant to Florida Rule of Civil Procedure 1.070(j)"

*As contained in court file

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.


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