

Date: August 12, 2016

To: John A. Tomasino, Clerk of the Supreme Court of Florida
Re: NOTICE OF RELATED CASE, In re: Amendments to the Florida Probate Rules,
SC16-1454

Please take Notice that Officers of the Florida Probate Rules Committee have failed to effectuate email service of the Notice of Related Case on all interested parties, for which they electronically filed a sworn Certificate of Service on August 11, 2016; thus the Certificate of Service is false.

I am the primary interested party in SC16-168 and in SC16-1454, two related cases, both of which grew out of my own emergent petition to amend Rules of the probate court, filed in 2014. I am the party described as "Franklin Jack Burr, Proponent, Amds. to Rules 5.550 and 5.560" in the "publication letter" written and published by John A. Tomasino, Clerk of the Supreme Court of Florida, regarding the Florida Bar Association Rules Committee Petition to Amend the Florida Probate Rules, Case No. SC16-168.

I learned of the 8/11/2016 filing quite by accident, and only because another interested party who was served came to me with a question about the document. Of course, I cannot answer his question until I am properly served with the document myself as required by Rules of Court.

As soon as possible after learning of the filed-but-unserved Notice of Related Case, I telephoned today to the office of the Clerk to find out why I was not served. To my surprise the Chief Deputy Clerk informed me that the Notice of Related Case in his possession does not have any Certificate of Service appended to it, giving him reason to believe that *there are no interested parties in these two cases*, Nos. SC16-168 & SC16-1454.

When I compared notes with the Chief Deputy Clerk, to my additional surprise I learned that the Notice of Related Case was intentionally filed in two versions – one with and the other *without* Certificate of Service. Each version has a different document number affixed by the e-portal server. The Officers of the Florida Bar Association Probate Rules Committee first filed a version of their Notice of Related Case via the e-portal on 8/11/2015 at 1:59 p.m. They electronically served the document on a subset of Interested Parties that did not include me, the Proponent; although my name is on the list of Interested Parties to be served. This version of the document included at the top of its Page Two a sworn CERTIFICATE OF SERVICE. My name and email address appear on that sworn CERTIFICATE as a party who was supposedly served via email. However, I was never served. This version of the document received electronic file-stamp:

Filing # 45110187 E-Filed 08/11/2016 01:59:29 PM

The Officers of the FBA Rules Committee did not electronically send this first version to the Clerk of the Supreme Court. Instead, after filing and serving the first version on selected members of the service list, they altered the document and deleted the sworn CERTIFICATE OF

SERVICE from Page Two. Next, they moved the CERTIFICATE OF COMPLIANCE to a position at the top of page two. Then they filed the second, altered version of the document, *sans* CERTIFICATE OF SERVICE, via the e-portal approximately two minutes later. Omission of the CERTIFICATE OF SERVICE from the version sent to the Clerk of the Supreme Court could not be inadvertent or accidental. It requires careful planning, deft computer skills and swift typing to file two different versions of a document, separated merely by two minutes. The dissemination of two similar-but-different versions of Notice of Related Case to two different sets of recipients was clearly intentional because it required exceptional computer skills.

When I asked the Chief Deputy Clerk to find my name on the Certificate of Service, he stated

“My copy does not have any Certificate of Service. As far as I know, there are no interested parties except the Bar Association itself. ... The filing number on our copy is #45110401, filed on 8/11/2016 at 2:01:26 p.m. It has no Certificate of Service. Page two has a Certificate of Compliance. That banner is at the top of the page.”

Rules of Court require the petitioner to deliver to the Clerk a Certificate of Service on all interested parties. For convenience and to minimize the burden of reformatting, the petitioner is permitted to also send a copy of his Certificate of Service to the parties being served. There is no valid justification for sending a Certificate of Service only to a party being served, but not to the Clerk. It makes no sense unless the motive is to deceive or defraud. Here the petitioner has defrauded the Clerk, and induced the Clerk to believe that there are no interested parties. At the same time, the petitioner has defrauded some of the interested parties and induced them to believe that all interested parties were duly served. Finally, the petitioner has defrauded me, the Proponent of the two Rules amendment cases, by excluding me from service and thereby keeping me in the dark about the existence of Petition SC16-1454. These acts of deception are injurious and material in that the latest petition asks the Supreme Court of Florida to ratify amendments that will make no substantive changes to RULE 5.648 EMERGENCY TEMPORARY GUARDIAN. The ratification, if granted, will defeat the entire purpose of amending the Rules as originally proposed by me, the Proponent, in 2014. Specifically, the amendment that I first proposed in 2014 would require a petitioner to give Notice to the court of the existence of a designated Health Care Surrogate before the probate court would be permitted to appoint any guardian, either permanent or temporary. The latest petition, SC16-1454 would accomplish ratification of RULE 5.648 without any amendment whatsoever, and without any Notice to me, the Proponent of the proposed amendment.

By playing a shell game with the Certificate of Service, the Officers of the Florida Probate Rules Committee have bamboozled the Supreme Court to believe that the latest Petition, SC16-1454 is unopposed. In doing so, they have foreclosed my opportunity to oppose the petition as well as foreclosing any opportunity to oppose the petition via a Public Comment period, because the Clerk would be able to advance the matter on the calendar as an unopposed petition. I reiterate

that it is only by accident that I discovered the existence of Related Case No. SC16-1454. I have attached as Exhibit 'A' a facsimile copy of the Certificate of Service that the petitioner served on one or more interested parties, but deleted from the document before electronically sending petitioner's Notice of Related Case to the Clerk of the Supreme Court on 8/11/2016.

Rules of Court provide that a Certificate of Service is the equivalent of a sworn affidavit, and is filed under penalty of perjury in the event that the affiant knowingly attests to serving a party but does not in fact serve that party. The Certificate of Service filed on 8/11/2016 with document #45110187 is a false Certification, the equivalent of false swearing.

By knowingly filing their false Certificate of Service with the judiciary via the e-portal, the Officers of the Florida Probate Rules Committee have uttered a false instrument and offered a false instrument for filing in the court, with intent to defraud, contrary to **FS §§ 831.01 et seq.** A person convicted of these acts faces substantial criminal penalties. The Supreme Court, in its role as supervisor of the Florida Bar Association, has authority to impose penalties on the offending Officers for violation of the Canons of Ethics that proscribe filing false affidavits and false certificates of service. I shall be applying to the Supreme Court to discipline the Officers of the Florida Bar Association Probate Rules Committee for their reprehensible act.

There is simply no excuse for excluding me, the Proponent, from service of papers in connection with Related Case No. SC16-1454, while swearing to the court and to other Interested Parties that the Officers served me. This act is a violation of Canons of Ethics, a violation of the Penal Code, and a violation of Rules of Court.

On behalf of the aggrieved Senior Citizens of Florida who are victims of abusive guardianship, I view this violation very seriously. Unless your Office can demonstrate to my satisfaction forthwith that the failure to serve the document on me as attested in the sworn Certificate of Service was due to a technical error in the Court's email server, and beyond the control of the party who filed the document, I shall pursue remedies against that party as provided by **FS 92.525** for perjury and by **FS §§ 831.01 et seq.** for forgery.

Those remedies begin with this Notice to the Clerk. Today the Chief Deputy Clerk instructed me to make every effort to promptly submit this Notice to the Clerk via the e-portal. I have submitted this Notice via the e-portal marked "EMERGENT" for reason that the Clerk needs to reject the Notice of Related Case, Filing # 45110401 as deficient because it lacks any Certificate of Service; and because the Certificate of Service that the petitioner filed via the e-portal with Filing # 45110187 is a false instrument, the product of perjury. It is the Clerk's ministerial duty to halt any progress of Case No. SC16-1454 until the details of filing and service have been fully investigated and until the scandal surrounding the filing of a false instrument has been resolved.

Franklin Jack Burr II, Proponent of Amendment to Rules of Probate Court
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Tel: 732-640-0885

EXHIBIT 'A': COPY OF FALSE CERTIFICATE OF SERVICE

Filing # 45110187 E-Filed 08/11/2016 01:59:29 PM

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, via the e-Portal, on August 11, 2016, to:

Dr. Sam Sugar
ssugarmd@msn.com

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CERTIFICATE OF COMPLIANCE

I certify that this notice was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Heather Savage Telfer
Heather Savage Telfer, Staff Liaison
Florida Probate Rules Committee
The Florida Bar
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