

IN THE SUPREME COURT OF FLORIDA

IN RE: Amendments to the Florida
Rule of Probate Procedure

CASE NO.: SC11-1575

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COMMENT TO FURTHER AMENDMENT TO SUBSECTION (d) (5)
OF THE FLORIDA RULE OF PROBATE PROCEDURE
5.025(ADVERSARY PROCEEDINGS)

Dorothy Collins Simpson interested person files this Comment for further amendment to subsection (d) (5) of the Florida Rule of Probate Procedure Rule 5.025 (Adversary Proceedings), as proposed by the Rules Committee, for the following reasons:

1. The amendment to Rule 5.025 (Adversary Proceedings) has to be further amendment to stop the unlawfully “dilatory practices” against the public and against a decedent. Resulting in the Probate Judges and Attorneys being the devisees instead of any of the heirs or beneficiaries intended, because any violation of Florida Rule of Probate Procedure 5.025(Adversary Proceedings) results in hearings which “the rulings did not afford procedural due process”, and did not “apply the correct law”. A “criminal conversion” can be perpetrated specially in a partition action when monies or real property in a Civil dispute.

2. The amendment to Rule 5.025 (Adversary Proceedings) has to be further amendment to stop the using of defected Hearing Notices and Petitions and Motions stamp for the record as Civil. Then using the decedent original case file number without sometimes filing an original document for the Civil action; After that disregard section (d) (5) of Rule 5.025 when the proceedings are adversary. The disregard of section (d) (5) has been the scheme used to deceive the public by the Legal community and has been the scheme used to keep a decedent Estate open exceeding its statutory authority in order to contain the civil dispute within the Probate Administration of the decedent when harm has occurred. The scheme used made sure any claims for intrinsic fraud upon the court and defamation claims are barred by the “statute of limitation”, and “precludes” federal courts jurisdiction for any “redress” because the probate is still within the custody of state probate court” and the judicial labor is not over. The containment shows corruptions exist in the Florida probate Clerk’s office and exist among the Judges and exist among the Attorneys.

In the case of Dorothy Collins Simpson vs. Estate of Roosevelt Norton, Florida Probate Rule 5.025 (Adversary Proceedings) was grossly violated by filing defected Petitions for the record as Civil never filing a “separate declaration that the proceeding was adversary” and by disregarding Rule 5.025 (d) (5) when the “caption of subsequent pleadings as an extension of the probate caption, must

include the name of the first petitioner and the name of the first respondent.”

Probate Judge Norman Gerstein did not apply the correct law and denied procedural “due process” under the “color of official” for Florida Rule of Probate Rule 5.025 (Adversary Proceedings) and Fla. Stat. §733.814 Partition for purpose of distribution. The violations to Rule 5.025 (Adversary Proceedings) occurred in Estate of Roosevelt Norton, by the officials not complying with Florida Probate Rule 5.025 (b) and Rule 5.025 (d) (2) and 5.025 (d) (5). All three of Dorothy Collins Simpson’s personal Attorney filed defected Petitions and Motions in violation of Rule 5.025 (Adversary Proceedings), for a simply matter of Partition to be conclude in January, 2004. The violations allowed a non final Order to be adjudicated by Probate Judge Norman Gerstein in the All Pending Matters proceedings, heard on April 18, 2007 and July 18, 2007, Order signed on September 21, 2007. This September 21, 2007 non final Order made Dorothy Collins Simpson who is an interested person and Creditor in this Probate matter of Partition to pay all the Estate of Roosevelt Norton’s legal obligations from her one-half share of the partition sell when both were legally obligated. The September 21, 2007 non final Order adjudged from the Partition sell \$22, 156.00 prior mortgage payment, when Fla. Stat. §733.710 barred the action and the request show fraud upon the court and prior appointment Fees to Estate of Roosevelt Norton’s Personal Representative and Estate of Roosevelt Norton Attorney when

Fla. Stat. §733.601 barred the prior appointment award and the request constitute fraud upon the court and fraud against Dorothy Collins Simpson and the Estate of Annie Pearl Collins partition share.; Dorothy Collins Simpson was not a beneficiary of the Estate of Roosevelt Norton only a Creditor and interested person. The September 21, 2007 non final Order also paid the Estate of Roosevelt Norton funeral expenses from Dorothy Collins Simpson's one-half partition share from the Partition sell. Reference to Petition to Order of Distribution of Sums Due to Dorothy Simpson and Estate of Roosevelt Norton, Summary attached as Exhibit "G". As well as surcharged Dorothy Collins Simpson for pursuing her fifty-percent interest in real property obtained through the Estate of Annie Pearl Collins, and monies paid on behalf of the Estate of Roosevelt Norton filed pursuant to Section 733.705 of the Florida Probate Code. Each issue adjudicated on the September 21, 2007 non final Order were Civil issues of dispute called for separate Civil Hearings but Judge Norman Gerstein allowed Civil issues of dispute to be combined and addressed then adjudicated in the April 18, 2007 and July 18, 2007 proceeding without the Petitions being served and filed in accordance with the provisions of Rule 5.025 (Adversary Proceedings) or , Fla. Stat. §57.105, Fla. Stat. §733.710, Fla. Stat. §733.601, Section 733.705, Fla. Stat. § 733.814 or any material facts necessary to establish the claims nor existing law applied to those claims. Further the record will show Probate Judge Norman Gerstein refused to allow any

sworn testimony from Dorothy Collins Simpson or any witnesses on her behalf in the April 18, 2007 and July 18, 2007 hearing and June 6, 2007 hearing or an accounting of the partition funds. Probate Judge Norman Gerstein in the April 18, 2007 and July 18, 2007 proceeding ordered Partition Funds due to Dorothy Collins Simpson and Estate of Annie Pearl Collins who had a Order of Summary Administration for “immediate” distribution since August 15, 2002 to be supervised and distributed by the Estate of Roosevelt Norton Personal Representative pursuant to Fla. Stat. § 69.031 when the Estate of Roosevelt Norton Personal Representative attempted to appropriate an ownership interest in the Partition funds due to Dorothy Collins Simpson and Estate of Annie Pearl Collins and when the Estate of Roosevelt Norton Personal Representative had not meet any provisions of the Probate Code or pursuant to Partition laws when the Estate of Roosevelt Norton had indebtedness to Dorothy Collins Simpson.

The record will show Probate Judge Norman Gerstein allowed the April 18, 2007, Notice of Filing Statement of Undisputed Facts to be filed for the record the same day of the April 18, 2007 and July 18, 2007 hearing which included “defamation” and “false statements” without any evidence offered. The April 18, 2007 and July 18, 2007, Notice of Hearing was dated one year prior for April 18, 2006 and July 18, 2006. Due to Judge Norman Gerstein leaving the apportionment on reserve for the All Pending Matters proceeding and signing the April 18, 2007

and July 18, 2007 Order on September 21, 2007 then waited one year later to adjudicate, an August 11, 2008 Order of Distribution of Sums Due to Dorothy Simpson and Estate of Roosevelt Norton, in a proceedings that did not comply with Florida Probate Rule 5.025 (Adversary Proceedings) or Fla. Stat. §733.814 Partition for the purpose of distribution, Fla. Stat. §57.105 and Rule of Law, shows the intent to deprive a “fundamental right to redress” and shows the intent to take monies and property without “due process of Law” “under the color of law”. Judge Norman Gerstein’s actions constituted a “criminal conversion” by unlawful treating Dorothy Collins Simpson and Estate of Annie Pearl Collins’s one-half share in the real property as Judge Norman Gerstein’s own property.

Then in the same August 11, 2008 Hearing Probate Judge Norman Gerstein adjudicated, an Order of Distribution, for Estate of Roosevelt Norton Attorney Leon E. Sharpe, Esq. As well as Petition for Estate Attorney Fees, Petition for Personal Representative Fees and Petition for Discharge that were not pled on the August 11, 2008 hearing Notice however each Petition have a book number filed for the record with no Orders sign for the record to discharge the Personal Representative closing the Estate of Roosevelt Norton. The April 18, 2007 Notice of Filing Statement of Undisputed Facts, April 18, 2007 and July 18, 2007 Hearing Notice, August 11, 2008 Notice of Hearing, Petition and Order for Distribution of Sums Due to Dorothy Simpson and Estate of Roosevelt Norton, Petition and Order

for Distribution, Petition for Payment of Compensation to Personal Representative, Petition for Payment of Attorneys Fees and Costs, Petition for Discharge and Response to Dorothy Simpson's Formal Notice of objection to Petition for Discharge, Objection to Petition for Attorney Fees and Objection to Petition for Personal Representative Fees were defected filings for the record in violation of Rule 5.025 (Adversary Proceedings).

Damages Caused by Rule 5.025 (Adversary Proceedings) defected filings

As a result, Probate Judge Norman Gerstein adjudicated a matter of civil dispute in pursuant to Fla. Stat. §733.814 Partition for the purposes of distribution as probate Administration matters to make sure Dorothy Collins Simpson would not avail to Florida Rules of Appellate Procedure Rule 9.110 (a) (2) and to make sure the judicial labor continue for a Civil dispute involved as to Dorothy Collins Simpson and Estate of Annie Pearl Collins when harm has occurred.

“Constitutional Deprivation” was Judge Norman Gerstein not following the Law and disbursing the partition funds to the Estate of Roosevelt Norton Attorney without concluding litigation and not signing an Order of Discharge before resigning after the Federal Lawsuit. See Case No. 09-22098-CIV-GRAHAM. Probate Judge Norman Gerstein conduct constituted blocking a party's right of appeal” and blocking “redress” in a Partition distribution. The Judge's conduct has

been a “tragedy to Justice” and has been a violation of Dorothy Collins Simpson and Estate of Annie Pearl Collins’s “substantive and procedural due process rights”. February 16, 2006, Order on Motion to Partition and For Reimbursement of Mortgage Payments and March 7, 2006 Notice of Hearing, February 16, 2006 Order on Appointing Realtor, April 5, 2006 Order on petition to Determine Ownership of Personal Property, April 18, 2006 Order on Emergency Petition to Compel Dorothy Simpson to Make Election Right of First Refusal Hearing) were defected filings and all Orders were procured under the ‘color of official’

This Committee must understand Judge Norman Gerstein were exceeding the statutory authority and adjudicating civil dispute of Partition for the purpose of distribution as a Probate Administration matters and adjudicating “pleadings not plead or litigated by the parties”. In essence Judge Norman Gerstein acts was “constitutional deprivation” an element of 18 U.S.C. Sec. 242 offenses. Reference to the Estate of Roosevelt Norton court Order Letters of Administration only gave the Estate of Roosevelt Norton in January, 2003 one year to “must be close”. Florida Rule of Judicial Administration Time Standard Rule 2.250(a) (D) Probate and Order of Summary Administration for Estate of Annie Pearl Collins and July 14, 2008 Mandate was clear.

Judge Norman Gerstein actions not concluding litigation and not complying with the Canons, Oath of Office and Rule of Law have blocked Dorothy Collins

Simpson for any redress, and have “deprivation” Dorothy Collins Simpson “her day in Court” when monies and property have been taken and a “criminal conversion” perpetrated. This has cause severe harm that could not be rectify on Appeal. The Probate Court still has custody of this state probate matter to this day and the Probate Court case is still open which continues to protect wrongdoers. “The probate exception reserves to the state probate courts the probate”; “When a court is exercising in rem jurisdiction over a res, second court will not assume in rem jurisdiction over the same res”.

In essence the Florida Probate court is allowing a intentional continuous tort and extrinsic fraud upon the Court to be perpetrated against Dorothy Collins Simpson and Estate of Annie Pearl Collins each day the Probate case remains open when a “criminal conversion” has been perpetrated by an “unlawful holding” of Dorothy Collins Simpson and Estate of Annie Pearl Collins’s partition funds and by “changing of one type of property to another, e.g. from joint to separate property”.

The Orders that cause harm to Dorothy Collins Simpson and Estate of Annie Pearl Collins were adjudicated by Judge Norman Gerstein as well as Petitions or Motions bought forth by Dorothy Collins Simpson three personal Attorneys were defected and not in accordance to Rule 5.025(Adversary Proceedings) when every issue of Partition for the purpose of distribution “must be adversary” and monies

paid on behalf of the Estate of Roosevelt pursuant to Section 733. 705 were civil issues of dispute.

Dorothy Collins Simpson three personal Attorneys and Estate of Roosevelt Norton Attorney actions were a “deprivation of due process” due to some or all the Filing of Petitions for the record were defected using the decedent’s original case file number 02-5430 and not the decedent’s adversary case file number 03-4983 when the “caption of subsequent pleadings as an extension of the probate caption, must include the name of the first petitioner and the name of the first respondent” when “proceedings are adversary”. As a result Rule 5.025 (d) (5) was grossly violated by Leslie B. Scharfman, P.A., for the July 14, 2003 Hearing and December 3, 2003 Hearing. Robert Cooper, P.A. for the May 24, 2004 hearing, and June 6, 2007 Hearing. Benjamin Jacobi, P.A., for the Objection to Homestead. Leon E. Sharpe, Esq., for the March 7, 2006, April 18, 2006 and April 18, 2007 and July 18, 2007 and August 11, 2008 hearings as well as Leon E. Sharpe, Esq., did not have the Hearing Notices or Petitions stamp Civil or “in accordance with any provisions of the Rule 5.025 (Adversary Proceedings), or any material facts necessary to establish the claims nor existing law applied to those claims”. To show deprivation all Leon E. Sharpe Esq. responses file for the record included “false statements” and “misrepresentations” stamp civil and in violation of Rule 5.025 (d)(5).

To show further deprivation, Leslie B. Scharfman, P.A., set the July 14, 2003 Hearing using two hearing Notices one stamp civil other stamp original filed and did not have the three Statement of Claims filed for the record as Civil with a wrong case Number 02-5439. The July 14, 2003 hearing resulted in an Order Compelling Inventory to be filed for Estate of Roosevelt Norton and the three claims were not before the court. Prior to July 14, 2003 Hearing received an Agreed Order Enlarging time to File Independent Action on June 9, 2003. On October 14, 2003 Leslie B. Scharfman, P.A. attended a Hearing on Motion to Transfer then received an Order however fail to Notice Client of intent but charged to file the Motion to Transfer. Leslie B. Scharfman, P.A. received the Order Authorizing Transfer by misrepresenting Dorothy Collins Simpson's diversity status to the civil court using the real property address, 13021 N.W. 20th Avenue, Miami Florida 33167 for Dorothy Collins Simpson instead of the correct address, 5173 Highpoint Road, Union City, Georgia 30291 which was clearly out of state; Then misrepresented the Estate of Roosevelt Norton's statutory time to close the Estate and a wrong case file No. 02-5439 CP 01. The independent action brought in pursuant to Fla. Stat. § 733.705 the Court Order Enlarging Until August 26, 2003, the Time to File Independent action entered into the Probate Division File No. 02-5430 CP 01 as Adversary Case No. 03-4983 CP 01. Leslie B. Scharfman, P.A. refusal to persecute the independent action after filing on August 25, 2003

shows the intent to commit not just intrinsic Fraud upon the Court but conduct justify extrinsic Fraud upon the Court.

After that Leslie B. Scharfman, P.A., set the December 3, 2003 hearing using two hearing Notices one stamp civil other stamp original filed and omitting to file a “separate declaration” that the December 3, 2003 proceeding was adversary or in accordance with the provisions of the Rule 5.025 (Adversary Proceedings). At the December 3, 2003 hearing Leslie B. Scharfman, P.A., received an Oral ruling and refused to reduce into writing then withdrew in February, 2004. The December 3, 2003 ruling was finally reduced in April, 2006 by Leon E. Sharpe, Esq., but omitted the decease Judge Sidney Shapiro Oral Announcements, Compelling the Estate of Roosevelt Norton to begin to pay its one-half share of the mortgage payment and the specified amount Caretaker, Tasha Barney and Dorothy Collins Simpson and Estate of Roosevelt Norton were to pay. Roosevelt Norton Decedent’s interstate heirs took the real property one-half interest as tenant in common.

The intentional failure to abide by Rule 5.025 (Adversary Proceedings) and partition Laws and failure to carry out Attorney’s contract and failure to reduce rulings into writing and false statements were acts of extrinsic fraud upon the court for person gain perpetrated which caused deprivation and severe harm to Dorothy Collins Simpson Civil case. The acts of extrinsic fraud which prejudiced the

above referenced hearings would support an action to set aside any orders adjudged pursuant to Fla. R. Civ. P. 1.540(b) to correct the “gross miscarriage of justice”. See Complaint Miami-Dade County case No. 09- 91705 CA 25. In which Miami-Dade Circuit Court dismissed the Complaint pursuant to Fla. R. Civ. P. 1.540 (b) for extrinsic fraud upon the Court and misconduct that prejudice the final Orders with prejudice that adjudicated sanctions to bar any filings by Dorothy Collins Simpson without Counsel in Civil and Criminal Courts against the wrongdoers. Judge Peter Adrian ignored the civil rule of Law by not transferring the Complaint pursuant 1.540 (b) extrinsic fraud upon the Court to the proper authority when a crime had been reported. See 18 U.S.C. Sec. 242 offenses

The acts above justify the case law of Dorothy Collins Simpson v. Estate of Roosevelt Norton; the Appellate Court’s decisions are so “erroneous” that justice requires that it be corrected. Due to the acts of dishonesty and misconduct cause harm that aided in Civil Theft and Civil Conspiracy that could not be prosecuted or appealed because the Probate Civil proceedings were adjudicated as Probate Administration proceedings. There was no Order of Discharge signed to end the judicial Labor. All the orders were procured under “color of official”.

Further the Committee must understand “all Rules are required to be applied and construed so that no defect in form will be permitted to impair substantial rights of an interested person or a decedent”. Any disregard or

violations of Rule 5.025 (Adversary proceedings) “must be severe sanctions” applied to stop the criminal conduct going without prosecution. “A Lawyer or Judge who does not know the Rules should not be hearing or trying cases”. Changing the word shall to must for Rule 5.025 (Adversary Proceedings) give a sense of finality and compulsion. However violation of Rule 5.025 (Adversary Proceedings) in any part by a probate Judge or an Attorney “must be” held accountable without delay. Since the acts “wrongfully and permanently deprives the owner of his or her property for an indefinite period of time” perpetrated by intentional extrinsic fraud upon the Court and all the Orders were procured under the “color of official” which warrant review and investigation.

For all the foregoing reasons, Dorothy Collins Simpson interested person request that Rule 5.025 (Adversary Proceedings) (d) (5) the “caption of subsequent pleadings as an extension of the probate caption, must include the name of the first petitioner and the name of the first respondent.” further amendment to include a separate Adversary case file Number separate from the decedent’s original case file Number.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by Certified US Mail to the following this _____ day of November, 2011, to committee co-chairs, John Christopher Moran, Gunter Yoakley & Stewart P.A., 777 South Flagler Drive, Suite 500 E, West Palm Beach, Florida 33401-6121; Tasha K. Pepper-Dickinson, Jones Foster Johnston & Stubbs, P.A., 505 South Flagler Drive, Suite 1100, West Palm Beach, Florida 33401-5950 and John F. Harkness, Jr., Executive Director, and Krys Godwin, Bar Liaison, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I certify that the font used in this comment is Time New Roman 14 point and in compliance with Rule 9.210, Florida Rule of Appellate procedure.

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**STATE OF
FLORIDA**

Sworn to or affirmed and signed before me on, November_____, 2011 by
Dorothy Collins Simpson.

NOTARY PUBLIC-STATE OF FLORIDA

(Print, type, or stamp commissioned name of notary)

Notary Signature:_____ Date:_____

(Check One)

_____ Personally Known

_____ Or Produced Identification

Type of identification produced_____