

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

**ESTATE OF LISA MCPHERSON, by and
through the Personal Representative,
DELL LIEBREICH,**

Plaintiff,

Case No. 00-5682-11

vs.

**CHURCH OF SCIENTOLOGY FLAG
SERVICE ORGANIZATION, INC., JANIS
JOHNSON, ALAIN KARTUZINSKI, and
DAVID HOUGHTON, D.D.S.,**

Defendants.

**CHURCH OF SCIENTOLOGY FLAG
SERVICE ORGANIZATION, INC.,**

Counter-claimant,

vs.

**ESTATE OF LISA MCPHERSON, by and
through the Personal Representative,
DELL LIEBREICH, and ROBERT MINTON,**

Counter-defendants.

ORDER
REVIVING COUNTERCLAIM FOR THE SOLE PURPOSE OF
GRANTING ROBERT MINTON'S RENEWED VERIFIED MOTION
TO DISQUALIFY TRIAL JUDGE AND SUGGESTION OF
DISQUALIFICATION AND REQUEST FOR PERMISSION TO FILE
MOTION

This cause came on to be heard on Robert Minton's ("Minton") Renewed Verified Motion to Disqualify Trial Judge and Suggestion of Disqualification and Request for Permission to File Motion filed on or about March 5, 2003, and Minton's Supplemental Amendment and Memorandum to Robert Minton's Renewed Verified Motion to Disqualify Trial Judge and Suggestion of Disqualification and Request for Permission to File Motion filed on or about March 10, 2003.

Minton's Verified Motion to Disqualify Trial Judge and Suggestion of Disqualification, filed on or about January 17, 2003, is incorporated into his renewed motion to disqualify. As this is the first motion to disqualify any judge that Minton has filed in this case, the truth or falsity of his motion, its incompleteness, and even the inappropriate inclusion of what Minton and his lawyers know is confidential information, cannot be considered or addressed by this court. The court is required to look at the sufficiency of the motion on its face, assuming everything in it is true, in order to determine whether the facts alleged in the motion would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial. *Cave v. State*, 660 So. 2d 705, 708 (Fla. 1995); *MacKenzie v. Super Kids Bargain Store, Inc.* 565 So 2d 1332 (Fla. 1990). This standard for a first disqualification motion, contained in Fla. Stat. § 38.10, and Fla. R. Jud. Admin. 2.160, has been criticized by all trial judges at one time or another. Nevertheless, the statute and rule have not been changed, and the standard remains as the one this court must employ to decide Minton's motion. Accordingly, since the Second District Court of Appeal has allowed the withdrawal of Minton's previously filed Motion for Clarification, in its Order dated March 10, 2003, it is

ORDERED AND ADJUDGED that Minton's Request for Permission to File Motion is granted. It is further

ORDERED AND ADJUDGED that this court, on her own motion, hereby revives the counterclaim for the sole purpose of determining Minton's renewed motion for disqualification. Some of the reasons for this court's action are as follows. This court erroneously assumed that Minton would file a motion to revive the counterclaim after this court issued her order of January 27, 2003. Instead, he filed a Petition for Writ of Prohibition or Certiorari in the Second District Court of Appeal. After his Petition was denied by Order of February 19, 2003, in part with prejudice, and in part without prejudice, this court again assumed Minton would file a motion to

revive the counterclaim for the purpose of hearing his motion for disqualification. Instead, he filed a Motion for Clarification in the Second District Court of Appeal. When the Church of Scientology Flag Service Organization, Inc. ("Church") filed its "Cross-Motion for an Evidentiary Hearing, for Issuance of an Order to Show Cause for Contempt against Plaintiff's Counsel, for an Award of Costs and Counsel Fees against Plaintiff's Counsel, for an Order Confirming That the Counterclaim is Now "Unabated for All Purposes, and for an Order to "Unsever" the Counterclaim for Trial" on or about February 28, 2003, in response to Plaintiff's Motion for Sanctions of Default of Liability on the Fifth Amended Complaint and Final Default Judgment on the Counterclaim" filed by the Estate of Lisa McPherson ("Estate") on or about February 3, 2003 suggesting, in part, that certain actions by this court regarding the Estate's motion had "unabated" the counterclaim "for all purposes", Minton curiously joined it, although he had originally moved to have the counterclaim abated, and prevailed on his oral motion. See Minton's Response to Estate's Motion for Sanctions, etc., and Church's Cross-Motion for an Evidentiary Hearing, filed on or about March 5, 2003. Minton also filed, at the same time, Robert Minton's Renewed Verified Motion to Disqualify Trial Judge and Suggestion of Disqualification and Request for Permission to File Motion. He also filed a Notice of Withdrawal in the Second District Court of Appeal of his Motion for Clarification that he had previously filed in the district court. As part of his renewed motion, Minton suggested that this court should be disqualified from hearing any part of the Estate's motion or the Church's cross-motion, as well as the "balance of the case." See Minton's Renewed Verified Motion to Disqualify, March 5, 2003, p. 2.

Since part of the Estate's motion dealt with the counterclaim, this court knew she could not hear that part of the Estate's motion or the Church's cross-motion since the counterclaim was abated, and further, even when the counterclaim was unabated, this court would have to hear the motion to disqualify first, before any other matter on the counterclaim could be heard. However, since the wrongful death complaint was to be set for trial, she knew she would have to deal with the matters contained in the Estate's motion and the Church's cross-motion which dealt with the wrongful death complaint only. Minton's suggestion that this court could not hear any part of the Estate's motion or the Church's cross-motion, since he continued to allege that his motion to disqualify went to both the counterclaim and the wrongful death complaint, tied this court's hands

procedurally. The wrongful death complaint could not be tried until the Estate's motion and Church's cross-motion were resolved as to the complaint, and Minton was alleging that I could not hear the motion or cross-motion, even as to the wrongful death complaint, so long as his motion to disqualify was pending, alleging as he did that his motion pertained to both the complaint and the counterclaim, and thus, had to be heard first.

In an attempt to remedy the procedural problems, this court, in a telephone hearing held on March 7, 2003, offered to resolve Minton's motion to disqualify first, and then either transfer the case to another judge, or move onto the other matters in the Estate's motion and Church's cross-motion if the court ruled she was not disqualified from part or all of this case. To accomplish this, she gave Minton the opportunity to file a motion to revive the counterclaim for the sole purpose of hearing his renewed motion for disqualification. This court indicated she would grant a motion to revive the counterclaim for the sole purpose of hearing his renewed motion for disqualification, and would then rule on his renewed motion for disqualification. Minton's lawyer sent this court a fax on March 10, 2003, before a scheduled case management conference in the wrongful death complaint, in which he indicated, "After consulting with my client, Robert Minton in discussing the options that have been made available to him by this Court on Friday, March 7, 2003, please be advised that we reject the court's offer." See Exhibit A attached. In fact, the only thing that this court's efforts to hear Minton's renewed motion for disqualification brought about was Minton's Supplemental Amendment and Memorandum, alleging further, albeit legally insufficient, grounds for his renewed motion to disqualify. A copy of Minton's Supplemental Amendment and Memorandum to Robert Minton's Renewed Verified Motion to Disqualify Trial Judge and Suggestion of Disqualification and Request for Permission to File Motion, dated March 10, 2003, was given to this court immediately following the attempted case management conference. In that pleading, Minton suggested that this court was using "coercion" on Minton's counsel to file such a motion, and further stated, "The Court's requirement that Minton file a motion to partially unabate the counterclaim...and repeatedly stating that it will automatically grant the motion once filed...obviously indicates that the Court believed it had the authority to rule on the motion. If the Court had such authority, presumably it could issue such an order on its own motion. Thus the Court's insistence that Minton file the motion provides further well grounded concern regarding the Court's prejudice....The Court should accordingly immediately disqualify itself

from proceeding further in this action, it should consider no other motion, it should hold no other hearings, it should demand no other waiver or act by Minton or his counsel." Minton's Supplemental Amendment, March 10, 2003, pp. 4, 5, emphasis mine.

It was clear to this court that she could not proceed to hear the Church's cross-motion and Minton's Response, both suggesting that certain actions by this court had unabated the counterclaim "for all purposes", before she heard Minton's motion to disqualify, and if granted, could not hear that part of the Church's cross-motion and Minton's response at all, as she would be disqualified from hearing any matter on the counterclaim. It was also clear to this court that so long as Minton continued to allege, as he did in every pleading he filed, that his motion to disqualify went to both the wrongful death complaint as well as to the abuse of process counterclaim, she could hear no part of the Estate's motion and the Church's cross-motion and Minton's response until Minton's motion to disqualify was heard. It was also clear, after March 10, 2003, that Minton would not move to revive the counterclaim for the sole purpose of hearing his motion to disqualify, and if granted, another judge could hear that portion of the Church's cross-motion and Minton's response that suggested that this court had "unabated" the counterclaim "for all purposes". This court felt that in order to move this case, she should take Minton up on his suggestion that the court could revive the counterclaim, "on its own motion", for the purpose of hearing Minton's motion to disqualify. Thus, this is what this order, at least in part, is doing—reviving the counterclaim for the sole purpose of hearing Minton's motion to disqualify. This is necessary since, apparently, Minton does not really want to have his motion heard, which effectively brings this whole case to a standstill. Accordingly, in order to move either the wrongful death complaint alone, or both the complaint and the counterclaim, "unsevered", toward a trial date, this court is reviving the counterclaim, on her own motion, solely to hear Minton's renewed motion to disqualify. It is further

ORDERED AND ADJUDGED that assuming everything in Minton's initial Verified Motion to Disqualify Trial Judge and Suggestion of Disqualification filed on or about January 17, 2003 is true, such matters contained therein having been adopted and incorporated in his Renewed Verified Motion to Disqualify Trial Judge and Suggestion of Disqualification and Request for Permission to File Motion filed on or about March 5, 2003, and further assuming that everything in Minton's Renewed Verified Motion to Disqualify Trial Judge and Suggestion of

Disqualification and Request for Permission to File Motion filed on or about March 5, 2003 is true, and further assuming that everything in Minton's Supplemental Amendment and Memorandum to Robert Minton's Renewed Verified Motion to Disqualify Trial Judge and Suggestion of Disqualification and Request for Permission to File Motion filed on or about March 10, 2003 is true, Minton's Renewed Verified Motion to Disqualify the undersigned judge from the counterclaim is granted. Assuming the facts are true, which this court must do, this court finds the facts alleged are facially sufficient to create a well-founded fear in Robert Minton that he could not receive a fair and impartial trial or hearing on the counterclaim, in which he is now a party, from the undersigned judge.

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In granting Minton's motion, this court is not unmindful of the vast body of case law that says that an adverse ruling is insufficient as a matter of law to establish bias or prejudice on the part of the ruling judge. See, for example, *Downs v. Moore*, 801 So. 2d 906, 915 (Fla. 2001), and cases cited therein. However, the ruling that this court made in denying the Church's Omnibus Motion for Terminating Sanctions and Other Relief, was not an "adverse ruling" as to Minton, as it did not affect any of Minton's rights or obligations as to the counterclaim. See additional discussion of this issue later in this order, pp. 14-15. The ruling affected the rights and obligations of the Church, the individual defendants, and the Estate, as to the wrongful death complaint, and affected the Church and the Estate only as to the counterclaim. However, as part of her ruling, she made factual findings that challenged not only Minton's credibility as a witness, but also his honesty in general. Therefore, now that Minton is a party to the counterclaim, it can reasonably be assumed that a motion such as that filed against the Estate would be filed against Minton, and Minton's credibility would be at issue in such a motion, and additionally, that even if no such motion is filed, because Minton's credibility may be at issue in other motions that may be filed in the counterclaim, a reasonably prudent person in Minton's shoes would not believe that he could get a fair trial, or hearing before this court. Therefore, Minton's motion to disqualify, as to the counterclaim, is granted, pursuant to Fla. Stat. § 38.10, and Fla. R. Jud. Admin. 2.160 (d) (1), and (f). It is further

ORDERED AND ADJUDGED that this order has no effect on the wrongful death complaint, as Minton is not, and has never been a party thereto. This court ruled on January 27, 2003, in her Order Dismissing Robert Minton's Verified Motion to Disqualify Trial Judge and Suggestion of Disqualification that, "Minton's Motion to Disqualify clearly pertains to

the counterclaim, and not to the wrongful death complaint since he is a party to only the counterclaim" Order, *Id.*, January 27, 2003, p. 6. The Second District Court of Appeal in its Order of February 19, 2003, stated, "The petition for writ of prohibition as to the wrongful death claims is denied with prejudice. The petition for writ of prohibition as to the counterclaim to the fifth amended complaint (counterclaim for abuse of process) is denied without prejudice...." Order, *Id.*, February 19, 2003, emphasis mine. Thus, if, as Minton continues to suggest (See Minton's latest such suggestion in Robert Minton's Response to Court's Order Permitting Response to Minton's Motion to Disqualify, March 28, 2003, p. 2.), that "[t]he disqualification Motion was made in both parts of this case—wrongful death and counterclaim," that matter has already been decided by this court's order of January 27, 2003 contrary to his position, and his writ of prohibition from that decision has been denied with prejudice as to the wrongful death claims by the Second District Court of Appeal. Simply put, Minton, a non-party to the wrongful death complaint, has no legal basis to try to have this court removed as the trial judge from the wrongful death complaint. That will have to be attempted by a party to the wrongful death complaint. It is further

ORDERED AND ADJUDGED that while it is not mandatory, therefore, that this court transfer the wrongful death complaint to the judge who is assigned to the counterclaim, it may be appropriate to do so. This court entered an Order Permitting Response to Minton's Motion to Disqualify on March 23, 2003, not only permitting all interested parties to respond to Minton's motion to disqualify, but also allowed any affected person to respond regarding whether or not, if this court granted the motion to disqualify only as to the abuse of process counterclaim, this court should continue to be the judge assigned to the wrongful death complaint. This court suggested that both legal and practical responses would be considered. Only three persons responded, Minton, the Church, and the Estate. None of the individual defendants to the wrongful death complaint responded.

Minton responded, among other things, that his motion went to both the wrongful death complaint and the abuse of process counterclaim. See Robert Minton's Response to Court's Order Permitting Response to Minton's Motion to Disqualify, March 28, 2003, p. 2. This court has already addressed this claim of Minton's previously in this order. This matter has been decided contrary to Minton's position both by this court and the Second District Court of Appeal.

Predictably, Minton also asserted that the court's March 23, 2003 order gave him additional grounds for his motion to disqualify. Minton's Response, *Id.* pp. 1-2, 2-3. These grounds for disqualification are not only legally insufficient, but also moot, in light of this order granting, on other grounds, Minton's motion to disqualify as to the counterclaim.

The Church took no position on the validity of Minton's motion to disqualify, but suggested, as they have previously, that Minton is a "key witness" to the wrongful death complaint and that this court's Order Denying the Church's Omnibus Motion for Terminating Sanctions and Other Relief had prejudiced their right to secure Minton's presence for the wrongful death trial, unless the counterclaim was "unsevered" from the wrongful death complaint. See Church of Scientology Flag Service Organization's Response to March 23, 2003 Order, March 26, 2003, p. 2. First of all, the fact that this court might find that Minton was not telling the truth at the evidentiary hearing on the Church's Omnibus Motion, as opposed to finding that Dandar was not telling the truth at the hearing was undoubtedly considered by the Church when it filed its motion. All good lawyers hope to win every motion they file, but they carefully consider all the ramifications of losing a motion before filing it. Without doubt, all attorneys involved in the hearing on the Church's Omnibus Motion clearly knew, early on, as did Minton, that this court was going to refer the perjury and extortion matters, raised in the Church's Omnibus Motion and the Estate's Response, to the state attorney, once this court entered its order on the motion. All attorneys additionally knew, early on, as did Minton that this court was planning to file an order to show cause why Minton should not be held in contempt of this court for committing perjury in this case, whether this court found that Minton's previous testimony was perjured, which he admitted at the hearing, and/or his testimony at the hearing was perjured. If Minton is now reluctant to come to court as a witness for the Church in the wrongful death complaint, knowing he might be charged by the state attorney with either his admitted and/or non-admitted perjury, or knowing that he might be held to answer to an order to show cause why he should not be held in contempt for his perjury, this predicament of the Church, if one exists, was brought on by its own motion, not the court's required order to resolve the motion, nor the court's sending the allegations of perjury to the state attorney's office for their necessary consideration, nor a potential order to show cause, all of which Minton clearly knew about long ago when this court first began the evidentiary hearing on the motion.

Furthermore, this court cannot understand how Minton is a witness at all, let alone a "key witness" for the Church, in the wrongful death complaint. Minton knows nothing about the death of Lisa McPherson. All he knows is how much money he paid for various services to some of the listed Estate witnesses, all except one of whom will not testify at the wrongful death trial. See this court's Uniform Pre-Trial Conference Order, dated December 12, 2002, limiting expert testimony to one expert per specialty. Of course, this court does not purport to know precisely why the Church perceives Minton to be a "key witness" at the wrongful death trial. Regardless, whether or not Minton can even testify at the wrongful death trial, whether or not Minton will appear as a witness for the Church at their request, whether or not it will be necessary to secure any testimony he is permitted to give in some fashion other than live testimony in front of the jury, that can all be decided another day. As to whether or not the counterclaim should be "unsevered", that decision will be for another judge.

The Church further suggested in its response that for this court to revive the counterclaim for the sole purpose of deciding Minton's motion to disqualify "violates both the letter and spirit of the Second DCA's February 19 Order on Minton's petition for writ." Church's Response, *Id.*, pp. 2-4. This court disagrees. There was nothing in the Second District Court of Appeal's Order that precludes this court from doing exactly what she has done, which is to abate the counterclaim on her own motion solely to resolve Minton's motion to disqualify. There is no reason not to get the disqualification matter resolved. This case is presently at a procedural standstill. Whether the standstill is of Minton's choosing, or, as the Estate contends, Minton doing the work of the Church, the case needs to get moving toward a trial of either the wrongful death complaint alone, or of the complaint and the abuse of process counterclaim together. Once this order is entered, this court will once again abate the counterclaim, pursuant to her previous Order Granting Minton's Oral Motion to Abate Counterclaim, dated September 19, 2002. As to whether or not any other action of this court has revived the counterclaim "for all purposes" as the Church and Minton have suggested, this will be decided by the judge who is assigned to the counterclaim, and assigned to the Plaintiff's Motion for Sanctions of Default, etc., dated February 3, 2003, to the Church's cross-motion filed in response to the Estate's motion, dated February 28, 2003, and Minton's response thereto, dated March 5, 2003. If the Church and Minton are correct, the counterclaim will be revived "for all purposes". If the Church

and Minton are incorrect, the counterclaim may be revived again only on a party's motion consistent with this court's previous order of abatement, dated September 19, 2002.

The Church further suggested that rather than reviving the counterclaim for the sole purpose of ruling on Minton's motion to disqualify, that this court could recuse itself pursuant to the authority of Rule 2.160(i). Church's Response, *Id.*, pp. 6-7. This court declines the Church's suggestion. But for Minton's motion to disqualify, this court would not have entered an order of disqualification as to the counterclaim on her own motion at this time. Minton's motion is granted pursuant to Fla. R. Jud. Admin. 2.160 (d) (1), and (f), and no other provision of the statute or Rule.

Finally, the Church suggests that, "Addressing the practical considerations, as this court has itself previously noted, a good deal of the counterclaim-related witnesses and evidence will be admissible as part of the Church's defense in the wrongful death trial, a circumstance with which plaintiff itself agrees. And that suggests that the Church's motion to "unsever" the counterclaim ought to be granted, thereby mooting the question this Court posed in its Order." Church's Response, *Id.*, pp. 5-6. This court does not agree that any, let alone a "good deal of the counterclaim-related witnesses and evidence," will be admissible as either part of the Church's defense in the wrongful death trial, or as part of the Plaintiff's case in the wrongful death trial. This court also disagrees that the Plaintiff "agrees" with the Church's assertion, merely by listing certain witnesses. The Plaintiff will be entitled to one "Scientology expert" at the wrongful death trial. Just who that expert will be has been in a state of flux ever since this court has been involved in this case. One day a witness presumably says they will testify for the Estate, and then, for various reasons, they decide they will not be a witness for the Estate. Perhaps that is why so many of these witnesses are listed by the Estate. However, other than the plaintiff attempting to qualify one of the witnesses listed in the Church's Response, in footnote 3, to testify as a "scientology expert", I cannot imagine any of the listed witnesses in footnote 3 being allowed to testify in the wrongful death trial. But this, too, remains for another day. And as stated previously in this order as to the Church's strategy in thinking Minton was a "key witness", this court would not presume to know why the Estate has listed all of these seemingly irrelevant witnesses, or why the Church thinks it will be able to call these witnesses in its defense of the wrongful death complaint. As to whether or not the counterclaim should be

"unsevered" from the wrongful death complaint, that will be a decision for the judge who is assigned to the counterclaim. The Church is correct that if the motion to "unsever" is granted, that will render moot this court remaining as the judge on the wrongful death complaint.

The Estate, in its response, first suggests that this court reconsider its March 23, 2003 order and "keep the Counterclaim abated as previously stipulated by the parties." Estate of Lisa McPherson's Response to This Court's Order of March 23, 2003, March 27, 2003, p. 1. This court declines the Estate's request. If the Plaintiff had not filed its Motion for Sanctions of Default on Liability on the Fifth Amended Complaint and Final Default Judgment on the Counterclaim, which brought on the Church's Cross-Motion for an Evidentiary Hearing, for Issuance of an Order to Show Cause for Contempt Against Plaintiff's Counsel, for an Order Confirming That the Counterclaim is Now "Unabated" for All Purposes, and for an Order to "Unsever," and Minton's Response to Estate's Motion for Sanctions, Etc. and Church's Cross Motion for an Evidentiary Hearing, Etc., the counterclaim would have remained abated pursuant to this court's September 19, 2002 order of abatement, and would have been revived only had a motion to do so been filed and granted pursuant to the court's abatement order. However, the Plaintiff did file its motion, and the procedural box that it created for this court ensued. This court must presume that the Estate knew, prior to filing its motion, the procedural havoc that the motion it filed could bring. The Estate, as does the Church for filing its Omnibus Motion, has to live with all of the consequences of its motion, including this order.

The Estate's attempt to unravel the procedural morass it created with its original motion by filing its "Plaintiff's Response to the Cross-Motion for Issuance of Order to Show Cause for Contempt, Award of Fees and Costs, and for Order Confirming that the Counterclaim Is Unabated for All Purposes and for Order to Unsever the Counterclaim for Trial," filed on or about March 11, 2003, does not solve the problem it created. Additionally, even if this court agreed with the Estate's suggestion that this court "simply sever the Motion for Default Judgment on the Counterclaim and not act on that motion until the Counterclaim is revived" (Plaintiff's Response to the Cross-Motion for Issuance of Order to Show Cause for Contempt, etc., March 11, 2003, p.2), since the Church has requested an evidentiary hearing on the Estate's motion, to which it will be entitled, imagine two judges having to sit through what will undoubtedly be another long evidentiary

hearing. That two judges may have to hear the same evidence at two evidentiary hearings is so because this court has granted Minton's motion to disqualify as to the counterclaim. That same result would occur whether this court hears the motion to disqualify now or later. Two judges should not be required to hear the same evidence, including lengthy testimony, one at a hearing on the wrongful death complaint, and another at a hearing as to the counterclaim. See further discussion of this issue below.

Next, the Estate suggests Minton's motion to disqualify should be denied. Estate of Lisa McPherson's Response to this Court's Order of March 23, 2003, March 27, 2003, p.2. This court rejects the Estate's position as one that is incorrect, according to the law of the State of Florida.

Next, the Estate suggests that the Church is "forum shopping" since it asked the Second District in its "appeal of this court's denial of Motion to Disqualify" (sic) to transfer the case to another division. Estate's Response, *Id.*, p. 2. I assume that the Estate is referring to that part of the Church's Petition for Writ of Certiorari of this court's denial of their Omnibus Motion for Terminating Sanctions and Other Relief wherein it requested in part IV of its petition that "The Court Should Exercise Its Inherent Power to Remand to a New Circuit Court Judge." Church's Petition for Writ of Certiorari, February 12, 2003, p. 49. This unusual request of the Church to the Second District Court of Appeal that it "direct that the case be assigned to a new circuit court judge" was apparently ignored by that court, since the Second District Court of Appeal issued its order denying the Church's Petition for Writ of Certiorari of this court's order denying the Church's Omnibus Motion for Terminating Sanctions and Other Relief on April 3, 2003, and did not even address the Church's unusual request.

Next, the Estate suggests that Minton and the Church are acting in concert to have the "entire case removed from this court" and says further that, "predictively, Church of Scientology Flag Service Organization, Inc. would request The Honorable Douglas Baird to hear the entire case." Estate's Response, *Id.*, p. 2. I do not know what the Estate is talking about, as this court has not seen any request by the Church that Judge Baird be assigned to this case. Since this case is assigned to a south Pinellas County circuit Civil Division, and Judge Baird is a north Pinellas County circuit Civil Division judge, this would not likely occur even if requested by the Church.

Next, the Estate says that since the wrongful death complaint and the abuse of process counterclaim are not interrelated, they should not be severed, and that there is no reason, therefore, to transfer the "main action." Estate's Response, *Id.*, pp. 2-3 The Estate surely understand that once this court disqualifies herself from the counterclaim, the matter of severance will be decided by the judge assigned to the counterclaim. If the complaint and counterclaim remain severed, this court can legally retain the wrongful death complaint. If the complaint and counterclaim are "unsevered" the matter is moot, as this court could not try the consolidated counterclaim and wrongful death complaint. This court would not presume to know how another judge would rule on the severance issue.

Next, the Estate suggests that a transfer of the wrongful death complaint would cause "undue delay of the trial and would not be judicially economical. It would be extremely prejudicial to the ESTATE to have the wrongful death case sent to another division. This court has done extraordinary work in studying the facts and issues involved in this case which no other judge has done. This case has been ready for trial for over a year." Estate's Response, *Id.*, p. 3. If the severance is not granted, there is no reason that the wrongful death trial cannot be scheduled for July, as all of the lawyers involved in the wrongful death complaint now agree that they are available in July for the trial of the wrongful death complaint. Since the Church's writ of certiorari on this court's denial of its Omnibus Motion for Terminating Sanctions and Other Relief, has been denied by order of the Second District Court of Appeal, dated April 3, 2003, there is nothing to preclude the trial going forth in July except the Plaintiff's motion of February 3, 2003, and the resulting cross-motion of the Church, and responses of the individual defendants. If the Estate's Motion for Sanctions of Default Judgment on Liability on the Fifth Amended Complaint can be heard prior to July and it is granted, there will be a trial as to damages only. If the Estate's motion can be heard prior to July, and it is denied, the wrongful death trial can proceed as to both liability and damages. In truth, if the wrongful death complaint is assigned to another judge now, that judge can easily be ready for the wrongful death trial in July. On the other hand, if this court continues to keep the wrongful death part of this case, and later has to transfer it to the judge who is assigned the counterclaim, because there is too much confusion having one judge assigned to the wrongful death complaint and another judge assigned to the abuse of process counterclaim, as this court believes will be the case, the wrongful death trial may well have to be delayed past July to allow the newly assigned judge to become familiar

with the facts of the wrongful death complaint and the extensive prior rulings that have already been made by three different judges, Judge Moody, Judge Quesada, and this court.

Of course, if the Church and individual defendants to the wrongful death complaint are successful in their motion to "unsever" the wrongful death complaint from the abuse of process counterclaim, it is doubtful that the counterclaim could be ready for trial in July, as there are motions, as well as discovery, that will need to be completed before a consolidated trial can take place. If there is to be only one trial, that would give the new judge even more time to become familiar with the facts and previous rulings that have been made in the wrongful death case.

As to "judicial economy", whom is the Estate kidding? It would, of course, be more economical to have one judge assigned to this case, rather than two. This is especially true where there are motions filed such as the Estate's motion of February 3, 2003, which will cause lengthy evidentiary hearings.

Finally, the Estate suggests that if the wrongful death complaint were transferred, the Church would file repetitive motions which this court has already decided, and cites *Blackpool Associates, Ltd v. FM-106, Ltd*, 28 Fla. L. Weekly D 639 (Fla. 4th DCA March 5, 2003). Estate's Response, *Id* p. 3. *Blackpool* stands for the proposition cited in Fla. R. Jud. Admin. 2.160 (h) that prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge under certain circumstances. As this order of disqualification is as to the counterclaim only, and only as to the counter-defendant Minton, only orders on the counterclaim could be reconsidered, and then only those orders that affected Minton's rights and obligations as to the counterclaim, on which he elected to request reconsideration. This court can think of no order she has entered, except one, that Minton could seek to have reconsidered. Minton filed an oral motion to abate the counterclaim, and he prevailed on his motion. He can move to have this court's order of September 19, 2002 reconsidered, although it seems odd that he would want to do so since he was the moving party and he prevailed on his motion.

The Estate filed a motion to dismiss the counterclaim that was denied. Minton was not a party, and is unaffected by the order that was entered. He has filed his own motion to dismiss that can be heard if and when the

counterclaim is revived. Another motion and order, filed by the Church, that affected the counterclaim was the court's denial of the Church's Omnibus Motion for Terminating Sanctions and Other Relief. The Church's motion did not refer to Minton, and this court's order did not affect Minton's rights or obligations as to the counterclaim. As the Church's Omnibus Motion for Terminating Sanctions and Other Relief, filed on or about April 26, 2002 stated, the Church sought the following relief: "(1) striking of plaintiff's complaint; (2) an order precluding plaintiff from answering the counterclaim, and defaulting plaintiff on the counterclaim; (3) dismissal of plaintiff's claims with prejudice; (4) disqualifying plaintiff's counsel from representing plaintiff on any matter in these proceedings; and (5) awarding sanctions, in an amount to be determined, against plaintiff and her counsel." Omnibus Motion, April 26, 2002, p. 1, emphasis mine. This court's order denying the Church's motion in no way affected Minton's rights or obligations as to the counterclaim. If the Church later files a similar motion as to Minton, he can respond to it at that time, defend against it, will have the right to a hearing where he can present witnesses and cross examine the Church's witnesses, make argument, and have the new judge assigned to the counterclaim decide any such motion as to him. Likewise, if Minton wants to file some motion, similar to what the Church filed in its Omnibus Motion, against the Estate or its counsel, as to the counterclaim, it can do so. The judge assigned to the counterclaim will hear any such motion he files. However, this court's order denying the Church's original Omnibus Motion cannot be reconsidered by a successor judge as there were no factual or legal rulings that affect any of Minton's rights or obligations as to the counterclaim, and this order of disqualification is as to Minton only, not the Church or the Estate.

There may have been other discovery motions and orders that related to the counterclaim, but since Minton was not even a party at the time any such orders were entered, his rights and obligations as to the counterclaim could not have been affected. Minton, now a party, is free to file his own motions, and have the new judge assigned enter orders on his motions. Thus, this court can not think of any "factual or legal" rulings that affected Minton's rights or obligations as to the counterclaim except, as previously mentioned, the order of abatement that he moved for and prevailed. He can have this favorable ruling reconsidered, if he so desires. Thus, in this court's opinion, the Plaintiff's concern in this regard is unwarranted.

So what should this court do as to the wrongful death complaint? One thing this court can note from her tenure on this case is that there have been times when it has been difficult for this court to preside over this wrongful death complaint and abuse of process counterclaim while other related cases were being handled by the Honorable Judge Baird and the Honorable Judge Greer. Motions are made and rulings are entered in those related cases that affect this case. I'm sure there have been times when it has been difficult for each of those judges to have two other judges making decisions that may affect their case. So why would the interests of justice be best served by adding a fourth judge to the mix to try the counterclaim, and keep the wrongful death complaint to myself? The clear reason I would want to keep the wrongful death part of this case is because the wrongful death complaint is an extremely interesting and challenging case, on which I have spent an extraordinary amount of time and effort. Because of this, I would like to see it to its conclusion. However, I cannot say that the best interests of the administration of justice would be served by my keeping the wrongful death complaint. In fact, as I foresee the future of this case, I feel that the administration of justice would be best served by having one judge assigned to both the wrongful death complaint and the abuse of process counterclaim. If nothing else, the time and effort involved to resolve the Estate's Motion for Sanctions, etc. and the Church's Cross-Motion for an Evidentiary Hearing, etc. may involve an immense amount of hearing time. There is no reason for two judges to potentially have to spend time at an evidentiary hearing, one to resolve that part of the Estate's motion that will involve the wrongful death complaint, and another to hear the same testimony and see the same evidence to resolve that part of the Estate's motion that will involve the counterclaim. Imagine the problems that would occur if, on the same testimony and other evidence, the two judges resolved the issues differently. There will be other interrelated issues between the complaint and the counterclaim. There could be additional motions filed that affect both. Only one judge should hear them. Accordingly, since this court cannot continue to hear any matters related to the abuse of process counterclaim, it is further

ORDERED AND ADJUDGED that due to the length of time that the trial of the wrongful death complaint and the abuse of process counterclaim, either separately or consolidated, will last (previously estimated at 8 weeks for the wrongful death complaint alone, and three months or more if it is consolidated with the abuse of process counterclaim), as well as the fact that the wrongful death complaint, if it remains severed from the counterclaim,

may be set for trial in July, 2003, a mere three months hence, where trials have undoubtedly already been set in the other Civil Divisions, this court sends the counterclaim to the chief judge for reassignment, and sends the wrongful death complaint to the chief judge for either reassignment to the same judge to whom he assigns the counterclaim, or assignment of the wrongful death complaint back to this judge. It is further

ORDERED AND ADJUDGED that while this court disqualifies herself from the counterclaim only, she recommends to the chief judge that he assign the wrongful death complaint to the same judge to whom he assigns the abuse of process counterclaim. In the event the chief judge feels that the interests of justice are best served by this court remaining on the wrongful death complaint, there is no legal reason why she is unable to do so, and she will accept the chief judge's decision if it is to assign the wrongful death complaint back to this judge. She further suggests to the chief judge that in the event that he decides to assign the wrongful death complaint to the judge to whom he assigns the abuse of process counterclaim, if that judge becomes unable for any reason to try the wrongful death complaint, so long as it remains severed from the counterclaim, this court stands ready, willing and able to try the wrongful death complaint in July, 2003, or whenever it is set for trial. It is further

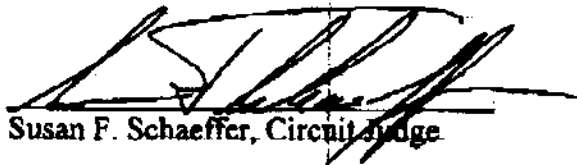
ORDERED AND ADJUDGED that any motions previously heard by this court, as to the wrongful death complaint, will be concluded by this court. This includes the motion for summary judgment as to the individual defendant, Dr. David Houghton, which this court has under advisement. If there are any other motions as to the wrongful death complaint which this court has already heard, but not yet decided, this court is unaware of them. In the event there are any, this court asks the Estate, the Church, and the individual defendants to the wrongful death complaint to advise this court as to what other motions there are so that this court can conclude her work. This notice should be provided to this court by Friday, April 11, 2003. It is further

ORDERED AND ADJUDGED that this court entered an Order on March 3, 2003, *nunc pro tunc* to January 17, 2003 that, in part, set a case management conference. In that order, she indicated the matters that she felt needed to be accomplished at that conference. They were as follows: (1) discuss the status of the Church's Petition to Remove the Personal Representative pending before Judge Greer; (2) set a trial date for the

wrongful death complaint; (3) adjust the dates for "additional matters" contained in ¶ 13 of this court's Uniform Pre-Trial Conference Order, dated December 12, 2002; (4) set a deadline for filing any motion that might be filed by any party challenging the manner of selecting the jury venire for the wrongful death trial; (5) set a deadline for filing all motions in limine for the wrongful death trial. Although a case management conference was set for these purposes on March 10, 2003 at 10:00 a.m., none of the above matters were accomplished at that time. It would now appear that the newly assigned judge, rather than this court, should schedule and conduct this case management conference, if he or she deems it necessary, since these matters are all related to the trial of the wrongful death complaint. Of course, if the chief judge should assign the wrongful death complaint back to this court, she will immediately schedule a case management conference for the purposes previously indicated. It is further

ORDERED AND ADJUDGED that this court, having revived the counterclaim for the sole purpose of ruling on Minton's motion for disqualification, and now having done so, this court hereby once again abates the counterclaim pursuant to this court's Order Granting Minton's Oral Motion to Abate Counterclaim, dated September 19, 2002.

DONE AND ORDERED in St. Petersburg, Pinellas County, Florida
this 8th day of April, 2003.



Susan F. Schaeffer, Circuit Judge

Copies to:
David A. Demers, Chief Judge
All Counsel of Record