UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Case No.: 10-14967-D
Case No. 8:09-cv-00264-T-23-EAS

CHURCH OF SCIENTOLOGY
FLAG SERVICE ORGANIZATION, INC.,

Appellant,

v.

ESTATE OF KYLE THOMAS BRENNAN,

Appellee.

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# ANSWER BRIEF OF APPELLEE

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On appeal from the United States District Court
Middle District of Florida

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## CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rules of Appellate Procedure, Rule 26.1 and Eleventh Circuit Rule 26.1-1, I hereby certify that I have reviewed the list contained in Appellant's Certificate and believe that the following should be added as interested persons:

**RELIGIOUS TECHNOLOGY CENTER**, a Scientology entity, Los Angeles California;

**DAVID MISCAVIGE**, Chairman of the Board of **RELIGIOUS TECHNOLOGY CENTER** and world leader of all of Scientology, Los Angeles, California;

**ALL SCIENTOLOGY ENTITIES** as referred to in the McPherson Confidential Settlement Agreement.

**/s/**_____
KENNAN G. DANDAR, ESQ.

## STATEMENT REGARDING ORAL ARGUMENT

Due to the uniqueness and importance of the attempt by the Appellant and the state court to force withdrawal of counsel in violation of the local rules of the district court in order to achieve dismissal of the underlying case and harm the Estate of Kyle Brennan and its sole survivor, Victoria Britton, an innocent third party, oral argument is requested.

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## STATEMENT OF THE ISSUES

Whether the district court abused its discretion in issuing a permanent injunction in aid of its jurisdiction, to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide the case, to manage the district court's docket, and to protect the rights of an innocent third party?

## STATEMENT OF THE CASE AND OF THE FACTS

Due to some inaccuracies of Scientology's Statement of the Case, which includes Statement of the Facts, the Estate of Kyle Brennan files the following corrections or additions.

### A. The Lisa McPherson Settlement

In the Statement of the Facts, footnote 1 makes note of the fact that the district court reviewed documents from the state case which are not contained in the district court record. However, Scientology fails to apprise this court that only Scientology maintained in the district court that all of those documents were confidential and that it did not want the documents to be published. It cannot now complain. Fortunately, the district court has quoted in its orders, (Doc. 152 and Doc. 173), the pertinent parts

of the state court orders and the Confidential Settlement Agreement, (CSA). Clearly, the pertinent facts to support the permanent injunction are manifestly stated throughout the orders.

### 1. State court lacked subject matter jurisdiction to enter its order to withdraw

Scientology omits an important, if not critical, fact in its Statement of Facts. In the state case, after the execution of the May 2004 CSA, after all of the dismissals of other related cases, and after execution of General Releases, the state parties filed a Voluntarily Dismissal with Prejudice on June 8, 2004 in the McPherson case without a court order reserving jurisdiction, thereby depriving the state court and Judge Beach of continuing subject matter jurisdiction, resulting in all orders and appeals rendered after the dismissal void. This includes the order to withdraw and the contempt order. Lack of subject matter jurisdiction is also an issue currently before the state appeals court. The state order requiring Dandar to withdraw was entered in the closed McPherson case in 2009, five years after the Voluntary Dismissal with Prejudice. When the state court issued its order requiring Dandar to withdraw from the Brennan case, which was the very first order of its kind, Dandar appealed. The Second District Court of Appeal affirmed without opinion or oral argument. A request for an *en banc* rehearing was denied. The *per curiam* affirmance in the first appeal was not

appealable to the Florida Supreme Court, contrary to Scientology's assertion in its brief.

**2. The CSA was never signed by Dandar individually.**

Another fatal omission concerning the CSA is that the only party of the "McPherson parties" whose individual signature appears on the CSA is that of Dell Liebreich. Neither Kennan Dandar, Thomas Dandar, nor Dandar & Dandar, P.A. signed the CSA in an individual capacity. This is uncontroverted until Scientology's misrepresentation in footnote 5 of its Brief. The district court correctly quoted the signature block of the CSA. (Doc. 152, p.12 and Doc. 173, p.12). The CSA is obviously not signed by Dandar individually. It specifically states it is signed by Dandar "as counsel" for Dell Liebreich individually and for Dell Liebreich as Personal Representative.

In the CSA, the signature line for Dandar is identical for that of Luke Lirot, co-counsel for the Estate of Lisa McPherson, yet Scientology has acknowledged that Luke Lirot is not subject to the "disengagement" clause. Also, the signature block for Scientology counsel, F. Wallace Pope and Monique Yingling, have each signing "as counsel" for their client and neither of them are bound by the "disengagement" clause.

As noted in the Argument section, under Florida law, the lack of a signature by all parties, as well as counsel, makes the mediation agreement void. Individual

signatures only appear on the General Release, and the Release does not incorporate any of the terms of the Settlement Agreement. (**Appendix A, the Release,** disclosed here since it is not claimed to be confidential).

### 3. A Global Settlement

In the McPherson case, Kennan Dandar ("Dandar") was the attorney representing the Estate of Lisa McPherson. In 1997, the McPherson Estate brought a wrongful death action against the Church of Scientology Flag Service Organization, Inc., "Scientology," which was concluded at mediation in May 2004 with the execution of the CSA and general releases. However, while the McPherson case was pending, Scientology filed two suits against the McPherson Estate, one of which included Dandar as a named party defendant, seeking 4 million dollars in punitive damages against him so as to derail the McPherson case going to trial. After a two week jury trial, Dandar prevailed. However, in that case and in another case brought in federal court in the Eastern District of Texas, two money judgments as sanctions for attorney fees totaling less than $40,000 was entered against Dandar. The Texas matter resulted in two appeals to the Fifth Circuit, where the panels affirmed Dandar's argument that the Texas court lacked jurisdiction over the Florida Estate. Scientology's attorney fee judgment was reversed, but it received eight percent of its

judgment as a sanction for Dandar arguing the lack of jurisdiction too many times in the lower court.

In May 2004, Scientology insisted on a global settlement and that is what it got. Compared to the settlement amount paid by Scientology to the Estate of Lisa McPherson for her wrongful death, those two judgments, one from the Florida state court and one from the federal court, were insignificant, totaling less than $40,000. In fact, while each party mutually executed general releases and dismissed all claims in general terms, including filing satisfactions of judgments, those two judgments were never specifically identified in the CSA.

The McPherson mediation of May 2004 included not only the death action, but all cases filed between the parties. The Estate only filed the wrongful death action. Dandar had not yet filed any action against Scientology. All others were filed by Scientology. Consequently, Dandar was a named party in the CSA since he had claims ready to be filed against Scientology.[1]

Contrary to what Appellant implies in its brief, this global settlement only resulted in settlement proceeds flowing from Scientology to the Estate of Lisa McPherson for McPherson's death. There is absolutely no moneys received by

[1]Mr. Pope showed the district court herein the McPherson CSA at the first hearing after entry by the state court ordering Dandar to withdraw from this federal case. The injunction quotes the pertinent sections from the CSA.

Kennan Dandar, Thomas Dandar, or Dandar & Dandar, P.A., in addition to their fee from the settlement.

**4. No Practice Restriction**

Dandar never agreed to a practice restriction and a practice restriction is not contained in the CSA entered in May 2004. Dandar's objection to including a practice restriction has been confirmed by counsel for Scientology, Monique Yingling, and recently by the Florida Bar. (**Appendix B**).

Prior to Dandar filing the Kyle Brennan case, the "disengagement" clause was never a litigated matter, even though Scientology has quoted Dandar's lawyer speaking impromptu and unprepared at several hearings in state court. That does not bind Dandar to a position which he never agreed to and which is contrary to the Rules Regulating the Florida Bar. "Practice restriction" is not found within the four corners of the CSA.

However, the CSA has been interpreted, at the request of Scientology, to include a practice restriction against Dandar by the state court pursuant to an ambiguous "disengagement" clause applying to all parties. The complete paragraph of the "disengagement" clause is made part of the injunction. (Doc. 173, p.12).

## B. The Kyle Brennan case

Dandar filed the instant case against Scientology just before the two year statute of limitation was to expire. At that time, there was no pending state case, no ongoing controversy in the McPherson death case, and no order from the state court restricting Dandar from doing so. Without filing a new suit alleging breach of the mediation agreement, Scientology simply filed a motion before Judge Beach and obtained an order from the state court ordering Dandar to cease representing any party against Scientology.[2] Dandar appealed.

While the appeal was in progress, Dandar sought out substitute counsel to comply with the state order. He provided the list of attorney contacts to the state court in order to show compliance with the state order. The list included contacting over 200 members of the Tampa Bay Trial Lawyers Association.

Before the Mandate was issued by the state appeals court, Scientology had moved for contempt. After the Mandate, the state judge found Dandar in contempt of court for not achieving withdrawal from the Brennan case. The staggering fine of $130,000 plus interest was entered in the order on appeal and ready for final judgment

[2]Scientology had filed its first motion for breach of the confidentiality provision of the CSA in 2005 and as a result of that, Dandar filed a similar motion. Each party had offsetting sanctions entered. But each party failed to recognize that the state court no longer had jurisdiction due to the dismissal with prejudice filed in June 2004.

with immediate execution by Scientology. Dandar had no way to force the district court to grant the withdrawal. Also, Dandar did not want to abandon his client or run afoul of the Rules Regulating the Florida Bar.

Scientology acknowledges in footnote 3 that the state court held Dandar in contempt because he advised the district court that his motion to withdraw was "involuntary," and such honesty with the district court was " a willful violation" of the state court orders.

Dandar appealed the contempt order. This second appeal did not contain the original caption of the state case, but instead was captioned *Kennan Dandar, and Dandar & Dandar, P.A. v. Church of Scientology Flag Service Organization, Inc.* The parties to that appeal did participate in oral argument before the Second District Court of Appeal on December 15, 2010. The Brennan trial has not been rescheduled as of this date.

Contrary to Scientology's assertion, the district court never stated that it granted the injunction in order to avoid granting the Motion to Withdraw. What the district court did say, (Doc. 173, p. 20), of the injunction was that it was protecting the Estate of Kyle Brennan's right to timely resolve its claim and protect its choice of counsel:

> "The district court will deny a withdrawal that is against the will of the Brennan Estate if the withdrawal prejudices the Brennan Estate, for example, by destroying or indefinitely delaying the client's opportunity

> to resolve the claim that the original counsel brought to the district court. ... The resolution of a Motion to Withdraw from representation, (especially if the motion is filed contrary to the will of the client and, in this instance, by order of another court at pain of contempt) is peculiarly within the discretion of the presiding judge in district court. The interests of justice in a federal action, the management of the bar of the federal court, and the management of the federal docket are peculiarly within the sound discretion of the district judge."

## STANDARD OF REVIEW IS ABUSE OF DISCRETION

Contrary to the argument of Scientology, a district court's decision to enjoin state court proceedings is a decision ultimately left to the district court's sound discretion.

In *Burr & Forman v. Blair*, 470 F.3d 1019, fn31 (11th Cir. 2006), this Court stated that in determining whether an exception to the Anti-Injunction Act provided the district court with authority to issue the injunction under the circumstances of the case is a question of law. However, if the district court had such authority, "whether the injunction should have issued presents a mixed question of law and fact, which we review for abuse of discretion." (citing *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1096-97 (11th Cir.2004).

In order to find an abuse of discretion by the district court, this Court must find that the district court applied an incorrect legal standard, followed improper procedures in making the determination, or made findings of fact which were clearly

erroneous. *Id*. (citing *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1309 (11th Cir.2001)). See also, *Martin v. Automobili Lamborghini Exclusive, Inc.*, 307 F.3d 1332, 1336 (11th Cir. 2002).

"We review decision staying a state court proceeding under the abuse-of-discretion standard." *In re: Bayshore Ford Trucks Sales, Inc.*, 4071 F.3d 1233, 1250 (11th Cir. (Ga.) 2006). See also *Klay v United Healthgroup, Inc*,, 376 F.3d 1092, 1096 (11th Cir. 2004).

"In making these assessments in the context of the decision to grant an injunction, we review the district court's facts of determinations for clear error, and its purely legal determinations *de novo. Klay*, 376 F.3d at 1097 (citations are many)." *Adams v. Southern Farm Bureau Life Insurance Co.*, 493 F.3d 1276 (11th Cir. (Ga.) 2007).

Here, there are no improper procedures in making the determination to issue an injunction and there are no clear errors in the district court's factual determinations. In fact, the Appellant suggests that the facts are quite simple and the Appellee agrees. Purely legal determinations are reviewed *de novo* in the Argument.

## SUMMARY OF THE ARGUMENT

If ever there was a case which fit within the purpose of the All Writs Act balanced by the Anti-Injunction Act, this is such a case. The Estate of Kyle Brennan is not a party in the state action, thus, the *Younger* Doctrine does not apply. The state action is not a "pending" state case, therefore the *Younger* Doctrine does not apply.

The District Court was left with no choice but to issue a permanent injunction against the state court to stop the state court from reaching into and attempting to influence the case before the federal court. This is quite a unique situation. It does not involve competing interests, but an actual power grab by the state court over the federal court.

Dandar was not being punished because he refused to follow the state court's order, i.e, to cease representation of the Estate of Kyle Brennan. Dandar was being punished because he did not obtain a court order to permit his withdrawal, something he had no power to do. But more importantly, the staggering financial penalties against Dandar were only meant to pressure the federal court to violate its own local rules, i.e., permit an attorney to withdraw without proper substitution of counsel for an estate, so that the estate's opponent could obtain a favorable resolution, i.e., dismissal.

## ARGUMENT

### I. THE *YOUNGER* ABSTENTION DOCTRINE DOES NOT APPLY TO THE PERMANENT INJUNCTION

The *Younger* Abstention Doctrine does not apply to the permanent injunction for the simple reason that there is no pending and ongoing state proceeding between the same parties. Both are missing here. Without any valid ongoing or pending state court proceedings, the *Younger* doctrine is inapposite.[3] What is not before the state court, but implied by the district court is the issue of whether the Confidential Settlement Agreement is binding at all since Dandar only signed as counsel, not individually.[4]

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[3] Although the district court would not rule on the propriety of the state court proceedings and the validity of the orders, this court should consider the complete lack of validity to the proceedings and orders entered subsequent to the filing of the joint dismissal with prejudice, with no court order reserving jurisdiction. Without an order reserving jurisdiction, the McPherson state case was concluded and closed, and the lower court was divested of jurisdiction to entertain any motions and conduct any hearings. *Paulucci v. General Dynamics Corp.*, 842 So.2d 797, 803, fn5 (Fla. 2003) (jurisdiction to enforce a settlement agreement only exists when "the trial court has either entered a final judgment incorporating the terms of the settlement agreement or approved the agreement by order and expressly retained jurisdiction to enforce its terms"). This cannot be waived under any circumstance. *W.C. Riviera Partners, LC. v. W.C.R.P., LC.*, 912 So.2d 587 (Fla. 2nd DCA 2005). All orders entered after a dismissal with prejudice must be vacated *in toto. Zimmerman v. Olympus Fidelity Trust, LLC,* 847 So.2d 1101, 1103 (Fla. 4th DCA 2003).

[4] "Florida Rule of Civil Procedure 1.730(b), regarding completion of mediation, states that "[n]o agreement under this rule shall be reported to the

In *Chen ex rel. V.D. v. Lester*, 364 Fed.Appx. 531 (11th Cir. 2010), this court recently explained that under *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), and its progeny, federal district courts must refrain from enjoining pending state court proceedings except under special circumstances." *Id.* at 535 (citing *Old Republic Union Ins. Co. v. Tillis Trucking Co.*, 124 F.3d 1258, 1261 (11th Cir.1997).

A court may abstain from granting injunctive relief under *Younger* where: (1) the state proceeding is ongoing; (2) the proceeding implicates an important state interest; and (3) there is an adequate opportunity to raise a constitutional challenge in the state court proceedings. *Id*. (citing *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, 102 S.Ct. 2515, 2521, 73 L.Ed.2d 116 (1982)).

The Estate of Kyle Brennan is not involved in any state court proceeding, and therefore, does not have an adequate opportunity to raise a constitutional challenge in the state court proceedings. It is the Estate's counsel which has been targeted by

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court" unless, *inter alia*, the agreement is "reduced to writing and signed by the parties and their counsel, if any." Rule1.730(b), *Fla. R. Civ. P.* (2008). Florida courts consistently have held that a supposed settlement agreement resulting from mediation cannot be enforced absent the signatures of all parties. *E.g., Freedman v. Fraser Eng'g & Testing, Inc.*, 927 So.2d 949, 953 (Fla. 4th DCA 2006); *City of Delray Beach v. Keiser*, 699 So.2d 855, 856 (Fla. 4th DCA 1997); *Gordon v. Royal Caribbean Cruises, Ltd.*, 641 So.2d 515, 516 (Fla. 3d DCA 1994); *Dean v. Rutherford Mulhall, P.A.*, 16 So.3d 284, 285-286 (Fla. 4th DCA 2009).

Scientology in the state court. The proceedings in state court do not implicate a state interest in the Estate of Kyle Brennan. Conversely, the state proceedings adversely affect the Estate's constitutional right to its choice of counsel, said right being observed and protected by the Permanent Injunction. The *Younger* doctrine simply does not apply.

As the Supreme Court stated in *Middlesex*, the court in determining the first prong, must determine whether the proceedings constitute an **ongoing state judicial proceeding**. *Old Republic Union Ins. Co.*, at 1261. The principles of *Younger* raises no barrier to federal action where no related state action is **pending**. *Old Republic Union Ins. Co.*, at fn3 (emphasis added) (citing *Johnson v. American Credit Co. of Georgia*, 581 F.2d 526 (5th Cir.1978)).

> The Supreme Court has said that federal courts have a "virtually unflagging obligation ... to exercise the jurisdiction given them." *Col. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S.Ct. 1236, 1246, 47 L.Ed.2d 483 (1976). But "virtually" is not "absolutely," and in exceptional cases federal courts may and should withhold equitable relief to avoid interference with state proceedings. *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 359, 109 S.Ct. 2506, 2513, 105 L.Ed.2d 298 (1989). While non-abstention remains the rule, the *Younger* exception is an important one. It derives from "the vital consideration of comity between the state and national governments," *Luckey v. Miller*, 976 F.2d 673, 676 (11th Cir.1992) ("Luckey V"), which *Younger* itself characterized as a "sensitivity to the legitimate interests of both State and National Governments," 401 U.S. at 44, 91 S.Ct. at 750.

*31 Foster Children v. Bush*, 329 F.3d 1255, 1274 (11th Cir. 2003).

In addition to requiring an ongoing state proceeding, *Middlesex* also requires that the federal relief the plaintiffs seek would interfere with those proceedings, and that if it would not interfere with the state proceedings, then the federal court has no basis for abstaining under *Younger*. *See generally*, *Middlesex,* 457 U.S. at 431, 102 S.Ct. at 2521 ("*Younger v. Harris* ... and its progeny espouse a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances."). *31 Foster Children v. Bush*, at 1275.

The abstention principles of *Younger* alone, particularly as illuminated by *Middlesex*, are sufficient to prevent the district court's decision from being an abuse of discretion.

The district court did not abuse its discretion in entering the permanent injunction against the state court judge and state court proceedings which were designed for one purpose: to interfere with the ongoing federal case with the immediate goal of effecting a dismissal of the federal case, all to the prejudice of the Brennan Estate, which is not a party in the state action. The state action is not "pending," which is defined as "awaiting decision or settlement." OxfordDictionaries.com, Oxford University Press (2010). The state action ceased to be pending in 2004.

The proceedings in the state court matter at the instigation of the Scientology, who is also the defendant in the state action, is designed to punish the Appellee's counsel for not accomplishing a withdrawal from the federal case even though the power to withdraw does not rest in Appellee's counsel, but only in the district court, as a matter of law.

The All Writs Act was designed precisely to accommodate and effectuate the federal court's jurisdiction without interference from an outside forum so that the federal court can manage its bar and its docket, all within the sound discretion of the district judge.

## II. The Permanent Injunction is authorized by the Anti-Injunction Act and the All Writs Act

The Anti-Injunction Act allows a federal court to enjoin a state court proceeding "in aid of its jurisdiction." 28 U.S.C. § 2283; *In re Bayshore Ford Trucks Sales, Inc.*, 471 F.3d 1233, 1250 (11th Cir. 2006). Necessity is required to invoke this exception.

> **Ordinarily**, a federal court may issue an injunction "in aid of its jurisdiction" in only two circumstances: (1) the district court has exclusive jurisdiction over the action because it had been removed from state court; or, (2) the state court entertains an *in rem* action involving a res over which the district court has been exercising jurisdiction in an *in rem* action.

*Id.* at 1250-51. (emphasis added).

An injunction may issue in aid of a court's jurisdiction when the state court proceedings displace or frustrate the district court's management of the case pending before it. *In re Bayshore Ford Trucks Sales, Inc*., at 1252.

> While proceedings are pending, "a court may enjoin almost any conduct 'which, left unchecked, would have ... the practical effect of diminishing the court's power to bring the litigation to a natural conclusion.' " *Klay*, 376 F.3d at 1102 (quoting *ITT Cmty. Dev. Corp. v. Barton,* 569 F.2d 1351, 1359 (5th Cir.1978)).

*In re Bayshore Ford Trucks Sales, Inc*., at 1256.

As this court stated in *Burr & Forman v. Blair,* 470 F.3d 1019 (11th Cir. 2006), courts read the language of the All Writs Act broadly. The statute has been found to authorize the issuance of writs to protect "not only ongoing proceedings, but potential future proceedings, as well as already-issued orders and judgments." *Id*. at 1026 (citing *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1099 (11th Cir.2004).

> Indeed, unless specifically constrained by an act of Congress, the Act authorizes a court to issue writs any time, "the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it." *Adams v. United States,* 317 U.S. 269, 273, 63 S.Ct. 236, 239, 87 L.Ed. 268 (1942).

*Burr & Forman*, at 1026.

At the court's discretion, writs may be issued to third parties who are in a position to frustrate a court's administration of its jurisdiction. *Id.* Also in *Burr &*

*Forman,* this court recognized *United States v. New York Tel. Co.*, 434 U.S. 159, 174, 98 S.Ct. 364, 373, 54 L.Ed.2d 376 (1977), in which the Court stated:

> The power conferred by the Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position **to frustrate the implementation of a court order or the proper administration of justice**, and encompasses even those who have not taken any affirmative action to hinder justice."

*Burr & Forman*, at 1026 (emphasis added).

The All Writs Act and the Anti-Injunction Act are closely related, and where an injunction is justified under one of the exceptions to the latter a court is generally empowered to grant the injunction under the former. *Burr & Forman,* at 1027-28 (citing *Olin Corp. v. Ins. Co. of North America,* 807 F.Supp. 1143, 1152 (S.D.N.Y.1992). Thus, in assessing the propriety of an injunction entered to stop a state court proceeding, the sole relevant inquiry is whether the injunction qualifies for one of the exceptions to the Anti-Injunction Act. *Id.*

Injunctions entered for the purpose of halting a state court proceeding are treated the same regardless of whether issued against the parties to the state court proceeding or directly against the state court. *Burr & Forman,* at fn28.

An All Writs Act injunction is not predicated on a cause of action; rather, it "must simply point to some ongoing proceeding, or some past order or judgment, the

integrity of which is being threatened by someone else's action or behavior. *Burr & Forman*, at 1031.

The district court determined that the actions and orders of Judge Beach at the behest of Scientology undermined the district court's ability to manage its docket, frustrated the implementation of the court's order denying the motion to withdraw, and interfered with the proper administration of justice.

The traditional requirements for a preliminary injunction are that the moving party shows (1) a substantial likelihood of success on the merits; (2) irreparable injury if the injunction does not issue; (3) the threatened injury to the movant outweighs any damage an injunction may cause the opposing party; and (4) the injunction would not be adverse to the public interest. *Burr & Forman*, at 1031 (citing *Klay*, at 1097).

Applying the above factors to The Estate of Kyle Brennan: (1)the Federal Rules of Civil Procedure, the Local Rules of the Middle District, and Rules Regulating the Florida Bar, all substantially support the denial of withdrawal of counsel as ruled by the district court; (2) the Estate would suffer irreparable injury if the injunction had not been issued; (3) the threatened injury to the Estate, dismissal of its case, heavily outweighs any damage to Scientology; and (4) the injunction does not affect the public interest, therefore, it is not adverse to the public interest.

Further, for an injunction properly to issue, the matter in controversy in the federal court proceeding must be "the virtual equivalent" of a controversy over a disputed *res* in an *in rem* proceeding *and* the state court proceeding must constitute a threat to the federal court's resolution of that controversy. *Id.* at 1032. Here, there is no dispute that the state court proceedings constitutes a threat to the federal court's resolution of this case. There is also no dispute that there is a "virtual equivalent" of a controversy over a disputed *res*: Dandar, and his representation of the Estate in the district court.

> Pursuant to the All Writs Act, a district court is authorized to bind non-parties where such action is necessary to preserve its ability to adjudicate proceedings already before it or to enforce its own prior decisions. *See In re Baldwin-United Corp.*, 770 F.2d 328, 338 (2d Cir.1985). Thus, an injunction that merely seeks to enjoin behaviors that could frustrate the operation of a consent decree are authorized by the All Writs Act, even if the injunction operates against non-parties. *See Int'l Bhd. of Teamsters*, 266 F.3d at 50. Here, the permanent injunction challenged by the appellants was justified by the district court's need to protect the implementation of its prior order;...

*Egri v. Town of Haddam,* 68 Fed.Appx. 249, 255-56, 2003 WL 21510422 (2nd Cir. 2003).

> **The All Writs Act provides "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The Anti-Injunction Act permits federal courts to issue an injunction to stay a state court proceeding "as expressly authorized by Act of Congress, or where necessary in**

> **aid of its jurisdiction, or to protect or effectuate its judgments." The All Writs Act grants federal courts broad authority to issue an injunction when "necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case."**

*Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers,* 398 U.S. 281, 295, 90 S.Ct. 1739, 26 L.Ed.2d 234 (1970).

The Court is also entitled to protect its judgments and orders by enjoining state court proceedings. *Sperry Rand Corp. v. Rothlein,* 288 F.2d 245, 248 (2nd Cir.1961).

> The All Writs Act and its inherent powers give this Court the authority to enjoin plaintiffs from filing state court actions in order to "preserve the court's ability to effectively rule on matters presently before it, to order meaningful relief with respect to motions pending before it, and to prevent abuse of the justice system." *Delgado v. Shell Oil Co.,* 890 F.Supp. 1324, 1375 (S.D.Tex.1995) (Lake, J.) See also, *Harris v. Wells,* 764 F.Supp. 743 (D.Conn.1991). Moreover, the Anti Injunction Act does not curtail the Court's power to limit the commencement of future state court litigation. *Delgado,* 890 F.Supp. at 1374; *Dombrowski v. Pfister,* 380 U.S. 479, 485 n. 2, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965); *United Steelworkers of America (AFL-CIO) v. Bagwell,* 383 F.2d 492, 495 (4th Cir.1967).

*Newby v. Enron Corporation,* 2002 WL 31989193, 4 (S.D.Tex).

## III. The State Court's Lack of Subject Matter Jurisdiction Does Not Require Comity or Full Faith and Credit

In *Burr & Forman,* this court recognized that when a court lacks subject matter jurisdiction to issue an order, the order is not entered by a court of competent

jurisdiction. *Id*. at 1034. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Id*. at 1035 (citing *Ex parte McCardle*, 7 Wall. 506, 74 U.S. 506, 514, 19 L.Ed. 264 (1868)).

The state court has been divested of jurisdiction since June 8, 2004, when the parties filed a Joint Voluntary Dismissal with Prejudice of the state court case, without a court order reserving jurisdiction. *Paulucci v. General Dynamics Corp.*, 842 So.2d 797, 803, fn5 (Fla. 2003) (jurisdiction to enforce a settlement agreement only exists when "the trial court has either entered a final judgment incorporating the terms of the settlement agreement or approved the agreement by order and expressly retained jurisdiction to enforce its terms"). This cannot be waived under any circumstance. *W.C. Riviera Partners, LC. v. W.C.R.P., LC.*, 912 So.2d 587 (Fla. 2nd DCA 2005). Based upon Rule 1.420(a), Fla. R. Civ. P., and the well-established case law, all proceedings and orders entered subsequent to the dismissal are void *in toto*. *Zimmerman v. Olympus Fidelity Trust, LLC*, 847 So.2d 1101, 1103 (Fla. 4th DCA 2003). A notice of voluntary dismissal deprives the trial court of jurisdiction over the case. *Service Experts, LLC v. Northside Air Conditioning & Electrical Service, Inc.*, --- So.3d ----, 2010 WL 4628567, 2, 35 Fla. L. Weekly D2512 (Fla. 2nd DCA 2010)

(citing *Ambory v. Ambory*, 442 So.2d 1087, 1088 (Fla. 2d DCA 1983); *Dunkin' Donuts Franchised Rests., LLC v. 330545 Donuts, Inc.*, 27 So.3d 711, 713 (Fla. 4th DCA 2010); *Freeman v. Mintz*, 523 So.2d 606, 608 (Fla. 3d DCA 1988)).

The state court was not a court of competent jurisdiction and no valid orders were rendered. Even the state appellate court lacked jurisdiction to entertain an appeal, but instead should have issued a writ of prohibition to stop all proceedings in the state court including the current appeal. *Service Experts, LLC.*

When there has been a voluntary dismissal filed, there is no right to an appeal.

> A writ of prohibition is appropriate "to forestall an impending injury where no other appropriate and adequate legal remedy exists and only when damage is likely to follow." *City of Ocala v. Gard*, 988 So.2d 1281, 1283 (Fla. 5th DCA 2008). It is "the appropriate remedy to prevent an inferior tribunal from acting in excess of jurisdiction" where there is no right to remedy the wrong at issue by direct appeal. *Id*. at 1283. Because we conclude that the trial court's order was in excess of its jurisdiction, we have appellate jurisdiction to "forestall an impending injury"-forced litigation after the plaintiff's notice of voluntary dismissal ed. As there is no other adequate remedy, we convert this appeal to a writ of prohibition.

*Service Experts, LLC*, at 2.

## CONCLUSION

The district court did not abuse its discretion in issuing the permanent injunction against the state court and the Appellant and its counsel, which, if left unchecked, would have had the practical effect of diminishing the court's power to bring the litigation to a natural conclusion and severely prejudicing the innocent party, the Estate of Kyle Brennan. Rather than have the state court overreach into the exclusive jurisdiction of the federal court, which forced the issuance of the federal injunction, as suggested by the district court, the Appellant should have filed a motion to disqualify. The Younger abstention doctrine is inapposite. The permanent injunction comports with the district court's power under the Anti-Injunction statute and the All Writs Act.

/s/_____
Kennan George Dandar, Esq.

## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the type-volume limitation set forth in FRAP 32(a)(7)(B). This brief contains 6745 words.

/s/_____
Kennan George Dandar, Esq.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail [X] FAX [ ] Email [ ] Hand-delivery [ ] this 20th day of December, 2010, to MARVIN E. BARKIN, ESQ., and MARIE TOMASSI, ESQ., 200 Central Avenue, Suite 1600, St. Petersburg, Florida 3370l and F. WALLACE POPE, JR., ESQ., Post Office Box 1368, Clearwater, Florida 33757.

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