

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ESTATE OF KYLE THOMAS BRENNAN,
by and through its Administrator,
Victoria L. Britton,

Plaintiff,

vs.

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

CHURCH OF SCIENTOLOGY
FLAG SERVICE ORGANIZATION, INC.,
DENISE MISCAVIGE GENTILE,
GERALD GENTILE, and
THOMAS BRENNAN,

Defendants.

_____ /

**UNOPPOSED INVOLUNTARY MOTION TO WITHDRAW
AS COUNSEL FOR PLAINTIFF**

Kennan G. Dandar, a member in good standing with the Florida Bar, the bar of this court, and counsel for the Plaintiff, ESTATE OF KYLE THOMAS BRENNAN, by and through its Administrator, Victoria L. Britton, in order to fulfill his obligation to comply with a state court order issued in an unrelated case, hereby involuntarily moves to withdraw as counsel for the Plaintiff upon the following grounds:

1. Plaintiff's counsel has been ordered to withdraw by a state court judge as this court was previously advised by F. Wallace Pope, Esq. While it is Plaintiff's counsel's intention to comply with the state court order by filing this motion, it is also Plaintiff's counsel's intention not to abandon his client.

2. Plaintiff objects to this motion as evidenced in the attached Declaration by Plaintiff's Administrator, Victoria L. Britton, mother of the decedent. Both she and the

undersigned counsel have exhausted all efforts to find substitute counsel without success.

3. The Estate must be represented by counsel. Plaintiff is an innocent third party who will be severely damaged by having no other attorney to take over representation in this case.

MEMORANDUM OF LAW

Written leave of this court is required before an attorney of record may withdraw. Local Rule 2.03(b). Withdrawal will likely cause continuance and delay contrary to Local Rule 2.03(c).

This is an estate opened under Virginia law, the place of residence for the decedent and his mother. Virginia law prohibits an estate to proceed in a wrongful death case pro se - the estate must be represented by counsel. *Kone v. Wilson*, 630 S.E.2d 774 (Va. 2006). Rule 5.030 of the Florida Probate Rules also requires an estate to be represented by an attorney admitted to practice in the state of Florida. The Personal representative is not an attorney. 28 U.S.C. § 1651(a) (1964) 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.'

Each federal court has the inherent power of to regulate and control its own bar and to manage its own affairs so as to achieve the orderly and expeditious disposition of cases. See 28 U.S.C. § 2071 (2000); 28 U.S.C. § 1654 (2000); Fed.R.Civ.P. 83; *In re Snyder*, 472 U.S. 634, 643, 105 S.Ct. 2874, 86 L.Ed.2d 504 (1985); *In the Matter of Abrams*, 521 F.2d 1094, 1099 (3d Cir.1975); *In re Mitchell*, 901 F.2d 1179, 1183 (3d

Cir.1990); and *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991).

Although Plaintiff's counsel has filed this motion based upon the state court order, it is counsel's good faith belief that the state court lacks subject matter jurisdiction because after settlement was reached in the unrelated state case, a joint voluntary dismissal with prejudice was filed without court order. Therefore, the state court lacked continuing jurisdiction to enter such an order. The state court disagreed. Counsel has filed a Writ of Prohibition with the Florida Supreme Court. No response has been given by the Florida Supreme Court to date. Counsel believes the following case law conclusively shows that the state court lacks jurisdiction, since all orders were entered after the voluntary dismissal without any order reserving jurisdiction and with no new case being filed against counsel. *Polk County v. Sofka*, 702 So.2d 1243, 1245 (Fla.1997); *Dunkin' Donuts Franchised Restaurants, LLC v. 330545 Donuts, Inc.*, 27 So.3d 711 (Fla. 4th DCA 2010).

WHEREFORE, Kennan G. Dandar requests this court to consider this motion and enter the appropriate order.

Per Rule 3.01, I contacted Robert Potter, counsel for SCIENTOLOGY, Nate Berman, counsel for GENTILE, and Rick Alvarez, counsel for THOMAS BRENNAN, who have no objection to the filing of Plaintiff's counsel's Motion to Withdraw. They were not advised as to the content of the motion nor the law cited herein.

I HEREBY CERTIFY that on April 12, 2010, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: LEE FUGATE, ESQ. Attorney for the Defendants,

Denise Miscavige Gentile and Gerald Gentile, and F. WALLACE POPE, ESQ. and
ROBERT POTTER, Attorneys for Church of Scientology Flag Service Organization, Inc.

/s/ Kennan G. Dandar, Esq.
KENNAN G. DANDAR, ESQ.
Florida Bar No. 289698
Attorney for Plaintiff
DANDAR & DANDAR, P.A.
Post Office Box 24597
Tampa, Florida 33623-4597
Telephone: 813-289-3858
Facsimile: 813-287-0895
Email: kgd@DandarLaw.net

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DECLARATION OF VICTORIA L. BRITTON

1. I, VICTORIA L. BRITTON, am the mother of Kyle Brennan and the Personal Representative of the ESTATE OF KYLE BRENNAN.
2. I retained an attorney, Luke Lirot, to contact the Clearwater Police Department due to their unwillingness to cooperate in my search for the truth as to what had happened to my son, Kyle, who died in Clearwater on February 17, 2007, under very suspicious circumstances. When the police closed their investigation, Luke Lirot could not bring a civil action for wrongful death because that is not an area of law in which he practices.
3. I searched online for an attorney to represent the Estate to bring an action against the responsible parties. I talked to many lawyers in different states and each one turned me down as soon as they heard it involved the Church of Scientology.

Some turned me down due to a conflict, since some had represented Scientology in the past or are currently representing the organization, but many turned me down because it is an entity they do not want to litigate against.

4. My search ended when I discovered Kennan G. Dandar in Tampa, Florida. I retained his services due to his prior experience in representing the Estate of Lisa McPherson against the Church of Scientology. Suit was filed just before the statute of limitations expired.
5. Upon learning that a state judge in June 2009 ordered Kennan G. Dandar to cease and desist from representing the ESTATE OF KYLE BRENNAN in this matter and ordered him to withdraw, I have contacted other attorneys across the nation to help me and become my attorney in this case. All have declined. I also know that Kennan G. Dandar has contacted many local and out-of-state attorneys to take his place and all have declined.
6. I am now very frustrated, desperate, and worried that I will not have an attorney to pursue this litigation. I do not want Kennan G. Dandar to withdraw from this case because I believe he is the most qualified attorney to represent the ESTATE OF KYLE BRENNAN. I have no one else to turn to.

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true.


VICTORIA L. BRITTON