

IN THE  
SUPREME COURT OF OHIO

IN RE: ESTATE OF  
JOSEPHINE A. CENTORBI

: CASE NO. 2010-0597  
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:  
: On appeal from the Cuyahoga  
: County Court of Appeals,  
: Eight Appellate District  
: Case No. 93501  
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MOTION TO STRIKE THE APPELLANT'S BRIEF

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RECEIVED  
DEC 09 2010  
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SUPREME COURT OF OHIO

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SUPREME COURT OF OHIO

Now comes, Diane Nancy Fiorille, by and through the undersigned counsel and hereby requests this court grant her Motion to Strike the Appellant's brief.

### **Facts**

Josephine Centorbi died on February 12, 2007. On December 21, 2007, Diane Nancy Fiorille filed an Application to Relieve the estate from Administration which was granted that same day. The estate was distributed in part to Ms. Fiorille and in part to Anthony Centorbi, the decedent's son. The Special Counsel to the Ohio Estate Recovery program, the collections firm of Weltman, Weinberg and Reis, filed a Motion to Vacate the Order Releasing the Assets from Administration, which was denied because the Movant was outside the time period for filing a claim against the estate having been nearly 2 years past the death of the decedent.

The decision of the Magistrate denying the Motion to Vacate was affirmed by Judge Anthony J. Russo of the Cuyahoga County Probate court on or around June 3, 2009. In that Order, the Probate court, like the Magistrate before found Diane Nancy Fiorille to be the Estate Representative.

The Special Counsel and the Ohio Attorney General then filed an appeal to the Eighth District Court of appeals listing the Appellee as Anthony Centorbi and did not send any notice whatsoever to Diane Nancy Fiorille, the estate representative. The Decision was issued on February 22, 2010.

The Ohio Attorney General then filed a Notice of Appeal to this Court with a Memorandum in Support of Appeal on or about April 6, 2010. The Appellant's Merit Brief was filed on August 10, 2010. None of the docketed Notices, Memorandum and Briefs were sent to the estate representative, Diane Nancy Fiorille.

The Undersigned counsel entered an appearance on October 22, 2010 on behalf of Diane Nancy Fiorille. The undersigned contacted her on behalf of the Ohio Chapter of the National Academy of Elder Law Attorneys to offer pro bono services with regard to the Appeal before this Court. That was the first she heard of it and accepted the representation at that time.

### **Law**

Supreme Court Practice Rule 14.2(d) states:

When a party or amicus curiae fails to provide service upon a party or parties to the case in accordance with S.Ct.Prac. R. 14.2(A), any party adversely affected may file a motion to strike the document that was not served. \*\*

### **Argument**

Diane Nancy Fiorille should have been served as estate representative of both the Supreme Court Notice of Appeal and the Eighth District Court of Appeals. The Special Counsel and the Attorney General were well aware of Mrs. Fiorille's involvement with the estate. She was Estate Representative on the Application for the Relief from Administration. She was served with both the Motion to Vacate the Magistrate's order and the subsequent Order from the hearing on March 30, 2009 before Judge Anthony J. Russo.

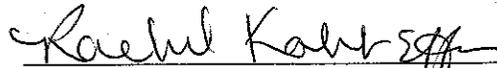
However, on June 19, 2009, when the Notice of Appeal from the Probate Division was filed, the Special Counsel failed to effect proper service on the personal estate representative.

Service of Process requirements are key to ensuring due process of law. Without due process the State in case, can literally take the house from a rightful heir, more than 3 years after death. This case is too important to leave to a default judgment without proper briefing.

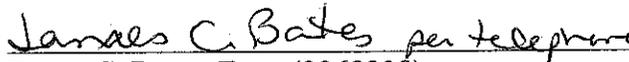
### **CONCLUSION**

The undersigned respectfully requests, this Court to Strike the Appellant's Brief and Notice of Appeal for lack of service. In fact, the Court should dismiss the Appellant's case altogether since service was flawed back to the Eighth District Court of Appeals.

Respectfully submitted,



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Counsel for Diane Fiorille

#### CERTIFICATE OF SERVICE

A Copy of the foregoing Motion to Strike the Appellant's Brief on Anthony Centorbi, pro se, and Benjamin C. Mizer, Solicitor General, 30 East Broad Street, 17<sup>th</sup> Floor, Columbus, Ohio 43215 via regular U.S. Mail this 6<sup>th</sup> day of December, 2010.

