


From: Paul Dulberg Paul_Dulberg@comcast.net 
Subject: judicial estoppel
Date: February 21, 2020 at 9:44 AM
To: Ed Clinton ed@clintonlaw.net, julia C. Williams juliawilliams@clintonlaw.net
Cc: Mary Winch marywinch@clintonlaw.net

PD

Hi Julia and Ed,

I have been doing my homework.

I believe that my case does not fill all five prerequisites required before a court can invoke judicial estoppel

I did not take two positions that are factually inconsistent because I initially disclosed the suit as an asset to the bankruptcy court and maintained that position throughout all judicial proceedings

five prerequisites required before a court can invoke judicial estoppel:
the party must


- (1) take two positions;
 - (2) that are factually inconsistent;
 - (3) in separate judicial or quasi-judicial administrative proceedings;
 - (4) intending for the trier of fact to accept the truth of the facts alleged; and
 - (5) have succeeded in the first proceeding and received some benefit from it.
- A statement under oath was not, however, a requirement for applying judicial estoppel.

The only prerequisites I believe can be perceived as being met here is (3,4,5) and that was with the Gagnon at the ADR not the McGuires since they had been removed previously.

I do not believe that Flynn can win a judicial estoppel motion limiting the amount we can recover since only three of the five prerequisites may have been met and that those three prerequisites is questionable at best.

Please advise and let me know if I am in error.

Thanks,
Paul

From: Paul Dulberg Paul_Dulberg@comcast.net 
Subject: Re: judicial estoppel
Date: February 21, 2020 at 9:54 AM
To: Ed Clinton ed@clintonlaw.net, The Clinton Law Firm juliawilliams@clintonlaw.net
Cc: Mary Winch marywinch@clintonlaw.net

PD

I should include that the Bankruptcy trustee (Olsen) was also made aware of the impending malpractice suit as soon as Gooch determined I had a valid case and I remember Olsen stated something very close to this, the bankruptcy was already solvent and that I would be receiving 100% of anything acquired by the malpractice suit so he had no interest in it.

On Feb 21, 2020, at 9:43 AM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

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