

IN THE SUPREME COURT OF FLORIDA

CAUSE NO. _____

UNDERLYING CASES NUMBERS

Case # 502012CP004391XXXXSB – Simon Bernstein Estate

Case # 502011CP000653XXXXSB – Shirley Bernstein Estate

**Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor
Children**

Case # 502014CP003698XXXXSB – Shirley Trust Construction

Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust

Case OLD CASE # 502014CA014637XXXXMB

Other related case

**Case # 13-cv-03643 - Federal Lawsuit in the US District Court of Eastern
Illinois, before the Hon. Judge Amy St. Eve.**

**IN THE ESTATES AND TRUSTS OF SIMON LEON BERNSTEIN,
SHIRLEY BERNSTEIN AND PETITIONER'S MINOR CHILDREN
TRUSTS**

**ELIOT IVAN BERNSTEIN,
PETITIONER**

**EMERGENCY PETITION FOR WRIT OF PROHIBITION,
MANDAMUS AND HABEAS CORPUS**

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1.
EMERGENCY PETITION FOR WRIT OF PROHIBITION AND
MANDAMUS

- 1.1. This Petition for All Writs, is both a Writ of Mandamus and Writ of Prohibition and follows a timely filed MOTION TO DISQUALIFY (Exhibit A), DENIED by JUDGE MARTIN COLIN as “legally insufficient” in violation of Florida Rule of Judicial Administration 2.330, Florida Statute 38, and Florida Code of Judicial Conduct, Canon 3(B)7 and E, all of which require that a judge disqualify himself once the Petitioner has established a reasonable fear that he will not obtain a fair hearing. See Fla. R. Jud. Admin. 2.330; Fla. Stat. §§ 38.02, 38.10; Fla. Code Jud. Conduct, Canon 3-B (7).
- 1.2. COLIN abused his discretion in failing to disqualify on or before September 13, 2013 when it was discovered by COLIN that there was Fraud Upon his Court committed by Fiduciaries, Counsel and others that were appointed by COLIN that materially affected PETITIONER’S rights to a fair and impartial hearing and denied PETITIONER Due Process and Procedure and Obstructed Justice.
- 1.3. That COLIN was mandatorily required at that time to DISQUALIFY himself mandatorily as the crimes committed in his Court also made him a material and fact witness to the events and conflicted with the matters since the crimes occurred in and upon his Court with his Court appointed officers and staff.

- 1.4. Once the Fraud Upon and In the Court was discovered it became impossible for COLIN to continue to handle the matters due to the overwhelming appearance of impropriety created by COLIN handling the investigations against the Officers of his Court, his staff and himself without PETITIONER fearing that his direct involvement in the matters biased his decisions.
- 1.5. PETITIONER filed for disqualification (**SEE EXHIBIT – PETITIONER DISQUALIFICATION MOTIONS AND PETITIONERS MOTIONS FOR DISQUALIFICATION ON COLIN’S OWN INITIATIVE**) but COLIN refused to disqualify despite his duty under Judicial Canon’s and law to disqualify when he became a witness, a potential suspect and more and continued to proceed and thus with each act COLIN acted outside the Color of the Law.
- 1.6. PETITIONER’S APPLICATION FOR WRIT OF PROHIBITION and WRIT OF MANDAMUS should be granted because:
 - 1.6.1. The acts of COLIN that defy law and due process cause PETITIONER to fear prejudice and the inability to obtain a fair trial for himself and his three minor children in his Court;
 - 1.6.2. COLIN is a material in fact witness and now has an interest in the case that is adverse and prejudicial to PETITIONER and his family who have exposed the Fraud on the Court, Fraud in the Court, Fraud by the Court and other crimes proven at this time, including but not limited to,

Forgeries of dispositive documents, fraudulent notarizations of dispositive documents, fraudulent closing of a deceased's estate using a deceased Personal Representative to close the estate as part of a larger fraud to seize Dominion and Control of the Estates and Trusts of both Simon and Shirley Bernstein by the court appointed fiduciaries and attorneys at law, fraudulent alteration of Dispositive Documents admitted to by Attorney at Law Robert Spallina to Palm Beach County Sheriff Investigators on behalf of he and his partner Donald R. Tescher, Esq. and where there continue to be ongoing state and federal, civil and criminal investigations and proceedings into multiple fraudulent acts that were ancillary to the other frauds that took place using the court of JUDGE COLIN to achieve;

- 1.6.3. Colin cannot investigate himself, his court appointed Officers and Fiduciaries and his court staff regarding the Fraud on the Court without an overwhelming appearance of impropriety that he is steering the cases to avoid prosecutions, covering up to avoid the bad press and possibly shift the focus away from his direct involvement and once knowledgeable about these conflicts of interest and adverse interests created by the criminal activity in his court COLIN was mandated by Judicial Canons and law to disqualify from the matters.

1.7. PETITIONER’S MOTION TO DISQUALIFY filed on DATE/EXHIBIT is “legally sufficient” because:

1.7.1. JUDGE MARTIN COLIN had a mandatory duty to disqualify independent of whether PETITIONER’S MOTION TO DISQUALIFY was “legally sufficient” (an undefined legal term) under the due process clause of the United States Constitution due to the crimes committed in and upon his Court by his Court Appointed Officers and Fiduciaries, his direct involvement in the Fraud on his Court, the Conflicts created by his handling matters and therefore he was mandated to disqualify from the matters on his own initiative;

1.7.2. PETITIONER has listed JUDGE COLIN in counter complaints (EXHIBITS __ and __) filed in these matters as a Material and Fact Witness whom may become a defendant in any amended complaint filed, whereby JUDGE COLIN then stayed such counter complaints that named him, further derailing PETITIONER’S right to fair and impartial due process and further causing him to be conflicted with PETITIONER, and yet he continued to act in violation of judicial canons – (See Exhibit C);

1.7.3. PETITIONER has filed criminal complaints against the Fiduciaries and

Attorneys at Law / Fiduciaries involved in the matters and where JUDGE COLIN attempted to influence law enforcement to cease investigating PETITIONER'S filed criminal complaints with the Palm Beach County Sheriff Office, stating he would handle the criminal investigations into the matters in his court and this led to investigators attempting to shut down the investigations PETITIONER instigated;

1.7.4. Upon learning of this attempt to shut down the criminal investigations, PETITIONER notified law enforcement that JUDGE COLIN had no jurisdiction to interfere and could in fact become a suspect in the investigations into the Fraud on his Court and thus this constituted intentional Obstruction of Justice;

1.7.5. PETITIONER was then forced to start an Internal Affairs complaint against the officers involved and elevate the matters to the Captain of the Sheriff's department to get the complaints re-opened, which then led to Attorney Spallina being questioned and admitting to fraudulently altering a Shirley Bernstein Trust document;

1.7.6. Judge Colin has created an attorney and fiduciary protection system for those involved in the criminal misconduct by;

1.7.6.1. failing to report them to the proper authorities,

1.7.6.2. interfering in ongoing investigations of the suspect parties,

- 1.7.6.3. allowing the attorneys at law who committed felony criminal acts in and upon his court to withdraw from the matters instead of removing them as demanded by Petitioner, where removal would have had a more severe impact on the guilty,
- 1.7.6.4. staying Counter Complaints that named attorneys at law involved in the criminal acts and further acting in the matters to defile the pleadings that had Judge Colin and Judge French as Material and Fact Witnesses named who could become Defendants,
- 1.7.6.5. staying the Counter Complaint other than to have Eliot remove Judge Colin and Judge French from the complaint as possible defendants in any amended complaint (See Order – Exhibit __),
- 1.7.6.6. suggesting to Eliot to file a new Simon Trust lawsuit to remove the legally impermissible Ted Bernstein as Trustee and Ordering that Eliot could not sue Attorneys at Law in the complaint (See Order – Exhibit __), despite the fact that the two prior Co-Trustees were attorneys at law who then resigned amidst the fraud and corruption they were directly involved in and whom as a last act transferred trusteeship to their client Ted Bernstein who they committed the crimes in part to benefit.

1.7.6.7. TED has done nothing to pursue the wrongdoings of the former trustees on behalf of the beneficiaries as TED was involved as well and TED was disinherited by both Simon and Shirley Bernstein and thus obstructing beneficiaries from documents and assets benefited TED, his counsel TESCHER and SPALLINA and JUDGE COLIN. COLIN allowing this fraudulent trusteeship is OBSCENE as well as illegal, as TED could not be a successor Trustee as the very language of the Trust states the successor cannot be related to the issuer and that TED, the son of the issuer Simon is also considered PREDECEASED for ALL PURPOSES OF THE TRUST! (See Exhibit ALLEGED 2012 Simon Trust, Pages ____ and ____)

1.7.6.8. failing to seize records and preserve and protect assets;

1.7.6.9. making privileged a letter sent to Petitioner Eliot that described the use of FORCE and AGGRESSION against Eliot by the fiduciary TED and his lawyer Alan B. Rose, Esq. (the letter also details misuse of trust funds and attacks on minor children) and again in efforts to cover up the corruption occurring in his court, (See Exhibits Order ____ and TED Sworn Statements ____ and Crystal Cox blog posts ____) and

1.7.6.10. Attempting to steer the cases by poisoning jurisdiction and venue upon recusal.

1.8. Due to the frauds on, in and by the Court that began the instant COLIN failed to disqualify himself from the start, all orders issued by COLIN must be voided, Village of Willowbrook, 37 Ill. App. 3D 393 (1962).

2.

BASIS FOR INVOKING JURISDICTION

2.1. This is an Original Proceeding filed in the Florida Supreme Court pursuant to Florida Rule of Civil Procedure 9.100(b) and 9.030 for extraordinary writs.

2.2. Florida Rule of Appellate Procedure Provides:

Original Jurisdiction. The Supreme Court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction, and may issue writs of mandamus and quo warranto to state officers and state agencies. The supreme court or any justice may issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

2.3. This Court has jurisdiction to issue writs of mandamus, prohibition and any other writ within the exercise of its judicial authority. See McFadden vs.

Fourth Dist. Court of Appeal, 682 So.2d 1068 (Fla. 1996).

2.4. Florida Rule of Appellate procedure 9.100(h) provides:

Order to Show Cause. If the petition demonstrates a preliminary basis for relief, a departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal, or that review of final administrative action would not provide an adequate remedy, the court may issue an order either directing the respondent to show cause, within the time set by the court, why relief should not be granted or directing the respondent to otherwise file, within the time set by the court, a response to the petition. In prohibition proceedings, the issuance of an order directing the respondent to show cause shall stay further proceedings in the lower tribunal.

2.5. PETITIONER seeks a WRIT OF PROHIBITION to prohibit the HONORABLE MARTIN COLIN from:

2.5.1. Acting in excess of his lawful jurisdiction;

2.5.2. Attempting to Recuse himself on his own Sua Sponte Order issued on May 20, 2015, after on May 19, 2015 denying PETITIONER'S Disqualification Motion as "Legally Insufficient" in efforts to leave his

void Orders standing, as all Orders were issued with COLIN knowingly acting OUTSIDE THE COLOR OF LAW.

2.5.3. Taking any action in this matter other than vacating the Order to Recuse himself and instead immediately disqualifying himself;

2.5.4. Prohibition is invoked for the protection of PETITIONER ELIOT IVAN BERNSTEIN, his wife CANDICE MICHELLE BERNSTEIN and their three minor children's, whose lives, safety and wellbeing are in danger if this WRIT is denied for lack of a legal remedy.

2.6. PETITIONER seeks a WRIT OF MANDAMUS, compelling the HONORABLE JUDGE COLIN to:

2.6.1. Abide by the laws of the State of Florida, Federal law and the United States Constitution and cease acting beyond his jurisdiction immediately;

2.6.2. Set aside the ORDER FOR RECUSAL as *void ab initio* immediately as it was obtained through further Fraud by the Court by JUDGE COLIN;

2.6.3. Set aside all other Orders in his Court as *void ab initio* immediately as they are the product of fraud on, in and by the court immediately;

2.6.4. Immediately disqualify himself from this case and take no further action;

2.6.5. Immediately turn over to criminal investigators, all court records

relating to the Estates and Trusts of Simon and Shirley Bernstein and PETITIONER'S three minor children Trust cases, including but not limited to, COLIN'S public and private records, his staff's records and all records of all attorneys at law and fiduciaries involved who have been appointed by the court;

2.6.6. Immediately notify the proper State and Federal authorities of the criminal misconduct in, on and by the COLIN and FRENCH'S court, as required by law and Judicial Canons;

2.6.7. Have immediate investigations begun into the fraudulent court activities and those involved that have been stymied, delayed and otherwise directly interfered with by COLIN who aided and abetted and furthered crime by ABUSE OF PROCESS and FRAUD ON THE COURT, FRAUD IN THE COURT and FRAUD BY THE COURT;

2.6.8. IMMEDIATELY SEIZE ALL ASSETS AND PROPERTIES OF THE ESTATES AND TRUSTS of Simon and Shirley Bernstein and have all assets that have been stolen through these fraudulent orders, immediately returned and put in protective custody by this Court, until all matters of document fraud, trust constructions, trust validity, fraud and breaches of fiduciary duties can be adjudicated by a fair and impartial court of law; and,

2.6.9. Reverse COLIN'S acts to interfere with the next step in the matters by having the case assigned to a proper jurisdiction and venue without COLIN'S steering the case to a court and judge that he influenced the outcome of.

2.7. WRIT OF PROHIBITION is proper to prevent an inferior court or tribunal from improperly exercising jurisdiction over a controversy and if a petition for a writ of prohibition demonstrates a preliminary basis for entitlement to relief, the court can issue an order to show cause why relief should not be granted. Once a show cause order issues in prohibition, it automatically stays the lower court proceeding. Fla. R. App. P. 9.100(h).

2.7.1. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. *Carroll v. Fla. State Hosp.*, 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge's order denying a motion to disqualify).

2.7.2. Jurisdiction and Venue have been poisoned by the extent and egregiousness of the Florida Civil Court JUDGE COLIN'S misconducts, especially where PETITIONER is pursuing legal remedies against members of this Court, including Chief Judge JORGE

LABARGA, other Justices of this Court, the FLORIDA BAR and its officers and several large South Florida Law Firms, regarding stolen intellectual properties, alleged to have been stolen by PETITIONER and his father's Intellectual Property Lawyers primarily at the law firm Proskauer Rose LLP and Foley & Lardner, in conjunction with various state actors installed to block due process and procedure and obstruct justice.

2.8. WRIT OF MANDAMUS is required to direct JUDGE COLIN to vacate his prior illegal ORDERS. The writ of mandamus is appropriately used to require a government actor to perform a nondiscretionary duty or obligation that he or she has a clear legal duty to perform. *See Austin v. Crosby*, 866 So. 2d 742, 743 (Fla. 5th D.C.A. 2004) (holding that mandamus may only be granted if there is a clear legal obligation to perform a duty in a prescribed manner). It applies to enforce a right already established. *Austin*, 866 So. 2d at 744. The writ of mandamus will issue to require a trial court to comply with the mandate of an appellate court. *Superior Garlic Int'l, Inc. v. E&A Produce Corp.*, 29 Fla. L. Weekly D2341 (Fla. 3d D.C.A. Oct. 20, 2004).

2.9. WRIT OF HABEAS CORPUS is sought to end the constructive unlawful detention of BARBARA STONE as a result of the WRIT OF ATTACHMENT for her wrongful arrest signed MAY 8, 2015. *Wright v.*

State, 857 So. 2d 861 (Fla. 2003), cert. denied, 541 U.S. 961 (2004).

2.10. Florida Rule of Appellate Procedure 9.040 provides :

Remedy. If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought; provided that it shall not be the responsibility of the court to seek the proper remedy.

3.

STATEMENT OF FACTS

WHISTLEBLOWER PROTECTION

3.1. PETITIONER files this original proceeding against the HONORABLE MARTIN COLIN, seeking an Emergency Writ of Prohibition, Writ of Mandamus, and **Writ of Habeas Corpus** to protect PETITIONER, his wife and three minor children from ongoing irreparable harm for which there is no adequate remedy at law and prays the Court immediately GRANT said relief to protect the ELIOT BERNSTEIN FAMILY. See *Affidavit of Eliot Bernstein*, attesting to the truth of all facts herein (Exhibit I).

3.2. PETITIONER seeks Whistleblower Protection from the Supreme Court from retaliation of JUDGE COLIN, JUDGE DAVID FRENCH (fraud occurred in his Court in relation to the Simon Bernstein Estate prior to the case being improperly transferred to JUDGE COLIN) ROBERT SPALLINA, ESQ.,

DONALD R. TESCHER, ESQ., ALAN B. ROSE, ESQ., JOHN PANKAUSKI, ESQ., MARK MANCERI, ESQ., JOHN SWERGOLD, ESQ., BRANDEN PRATT, ESQ., ALBERT GORTZ, ESQ., GERALD LEWIN, CPA, THEODORE STUART BERNSTEIN and others known and unknown, for filing state and federal civil and criminal complaints with the Palm Beach County Sheriff¹, F.B.I., DOJ OIG, a Federal Judge, Circuit Judges, a District Attorney, among others, to report abuse, fraud, extortion, neglect and exploitation of PETITIONER and his family by FELONY MISCONDUCT already proven and further alleged and under ongoing investigations.

3.3. PETITIONER also seeks protection in that he has aligned with other Whistleblower's reporting on a systemic corruption in the Probate Courts, See Letter to Supreme Court requesting Whistleblower Protection of Barbara Stone, Esq. (Exhibit E); Cause No. 15-61004; Barbara Stone vs. Michael Genden, et al; In the Southern District of Florida, Broward County Division (Exhibit C with exhibits); Cause No. 15-006431; In the Circuit Court of Broward County, Florida, Judge Sandra Perlman presiding (Exhibit J).

3.4. PETITIONER and his minor children are in imminent continued and

¹ PALM BEACH COUNTY SHERIFF CASES NO: 13097087 MORAN FORGERY AND FRAUDULENT NOTARIZATION; 13159967 PROPERTY THEFT, 14029489 TESCHER AND SPALLINA ET AL. SUPPLEMENTAL, 12121312 ALLEGED MURDER OF SIMON BERNSTEIN

ongoing danger of irreparable injury due to the HONORABLE JUDGE COLIN'S use of illegal ORDERS to exact revenge from the bench "under Color of State Law" via a series of illegal ORDERS, in retaliation for PETITIONER filing civil and criminal complaints against him for neglect, abuse and exploitation of minor children and more.

3.5. Denial of PETITIONER'S plea will place the ELIOT BERNSTEIN FAMILY in further substantial risk of danger for reporting criminal activity.
(SEE EXHIBIT - CANDICE SCHWAGER WARNING LETTER VIA STONE)

3.6. Harm is irreparable when a citizen is wrongfully arrested and/or prosecuted--
-with the mere opportunity to defend himself or herself without due process.
See Hearing Transcript in Circuit Court (Exhibit K) and Affidavits of Barbara Stone (Exhibit I) and Eliot Bernstein (Exhibit N).

3.7. PETITIONER has met the burden of demonstrating that a reasonable person would fear bias and the inability to decide matters in this case with impartiality.

ILLEGAL RETALIATION

3.8. That JUDGE COLIN'S refusal to Disqualify upon a perfect Disqualification Petition filed by Petitioner and then through a sneaky Recusal Order to claim after two and half years he just suddenly awoke to Sua Sponte Recuse

himself after denying PETITIONER'S Disqualification Motion a day earlier forms the basis for further foul play and continued Fraud Upon the Court by JUDGE COLIN in efforts to further stymie and delay and cover up the crimes committed in, on and by his court by steering the case to the next judge who may be a plant and this is further retaliation against PETITIONER.

3.9. That the Recusal ORDER clearly shows that prior to his sudden and unexplained Sua Sponte recusal JUDGE COLIN went shopping the case to other JUDGES in the venue and prejudicing PETITIONER'S rights and influencing the cases to be moved to an inconvenient location and perhaps with a planted new Judge Coates assigned possibly by those directly involved in the prior frauds.

3.10. This cleverly disguised OBSTRUCTION OF JUSTICE through further FRAUD UPON, IN and BY THE COURT to have COLIN and his court move the complaint by illegally steering it must also be stricken and investigated by this Court and this Court must now notify the proper tribunals of all of these criminal acts that occurred in the COLIN court as required under Judicial Canons, whereby as Justices reviewing these matters of another judges misconduct with alleged felonious activity you are required under Oath to do.

LACK OF JURISDICTION

3.11. COLIN did not have jurisdiction to proceed with sham hearings and proceedings after knowing he would be a material and fact witness to the proceedings, as early as November of 2012. Upon discovering the criminal felony acts COLIN needed to have independent investigation of his court and his court appointed Officers and Fiduciaries but disregarding his duties COLIN proceeded to act outside of the Color of Law from that point forward and held hearing after hearing and issued order after order while suppressing any investigations of the criminal misconduct and attempting to sweep it under the rug to protect himself and others involved.

3.12. The Supreme Court **must intervene** immediately to protect PETITIONER, his lovely wife and his minor children, from further acts of aggression of JUDGE MARTIN COLIN et al., who have been exacting revenge from the bench and through abuse of process with other Officers and Fiduciaries of the Court, all disguised “under color of State law” to harm PETITIONER even in his final act of recusal to further influence and poison the next step once he knew he was being forced off the case by PETITIONER’S Legally Sufficient pleading.

3.13. wherein the Court stated:

We conclude that the trial judge's thoughtful and complete

analysis of the facts presented in support of defendants' motion to dismiss for fraud upon the court is amply supported by the record and does not constitute an abuse of discretion. Conclusion is inescapable that Lustig, agents of the corporate plaintiff, repeatedly lied under oath concerning issues material to the prosecution of plaintiff's claim and defendants' affirmative defenses, in an effort to conceal the truth and have consequently, forfeited plaintiff's right to proceed with this action.

The Court further stated:

In *Metropolitan Dade County v. Martinsen*, 736 So. 2d 794, 795 (Fla. 3d DCA 1999), this Court restated the well-settled principle "that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends." *Hanono v. Murphy*, 723 So. 2d 892, 895 (Fla. 3d DCA 1998) (citing *Carter v. Carter*, 88 So. 2d 153, 157 (Fla. 1956)).

3.14. This is the exact same divisive and devious conduct exhibited herein – these

state actors are employing the very institution they have subverted to achieve their ends.

SHAM APPEARANCE OF DUE PROCESS

3.15. COLIN has intentionally sought to deprive PETITIONER and his three minor children of privileges and immunities guaranteed citizens of the United States by the Constitution in violation of 18 U.S.C. 241 (“conspiracy against rights”), 242 (“deprivation of rights under color of State law), and 42 U.S.C. 1983 (civil deprivation of rights under color of State law) – constituting official oppression.

3.16. COLIN intentionally and with scienter and in conspire with others deprived PETITIONER and his three minor children of First, Fifth, Sixth, Seventh, and Fourteenth Amendment rights to freedom of speech, freedom of association, due process, equal protection of the law, and the right to effective assistance of counsel.

3.17. 18 U.S.C. 242 provides as follows:

Whoever, under color of any law, ordinance, statute, ordinance, regulation, or custom, willfully subjects any person in any State...to the deprivation of rights, privileges, or immunities secured or protected by the Constitution of the laws of the United States, or to different punishments, pains

or penalties...than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year; or both... and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap...shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.²

3.18. COLIN violated PETITIONER and his three minor children's due process rights in his fervor to retaliate and cover up for crimes exposed, committed and run through the misuse of his court as a vehicle to commit said crimes and other ancillary crimes, while attempting to cover up for the crimes of his court appointed officers and fiduciaries in efforts to exculpate the criminals from prosecution by aiding and abetting the felonious acts through a complex legal process abuse scheme that not only covered up but in fact continued to commit crimes against PETITIONER and his minor children with the parties acting as if retribution for their crimes would never come, drunken in delusions of grandeur as if Above the Law and protected by COLIN.

3.19. COLIN violated the OPEN COURTS provision of the U.S. and Florida

² 18 U.S.C. 241 contains similar language but applies to two or more people conspiring to deprive a citizen of rights and privileges under the Constitution.

Constitution, due process and equal protection clause via the following scheme: (a) Issuance of illegal ORDERS, allowing Officers and Fiduciaries to continue in proceedings after learning of their involvement in Felony Misconduct and after stating he had enough evidence of their fraud and fraud on the court to read them all their Miranda Warnings twice (See Exhibit ____ - September 13, 2013 Hearing) and then failing to do ANYTHING required of him by law and judicial canons over the next two and one half years.

4.
NATURE OF RELIEF SOUGHT

4.1. PETITIONER seeks a WRIT OF PROHIBITION to prohibit the HONORABLE MARTIN COLIN from:

4.1.1. acting in excess of his lawful jurisdiction;

4.1.2. attempting to evade the Disqualification and vacating and voiding of his Orders through a sham Sua Sponte Recusal;

4.1.3. taking any action in this matter other than vacating and voiding all ORDERS,

4.1.4. immediately disqualifying himself and

4.1.5. turning over records and evidence in his or his court's possession regarding these matters.

4.2. Prohibition is invoked for the protection of PETITIONER'S family, whose

lives, safety and wellbeing are in danger if this WRIT is denied for lack of a legal remedy.

4.3. PETITIONER seeks a WRIT OF MANDAMUS, compelling the HONORABLE MARTIN COLIN to:

4.3.1. abide by the laws of the State of Florida, Federal law and the United States Constitution and cease acting beyond his jurisdiction immediately;

4.3.2. set aside all ORDERS as *void* immediately; and

4.3.3. immediately disqualify himself from this case and take no further action.

4.4. WRIT OF HABEAS CORPUS to invalidate the ORDERS, constructively detaining PETITIONER in violation of her rights.

5.

LEGAL AUTHORITIES

MANDATORY DISQUALIFICATION

5.1. COLIN had a statutory duty and was mandated by judicial canons to disqualify himself on his own initiative well before May 20, 2015 when PETITIONER filed a third MOTION TO DISQUALIFY that was legally sufficient within Fla. Stat. 38.10 and Fla. Rules Jud. Admin 2.330.

5.2. The Florida Code of Judicial Conduct Canon 3 provides states:

A Judge SHALL disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning the party or a party's lawyers.

- 5.3. Disqualification is mandatory under Florida Rule of Judicial Administration Rule 2.330 and Florida Statute 38.10. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994). Positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988); *Levine v. United States*, 362 U.S. 610 (1960);
- 5.4. Should a judge not disqualify himself, the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.") "[A] fundamental requirement of due process is the opportunity to be heard . . .

at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);

5.5. Disqualification is Mandatory under the Code of Judicial Conduct, Canon 3

“A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently” Section E. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding.”

5.6. The issues before this Court are the failure to mandatorily disqualify and the “**legal sufficiency**” of the motion to disqualify filed by PETITIONER. In order to demonstrate legal sufficiency, PETITIONER need only show:

...a well-grounded fear that he will not receive a fair [hearing] at the hands of the judge. **It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling.’**

State ex rel. Brown v. Dewell, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). *See also Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981). **The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially.**

- 5.7. *State v. Livingston*, 441 So. 2d 1083, 1086 (Fla. 1983) (emphasis added). In a case where the PETITIONER'S liberty is at stake, the court "should be especially sensitive to the basis for the fear." *Chastine v. Broome*, 629 So. 2d 293, 294 (Fla. 4th DCA 1993). The circumstances of this case are of such a nature that they are "sufficient to warrant fear on PETITIONER'S part] that he would not receive a fair hearing by the assigned judge." *Suarez v. Dugger*, 527 So. 2d 191, 192 (Fla. 1988).
- 5.8. PETITIONER and his minor children are entitled to a full and fair proceeding, including a fair determination of the issues by a neutral, detached judge. *Holland v. State*, 503 So. 2d 1354 (Fla. 1987); *Easter v. Endell*, 37 F.3d 1343 (8th Cir. 1994). Due process guarantees the right to a neutral, detached judiciary in order "to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk

of mistaken deprivations of protected interests.” *Carey v. Piphus*, 435 U.S. 247, 262 (1978). Principles of due process demands that this case be heard by another judge and for COLIN to disqualify himself:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. *See Carey v. Piphus*, 435 U.S. 247, 259-262, 266- 267 (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. *See Matthews v. Eldridge*, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, ‘generating the feeling, so important to a popular government, that justice has been done,’ *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of

his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

- 5.9. The disqualification rules require judges to avoid even the appearance of impropriety and COLIN'S self-dealing actions after knowing he would be a material and fact witness to crimes that occurred in his court by officers and fiduciaries he appointed, in which his own actions became questionable, establishes a prima facie case of appearance of impropriety:

It is the established law of this State that every litigant...is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the court to scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any manner where his qualification to do so is seriously brought into question. The exercise of any other policy tends to discredit and place the judiciary in a compromising attitude which is bad for the administration of justice. *Crosby v. State*, 97 So.2d 181 (Fla. 1957); *State ex rel. Davis v. Parks*, 141 Fla. 516, 194 So. 613 (1939); *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932);

State ex rel. Mickle v. Rowe, 100 Fla. 1382, 131 So. 3331 (1930).

* *

The prejudice of a judge is a delicate question for a litigant to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge in question should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned. *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932); *State ex rel. Aguiar v. Chappell*, 344 So.2d 925 (Fla. 3d DCA 1977).

5.10. The United States Supreme Court has stated:

...the inquiry must be not only whether there was actual bias on respondent's part, but also whether there was 'such a likelihood of bias or **an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused.**' *Ungar v. Sarafite*, 376 U.S. 575, 588 (1964). 'Such a stringent rule may sometimes bar trial by judges who have no

actual bias and who would do their very best to weigh the scales of justice equally between contending parties,’ but due process of law requires no less. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). *Taylor v. Hayes*, 418 U.S. 488, 501 (1974) (emphasis added).

- 5.11. The appearance of impropriety violates state and federal constitutional rights to due process. A fair hearing before an impartial tribunal is a basic requirement of due process. *See In re Murchison*, 349 U.S. 133 (1955). “Every litigant is entitled to nothing less than the cold neutrality of an impartial judge.” *State ex rel. Mickle v. Rowe*, 131 So. 331, 332 (Fla. 1930). Absent a fair tribunal, there can be no full and fair hearing.
- 5.12. The issues before this Court are the mandatory disqualification of COLIN and the question of “legal sufficiency” of the motion filed by PETITIONER; there is no deference owed to the lower court. *Smith v. Santa Rosa Island Authority*, 729 So. 2d 944, 946 (Fla. 1st DCA 1998). The test for determining the legal sufficiency of a motion for disqualification is an objective one which asks whether the facts alleged in the motion would place a reasonably prudent person in fear of not receiving a fair and impartial hearing. *See Livingston v. State*, at 1087. The fact that the crimes were committed in JUDGE COLIN’S COURT with Officers and Fiduciaries under COLIN’S

tutelage requires mandatory disqualification on COLIN'S own initiative and casts "a shadow...upon judicial neutrality so that disqualification [of the circuit] is required." *Chastine v. Broome*, at 295.

5.13. In *Partin v Solange et al*, 2015 WL 2089081 (Fla.App. 4 Dist., 2015), the court granted the petition to disqualify stating the lower court judge cut-off petitioners' counsel and expressed his prejudgment of the matter and in another hearing, the lower court judge made acerbic comments about petitioners and exhibited overall hostility toward both petitioners and their counsel. Not only did COLIN engage in this similar egregious conduct towards PETITIONER from the start but his disqualification is also mandated because of his direct involvement and handling of the fraudulently notarized and forged documents posited in his court and other direct involvement in the matters.

5.14. The Due Process Clause serves to protect use of fair procedures to prevent the wrongful deprivation of interests and is a guarantee of basic fairness. *Johnson v. Mississippi*, 403 U.S. 212, 216 (1971); *Peters v. Kiff*, 407, U.S. 493, 502 (1972). "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) *Garrahty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); Denying access to

important records, evidence, and witnesses and mistreating PETITIONER and his minor children as a *pro se* party are violations of Equal Protection and due process of law. *Pro se* parties are a distinct minority class in judicial proceedings. COLIN should have demanded that the minor children and PETITIONER were represented by counsel, forced bonding of the fiduciaries and officers he appointed involved in the criminal acts, posted bonds for the court and instead COLIN took opposite actions to harm PETITIONER and his minor children and delay their inheritances to cause catastrophic financial ruin upon them by fraudulent proceedings and illegally issued Orders.

- 5.15. Where a judge fails to disqualify, there is no jurisdiction to act and any order issued is illegal and void. *Kilbourn v. Thompson*, 103 U.S. 168 (1881). In *Kilbourn*, the Sergeant-at-Arms of the United States House of Representatives was held not to have immunity for ordering that the PLAINTIFF be arrested under a warrant issued by the House for refusing to testify because they lacked jurisdiction to issue such an order. *Id.* The court held that the House *did not have jurisdiction* to conduct the particular investigation. The Sergeant at Arms was liable for false arrest and could not assert the issuance of the warrant as a defense. *Id.* An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See *Pennoyer*

v. Neff (1877) 95 US 714; *Windsor v. McVeigh* (1876) 93 US 274; A void judgment is no judgment at all and "a court must vacate any judgment entered in excess of its jurisdiction." *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972). *Kalb v. Feuerstein* (1940) 308 US 433.

5.16. "A void judgment does not create any binding obligation. *Kalb v. Feuerstein* (1940) 308 US 433. If a court grants relief, which, under the circumstances, it hasn't any authority to grant, its judgment is to that extent void." An illegal order is forever void. A void order is *void ab initio* and does not have to be declared void by a judge. The law is established by the *U.S. Supreme Court in Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, (1920) as well as other state courts, in *People v. Miller*. "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities..." *Valley v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348.

5.17. **An order is void if it was procured by fraud upon the court,**" In re Village of Willowbrook, 37 Ill. App. 3D 393(1962)

5.18. A void judgment is one that has been procured by extrinsic or collateral fraud, or entered by court that did not have jurisdiction over subject matter or

the parties, *Rook v. Rook*, 353 S.E. 2d 756 (Va. 1987).

- 5.19. A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999)

6.

CONCLUSION AND PRAYER

- 6.1. PETITIONER seeks a WRIT OF PROHIBITION to prohibit the HONORABLE JUDGE COLIN from:

6.1.1. Acting in excess of his lawful jurisdiction;

6.1.2. Attempting to enforce the May 20th 2015 SUA SPONTE RECUSAL or ANY OTHER ORDER;

6.1.3. Taking any action in this matter other than vacating and voiding all Orders and immediately disqualifying himself;

6.1.4. Prohibition is invoked for the protection of PETITIONER and his minor children, whose safety and wellbeing are in danger if this WRIT is denied for lack of a legal remedy.

6.2. PETITIONER seeks a WRIT OF MANDAMUS, compelling the

HONORABLE MARTIN COLIN to:

6.2.1. abide by the laws of the State of Florida, Federal law and the United States Constitution and cease acting beyond his jurisdiction immediately;

6.2.2. set aside the May 20th 2015 Order to Recuse as void ab initio immediately;

6.2.3. set aside the ALL ORDERS as void ab initio immediately;

6.2.4. set aside all other Orders in his Court as *void ab initio* immediately as they are the product of fraud on, in and by the court; and,

6.2.5. immediately disqualify himself from this case and take no further action.

6.3. PETITIONER seeks a WRIT OF HABEAS CORPUS to invalidate the violation of rights.

DATED: Saturday, May 23, 2015

Respectfully submitted,

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I hereby certify that a true and correct copy of the foregoing was furnished by
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I hereby certify that this brief complies with the font standards, i.e. Times New Roman 14 point font as set forth in Florida Rule of Appellate Procedure 9.210.

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IN THE SUPREME COURT OF FLORIDA

CAUSE NO. _____

Underlying Case Nos.:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate

Case # 502011CP000653XXXXSB – Shirley Bernstein Estate

Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

Case # 502014CP003698XXXXSB – Shirley Trust Construction

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**IN THE PROBATE AND TRUST MATTERS OF SIMON AND SHIRLEY
BERNSTEIN**

ELIOT IVAN BERNSTEIN,

PETITIONER

APPENDIX TO

**EMERGENCY PETITION FOR ALL WRIT, WRIT OF PROHIBITION,
MANDAMUS AND HABEAS CORPUS**

INDEX AND EXHIBITS

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INDEX TO APPENDIX

URL’ S ARE FULLY INCORPORATED HEREIN BY REFERENCE.

Exhibit	Document - URL

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ELIOT IVAN BERNSTEIN

PETITIONER

**APPENDIX TO
EMERGENCY PETITION FOR WRIT OF PROHIBITION,
MANDAMUS AND HABEAS CORPUS**

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CASES	PAGE
<i>Village of Willowbrook</i> , 37 Ill. App. 3D 393(1962)	4, 31
McFadden vs. Fourth Dist. Court of Appeal, 682 So.2d 1068 (Fla. 1996).	5
<i>Carroll v. Fla. State Hosp.</i> , 885 So. 2d 485 (Fla. 1st D.C.A. 2004)	7
<i>Austin v. Crosby</i> , 866 So. 2d 742, 743 (Fla. 5th D.C.A. 2004)	7, 8
<i>Superior Garlic Int'l, Inc. v. E&A Produce Corp.</i> , 29 Fla. L. Weekly D2341 (Fla. 3d D.C.A. Oct. 20, 2004).	8
<i>Wright v. State</i> , 857 So. 2d 861 (Fla. 2003), cert. denied, 541 U.S. 961 (2004).	8
<i>In the Southern District of Florida, Broward County Division Cause No. 15-006431</i>	9
<i>Leo's Gulf Liquor vs. Chandresh Lakhani</i> , 3D00-130 LOWER TRIBUNAL NO. 96-21267; (3RD DIST FLA. 2001)	15
<i>In Metropolitan Dade County v. Martinsen</i> , 736 So. 2d 794, 795 (Fla. 3d DCA 1999)	16

Hanono v. Murphy, 723 So. 2d 892, 895 (Fla. 3d DCA 1998) (citing Carter v. Carter, 88 So. 2d 153, 157 (Fla. 1956)	16
<i>Liteky v. U.S.</i> , 114 S.Ct. 1147, 1162 (1994)	22
<i>Liljeberg v. Health Services Acquisition Corp.</i> , 486 U.S. 847 (1988)	22
<i>Levine v. United States</i> , 362 U.S. 610 (1960)	22
<i>United States v. Sciuto</i> , 521 F.2d 842, 845 (7th Cir. 1996)	23
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 335 (1976)	23
<i>State ex rel. Brown v. Dewell</i> , 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938)	23
<i>Armstrong v. Manzo</i> , 380 U.S. 545, 552 (1965)	23, 29
<i>Garraghty v. Va. Dep't of Corr.</i> , 52 F.3d 1274, 1282 (4th Cir. 1995)	23, 29
<i>Hayslip v. Douglas</i> , 400 So. 2d 553 (Fla. 4th DCA 1981)	23
<i>State v. Livingston</i> , 441 So. 2d 1083, 1086 (Fla. 1983)	24, 28
<i>Chastine v. Broome</i> , 629 So. 2d 293, 294 (Fla. 4th DCA 1993)	24, 28
<i>Suarez v. Dugger</i> , 527 So. 2d 191, 192 (Fla. 1988).	24
<i>Holland v. State</i> , 503 So. 2d 1354 (Fla. 1987)	24
<i>Easter v. Endell</i> , 37 F.3d 1343 (8th Cir. 1994)	24
<i>Carey v. Piphus</i> , 435 U.S. 247, 262 (1978)	24, 25
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 344 (1976)	25

<i>Joint Anti-Fascist Committee v. McGrath</i> , 341 U.S. 123, 172, (1951)	25
<i>Marshall v. Jerrico, Inc.</i> , 446 U.S. 238, 242 (1980).	25
<i>Crosby v. State</i> , 97 So.2d 181 (Fla. 1957)	26
<i>State ex rel. Davis v. Parks</i> , 141 Fla. 516, 194 So. 613 (1939)	26
<i>Dickenson v. Parks</i> 104 Fla. 577, 140 So. 459 (1932)	26, 27
<i>State ex rel. Mickle v. Rowe</i> , 100 Fla. 1382, 131 So. 3331 (1930).	26, 28
<i>State ex rel. Aguiar v. Chappell</i> 344 So.2d 925 (Fla. 3d DCA 1977).	27
<i>Ungar v. Sarafite</i> , 376 U.S. 575, 588 (1964)	27
<i>In re Murchison</i> , 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955)	27, 28
<i>Taylor v. Hayes</i> , 418 U.S. 488, 501 (1974)	27
<i>Smith v. Santa Rosa Island Authority</i> , 729 So. 2d 944, 946 (Fla. 1st DCA 1998)	28
<i>Partin v Solange et al</i> , 2015 WL 2089081 (Fla.App. 4 Dist., 2015)	28
<i>Johnson v. Mississippi</i> , 403 U.S. 212, 216 (1971)	29
<i>Peters v. Kiff</i> , 407, U.S. 493, 502 (1972)	29
<i>Kilbourn v. Thompson</i> , 103 U.S. 168 (1881)	29
<i>Pennoyer v. Neff</i> (1877) 95 US 714	30
<i>Windsor v. McVeigh</i> (1876) 93 US 274	30

<i>Lubben v. Selective Service System Local Bd. No. 27</i> , 453 F.2d 645 (1st Cir. 1972)	30
<i>Kalb v. Feuerstein</i> (1940) 308 US 433	30
<i>Valley v. Northern Fire & Marine Ins. Co.</i> , 254 U.S. 348, (1920)	30
<i>Rook v. Rook</i> , 353 S.E. 2d 756 (Va. 1987).	31
<i>Long v. Shorebank Development Corp.</i> , 182 F.3d 548 (C.A. 7 Ill. 1999)	31

AUTHORITIES	
Fla. R. Jud. Admin. 2.330	2, 22
Fla. Stat. §§ 38.02, 38.10	2, 21, 22
Fla. Code Jud. Conduct, Canon 3-B (7).	2
Florida Rule of Appellate procedure 9.100(h)	5, 6
Klu Klux Klan Act, 42 U.S.C. § 1983	10, 17, 18
Florida Bar Rule 4-8.3	15
Americans with Disabilities Act (“ADA”)	10, 17
42 U.S.C. 12101	10, 17
18 U.S.C. 241, 242	17, 18, 19
U.S. Constit. Amend I, V, VI, VII, and XIV.	17, 18