

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008,  
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

/

Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips, Should Apply to:

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

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**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR  
IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L.  
PHILLIPS**

COMES NOW Eliot Bernstein (“Eliot” or “Petitioner”) and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Judge John L. Phillips, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.**

1. Judge John Phillips is a circuit judge in the 15th Judicial Circuit Probate Division and therefore this rule applies.

**Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.**

2. Petitioner, a party to the case moves for mandatory disqualification and to otherwise disqualify trial Judge Phillips provided by rules, statute and by the Code of Judicial Conduct.
3. Judge Phillips is alleged to have violated Statutes and Court and Judicial Rules related to, including but not limited to;
  - a. Fraud on the Court and by the Court – This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and other relief as is just and proper;
  - b. Continued Fraud in the Court;
  - c. Continued Fraud by the Court;
  - d. Continued Obstruction of Justice through Denial of Due Process;
  - e. Aiding and Abetting;
  - f. Violations of Probate Statutes and Rules ;
  - g. Violations of Judicial Cannons - Judge Phillips has violated the following Judicial Canons, including but not limited to:

**Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary**

4. Judge Phillips has failed to Uphold the Integrity and Independence of the Judiciary as further set forth herein.

**Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities**

5. Judge Phillips express and direct conduct, statement and activities in the case have created the Appearance of Impropriety in violation of this Canon as set further set forth herein.

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

6. Judge Phillips was required to disqualify as it has already been alleged by Petitioner and others that the transfer of the cases to his Court was improperly interfered with post recusal by the former Judge Martin Colin as further set forth herein and set forth in the All Writs Petition filed with the Florida Supreme Court in these cases and then Transferred to the 4th DCA.

**(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.**

7. Judge Phillips has not maintained professional competence in hearing the Estate and Trust matters of Simon and Shirley Bernstein as further set forth herein.

**D. Disciplinary Responsibilities.**

**(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.**

8. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another judge, Martin Colin, has committed a violation of the Judicial Cannons and has failed to take appropriate action in regards to the fraud in and on his court that has already been

proven, committed by Fiduciaries and Attorneys at Law involved in these matters, which has material impact on these matters before Judge Phillips now. Further, Judge Phillips ability to hear the case forward is now precluded for all these reasons and due to improper transfer of the case post recusal by Judge Colin through interference in the transfer process as petitioned in the All Writs Petition pending before the Florida Supreme Court.

**(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.**

9. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another lawyer, Alan B. Rose, Esq. has committed a violation of the Rules Regulating the Florida Bar and has failed to take appropriate action. Judge Phillips was made aware in hearings and in the case pleadings that another Attorney at Law and new Personal Representative of the Estate of Simon Bernstein made pleadings to the Court that Ted Bernstein, counseled by Alan B. Rose, Esq. is acting as a fiduciary when he is not qualified under the terms of the trust he is operating under. The terms of the trust preclude a successor that is related to the issuer of the trust, Simon Bernstein and is also considered predeceased in the dispositive documents for all purposes of the trust and dispositions made thereunder, yet despite knowing this, Alan B. Rose, Esq. continues to file pleadings on behalf of a client he knows is not valid and Judge Phillips refuses to address the issue of Alan Rose's client's validity as Trustee first and foremost. Despite this claim coming from a Florida Bar attorney, Judge Phillips has chosen to allow Rose and Ted Bernstein to continue to plead fraudulently to the Court without first determining the veracity of O'Connell's claims.

10. That Judge Phillips has information that Alan B. Rose, Esq. showing a substantial likelihood that he is acting improperly in violation of the Rules Regulating the Florida Bar with his client Ted Bernstein in an Illinois District Court case, acting in conflict and with adverse interest to parties in these matters and where this information of the improper conduct was identified by Attorney at Law Peter Feaman in a letter to the PR O'Connell and submitted to the Colin Court by Eliot Bernstein. Yet, without first determining these matters first Judge Phillips has ignored this information and moved forward with Alan B. Rose and Ted Bernstein as fiduciaries and counsel without questioning the merits of the claims by licensed Florida Bar members O'Connell or Feaman.

#### **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:**

11. Judge Phillips impartiality is reasonably questioned as set forth herein.

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

12. One of the facts concerning the proceeding and contained in an All Writs Petition filed with the Florida Supreme Court and then transferred to the 4th DCA, is if Judge Martin Colin improperly steered the case POST recusal by Judge Shopping the Case and interfering with the transfer first to Judge Coates (who Sua Sponte recused after admitting conflict that should have been cleared prior to even taking the case as his former law firm is a Counter Defendant in these matters and Judge Coates had an office as a Partner in the Proskauer Rose law firm in the same Boca Raton, Fl location where fraud by his former law firm occurred against Petitioner) and with the intended

ultimate steer to Judge Phillips after reasonably knowing Coates would either be disqualified by parties involved or recuse voluntarily. Therefore, it will be instrumental for Petitioner to receive the Court files regarding the matters as requested in the All Writs to then question both Coates and Phillips about these disputed evidentiary facts regarding their interactions with Colin prior to transfer.

13. Until Phillips knew what the decision from the Florida Supreme Court would be regarding the voiding of the transfer due to the factual interference by Colin in moving the case as a necessary and material fact witness who should have been Disqualified, Judge Phillips only action as a knowing material and fact witness to the events surrounding the improper transfer was to wait the Florida Supreme Court Ruling.

14. Yet, without regard to the All Writs pending and the answer to the improper transfer resolved, he began to deliberate on the matters, acting as he claimed in hearings to be “stupid.” In fact, if it is found that the transfer was improper, despite if he was knowledgeable or not of the impropriety by Colin or involved in such act, he would still have had to disqualify because it would lead to an inescapable APPEARANCE OF IMPROPRIETY that could only be resolved by his becoming a witness and being questioned as such since due to the reasonable appearance and chance that the improper transfer by Colin to the North Branch was with criminal intent, Phillips certainly will be a suspect in criminal complaints filed against Colin and others.

15. Judge Phillips has expressed personal bias for a party to the proceeding in professing his love for Judge Martin Colin who is alleged to have participated in a fraud in and on the court when he stated on the record:

THE COURT: Okay. Great. This is the way  
15 I intend to proceed -- I love Marty Colin.  
16 This guy is a judge that's been around a long

17 time. I know him. He's an entirely different  
18 guy than me.

16. Judge Phillips professed "love" for Judge Martin Colin on the Record who is a necessary and material fact witness before the Court creates substantial bias, prejudice and reasonable fear that Petitioner can not get a fair trial before Judge Phillips as further set forth herein and Judge Phillips must now be mandatorily disqualified.
17. The bias, prejudice, appearance of impropriety and reasonable fear that Petitioner can not receive a fair trial before Judge Phillips is particularly egregious in light of the fact that Judge Phillips never even permitted Petitioner to be heard about this pending Petition for All Writs and Stay and Injunctive relief despite 2 assurances at the prior conference that this would occur and further egregious as the Record shows each time Petitioner did attempt to be heard he was cut-off by Judge Phillips without being fully or fairly heard.
18. Judge Phillips also spoke to his personal knowledge of the attorneys at law involved and how he knew them well and did not know Petitioner Eliot Bernstein and this also seemed prejudicial, since attorneys at law in the cases have already committed fraudulent acts, including fraud on the court.

**(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;**

19. Judge Phillips is a material witness in the proceeding as it is already alleged that he was a participant in the improper steering of the case, knowingly or unknowingly his involvement must

be questioned to determine if Ex Parte conversations took place with Judge Colin prior to the transfer as further defined herein.

**Rule 2.330 (c) Motion.**  
**A motion to disqualify shall:**  
**(1) be in writing.**

20. This Motion is in writing.

**Rule 2.330 (c) Motion**  
**(2) allege specifically the facts and reasons upon which the**  
**movant relies as the grounds for disqualification.**

21. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

**Rule 2.330 (c) Motion**  
**(3) be sworn to by the party by signing the motion under oath or**  
**by a separate affidavit.**

22. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

**Rule 2.330 (c) Motion**  
**(4) include the dates of all previously granted motions to**  
**disqualify filed under this rule in the case and the dates of the**  
**orders granting those motions.**

23. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

**Rule 2.330 (c) Motion**  
**(4) The attorney for the party shall also separately certify that**  
**the motion and the client's statements are made in good faith. In**  
**addition to filing with the clerk, the movant shall immediately**  
**serve a copy of the motion on the subject judge as set forth in**  
**Florida Rule of Civil Procedure 1.080.**

24. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se Petitioner has certified that the motion and the statements made herein are made in good faith. That Service is proper to Judge Phillips under Rule 1.080.

**Rule 2.330 (d) Grounds.**

**A motion to disqualify shall show:**

**(1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.**

25. That Petitioner asserts as set out below and further herein that he will not and has not already received a fair trial or hearing and that Judge Phillips because of the following specifically described prejudices and biases under Rule 2.330 (d) should be mandatorily disqualified for the reasons that follow:

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office  
Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

**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:**

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

**(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;**

**CANON 3B(1) - ...A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

26. That it is is alleged in the All Writ Petition in these matters currently before the Supreme Court of Florida that Judge Coates was never the intended party Judge Colin interfered post recusal to

steer the case to, allegedly knowing of Conflict with Coates due to his being a former Proskauer Rose partner and that Proskauer was a counter defendant in these matters and knowing the case would be moved to a new Judge who was unknown at the time. After Coates first hearing where he Sua Sponte recused himself on record, the case was transferred to Judge Phillips.

27. Where it is alleged based on information and belief that the interference by Colin was to move the case to Phillips, despite whether it is true, it can only be proven after Petitioner has access to the Court record from Colin, Coates and Phillips and Petitioner has the right to question each party under deposition or otherwise to ascertain their involvement, Judge Phillips new becomes a material and fact witness to a major allegation of fraud on the court in the transfer by Colin and to answer if he had any Ex Parte communications with Judge Coates or Judges Colin or any other party prior to taking the cases that Colin is alleged to have improperly steered to the North District.

In the fact that this question can be reasonably asked of Judge Phillips due to the improper post recusal steering of the case by Colin, Judge Phillips should on his own initiative have then disqualified himself as a witness, allowed a completely independent judge to be picked properly and thus from the start Judge Phillips could not hear the matters further without first addressing this most serious issue of the transfer.

28. That even if the Supreme Court of Florida or Appellate Court were to now attempt to permit such transfer, the fact that Phillips acted first, prior to any rulings, remains cause for his disqualification.

**CANON 3E(1) - ...A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.**

29. Judge Phillips must mandatorily be disqualified as his impartiality is reasonably questioned on multiple grounds as further set forth herein including but not limited to his “pre-judging” and “pre-determination” in the case that he would not do anything to find Judge Colin “wrong” prior to Petitioner even being heard on Sept. 15, 2015, further based upon Judge Phillips professed “love” for Judge Colin who is a necessary and material fact witness, for his due process violations in Ordering a Trial in Shirley Bernstein’s Estate when the Conference was only “Noticed” for Simon Bernstein’s Estate and for other grounds as set forth herein.

30. Judge Phillips impartiality is challenged as despite now being a material and fact witness in the matter, he did not clarify or rectify this matter first before determining if he could adjudicate, or allow the Florida Supreme Court to determine if the Colin transfer was improper, before taking ANY judicial action in the matters.

31. Instead, Judge John L. Phillips began acting in the matters and in fact held two hearings, including issuing an Order on Sept. 24, 2015 thereby scheduling a Trial date of December 15, 2015 on a claim for construction filed by Attorney Alan B. Rose, Esq. on behalf of an alleged trustee Ted Bernstein and further enforcing a prior Stay Order of Judge Martin Colin who was petitioned for mandatory Disqualification by Eliot I. Bernstein as a material and fact witness to fraud in the Court, upon the Court and potentially by the Court and further that this Order by Judge John L. Phillips was issued despite the pendency of a Petition for All Writs at the Supreme Court of Florida seeking Mandamus and Prohibition in relation to the conduct of Judge Martin Colin and further seeking injunctive relief and other redress.<sup>1</sup>

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<sup>1</sup> See Petition for All Writs by Eliot I. Bernstein @ See All Writ Filed with the Florida Supreme Court @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20DisqualificationECF%20STAMPED%20COPY.pdf>

32. Judge John L. Phillips, both by express words, conduct and by omission has committed acts that mandate Disqualification since the judge's impartiality might reasonably be questioned in this proceeding as defined herein.

**CANON 3E(1)(a) - ...the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.**

33. Judge John L. Phillips is further mandated to be Disqualified again both by express words, conduct and by omissions demonstrating bias and prejudice against Eliot I. Bernstein, a party in this proceeding as defined herein.

**CANON 3E(1)(d)(iv) - ...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;**

34. As already stated above Judge Phillips has knowledge that he is likely to be a material and fact witness in the proceedings.

### **OTHER ISSUES AND FACTS REQUIRING DISQUALIFICATION UNDER CANON 3**

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and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin>

and

Colin Order Denying Disqualification @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

and

See Colin Sua Sponte Recusals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

**AND OTHER JUDICIAL CANONS AND LAWS AND US AND STATE CONSTITUTION**

35. For the reasons set forth herein, Florida Probate Judge John L. Phillips must be mandatorily disqualified from this case and all related cases under the US and State Constitution of Florida, Florida Statutes and Rules, Florida Judicial Canons, applicable Florida laws and for ongoing and continuing fraud upon the Court and fraud by the Court.
36. This written, signed motion for mandatory Disqualification is legally sufficient and timely.
37. It was just discovered by myself and my wife Candice Bernstein yesterday, Thursday Dec. 3, 2015, through a series of phone calls by my wife and myself to the Court of Judge John Phillips and related referred calls to Florida Court Administrative offices that I am not eligible to receive “Original” Certified ( “Trial Admissible” ) Transcripts of proceedings in this case despite our indigency “in pauperis” status which has been forced upon us by a series of continuing frauds upon this Court and by this Court.
38. It was further discovered yesterday, Dec. 3, 2015 through these calls that an “Original” Certified Transcript of proceedings ( “Trial Admissible” ) shall be Signed by the involved Stenographer.
39. It was also discovered just yesterday, Dec. 3, 2015, through these calls that there apparently is no Audio Recordings by the Court in this case for appearances before current Judge John Phillips who must now be mandatorily Disqualified.
40. This recent discovery occurred just yesterday, Dec. 3, 2015 despite diligent efforts by myself and wife to ascertain these facts on September 16, 2015 which was the day after a “Case-Management Conference” held in the North Branch by Judge John L. Phillips who must now be mandatorily Disqualified.

41. On Sept. 16, 2015, my wife Candice Bernstein and I called The Honorable John L. Phillips, Judicial Assistant: Alejandra Stelicha or “Alex” at (561) 624-6593 and left a message on her voicemail that I was calling to ask her a question regarding a hearing that had occurred the day before on Sept. 15, 2015 for case # 502012CP004391 and for her to call be back as soon as possible.
42. At no time since that diligent call on Sept. 16, 2015, has the Judicial Assistant to Judge John L. Phillips or any other Court member of the North Branch returned our call creating further Bias and Prejudice supporting the instant motion for mandatory Disqualification by Judge John L. Phillips at this time since Petitioner can reasonably fear and believe that Judge Phillips has pre-determined all matters against Petitioner and not even being responsive to basic calls on matters of procedure.
43. Still, it was also just discovered and confirmed just yesterday, Thursday Dec. 3, 2015 in a conference call with Florida Licensed attorney Peter Feaman, representing the “Creditor” William Stansbury herein, that Florida does in fact have statutory and Rules which permit a Trial Judge such as Judge John L. Phillips to void and vacate Judgments, Orders and Decrees of other Judges such as those of Necessary and Material Fact Witness Judge Martin Colin which is precisely the relief that I Petitioned the Florida Supreme Court to issue on July 30, 2015.
44. “But for” the ongoing and continuing frauds upon the Court and by the Court and illegal, tortious, extortive and criminal actions against myself and family and in the Estates and Trusts of Simon and Shirley Bernstein, I would have adequate funds and resources to obtain proper Florida licensed counsel throughout all of these proceedings herein and would not be in indigent “in pauperis” status at this time.

45. I have Petitioned Florida Judge Martin Colin on multiple occasions who is and has been a Necessary and Material fact witness since May 6, 2013 for Emergency Relief and to halt and stay these proceedings, address the frauds upon the Court as well as for financial relief in the Estates and Trust cases to have adequate funds to retain counsel of my own choosing for myself and minor children and provide for our family home which was the intent and purpose of significant Estate and Trust planning and business actions by Simon and Shirley Bernstein.

46. These frauds include but are not limited to direct frauds upon the Court by the filing of false and fraudulent instruments in the Estate of Shirley Bernstein such as 6 illegally and criminally fraudulent Notaries placed on Estate documents by a Paralegal Notary Kimberly Moran who worked for Tescher and Spallina and other documents such as an April 9, 2012 document “Witnessed” by Robert Spallina and allegedly signed by Simon Bernstein relating to the Estate of Shirley Bernstein but not filed with the Court until Oct. 2012 post-mortem and after his death.

47. A close and careful review of the Transcript of Proceedings from Sept. 13, 2013 before Judge Martin Colin who is a Necessary and Material fact witness which came up after Kimberly Moran Admitted to Florida Governor’s Office the fraudulent Notaries filed in Judge Colin’s Court will show that, despite Judge Colin saying on the Record he had sufficient information to read Miranda Warnings to Tescher & Spallina, Judge Colin raises but “skips by” who actually filed these documents in his Court and how these documents were filed in his Court leaving these as open questions of material fact necessary to determine the full frauds herein and for the integrity of the court and court system itself.

48. As set forth in a further mandatory Disqualification filed with Judge Colin, instead of issuing a Show Cause Order to Tescher & Spallina as Licensed Florida attorneys at that time in Sept. 2013

and issuing Emergency stay relief as I repeatedly petitioned and instead of calling Kimberly Moran to the stand at subsequent hearings in October of 2013, Judge Colin proceeded in the case for another 19 plus months permitting Ted Bernstein to act as Trustee and Fiduciary despite the fact that Tescher & Spallina were involved with Ted Bernstein as business partners, were his counsel as alleged fiduciary and were the ones to fraudulently place Ted Bernstein into this position which was approved and upheld by Colin.

49. Still further, Judge Colin even goes further as to permit Ted Bernstein to sell off and dispose of substantial assets of the Shirley Estate and Trust and was proceeding to permit Ted Bernstein to sell off Simon's multi-million dollar home from the Simon Estate without ever holding a hearing to determine the construction and validity of the Shirley and Simon Bernstein Trusts and Wills nor the validity of Ted Bernstein as a Fiduciary and Trustee and in fact was proceeding to allow Ted to fraudulently sell this multi-million dollar home to an "undisclosed" buyer while falsely claiming this as an "arms length" transaction.

**Washington DC Public Integrity Unit Prosecution of NY Judge who was involved in the Florida Election Re-count of 2000; Bush v Gore**

50. Judicial fraud and bribery are serious crimes which fundamentally undermine the integrity of our system of justice and laws.

51. From the Dept. of Justice Website:

"FOR IMMEDIATE RELEASE

Thursday, August 27, 2009

**Former New York State Supreme Court Justice Thomas J. Spargo Convicted of Attempted Extortion and Bribery**

Former New York State Supreme Court Justice Thomas J. Spargo was convicted today by a federal jury in Albany, N.Y., of attempted extortion and soliciting a bribe.

Spargo, 66, was convicted following a three-day jury trial. Evidence introduced at trial showed that on Nov. 13, 2003, Spargo solicited a \$10,000 payment from an attorney with cases pending before him in Ulster County, while Spargo was serving as a state supreme court justice. The trial evidence showed that when the attorney declined to pay the money, Spargo increased the pressure by a second solicitation communicated through an associate. According to evidence presented at trial, on Dec. 19, 2003, Spargo directly told the attorney in a telephone conversation that he and another judge close to him had been assigned to handle cases in Ulster County, including the attorney's personal divorce case. According to the evidence at trial, the attorney felt that if he did not pay the money, both the cases handled by his law firm and his personal divorce proceeding would be in jeopardy.

"It is a sad day indeed when a judge breaks the laws that he is sworn to enforce," said Assistant Attorney General Lanny A. Breuer. "The Criminal Division's Public Integrity Section will continue in its singular mission to hold accountable wayward public officials who violate the law and the trust that has been placed in them."

"Judges are supposed to serve the people who elected them, not their own self-interests. What Mr. Spargo did is nothing more than old fashioned extortion," said FBI Special Agent in Charge John F. Pikus.

The maximum statutory penalty for the charge of soliciting a bribe is 10 years in prison and the maximum penalty for the charge of attempted extortion is 20 years. Spargo also faces a maximum fine of \$250,000 for each count on which he was convicted.

This case is being prosecuted by Senior Trial Attorney Richard C. Pilger and Trial Attorney M. Kendall Day of the Public Integrity Section, which is headed by Chief William M. Welch II. The case was investigated by the FBI's Albany Division."<sup>2</sup>

52. From the Troy Record,

"At the time, it was suggested that Spargo was seeking the funds to help defray his legal costs as he was battling the state Commission on Judicial Conduct. . . . . .

**Spargo traveled to Florida during the 2000 election vote recount on**

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<sup>2</sup> See,

<http://www.justice.gov/opa/pr/former-new-york-state-supreme-court-justice-thomas-j-spargo-convicted-attempted-extortion-and>

**behalf of George W. Bush and is considered an experienced election lawyer.** (emphasis added).

John F. Pikus, Special Agent in Charge of the FBI's Albany division, said in a statement that the case "should demonstrate that the FBI will pursue all allegations of judicial corruption vigorously, as public corruption violations are among the most serious of all criminal conduct and can tear at the fabric of a democratic society."<sup>3</sup>

53. As set out in the Petition for All Writs which also includes a request for a Stay and Injunctive Relief, Petitioner has reported criminal and fraudulent actions relevant herein to the US Dept of Justice and related federal and state authorities.

54. This includes conduct of now Chief Judge Jorge Labarga who, like Spargo, was also involved in the Florida Re-Count of 2000, Bush v. Gore, as a Circuit Judge and who was intimately involved with the original frauds upon the Florida courts in the underlying Proskauer Rose "Billing Lawsuit" related to the Iviewit Technologies including but not limited to orchestrated fraudulent actions by Labarga to deny counsel and resources for counsel to Petitioner Eliot Bernstein in 2003.

55. These actions and the Iviewit matters were brought up before Judge Colin in a May 6, 2013 Emergency Petition after further frauds upon the Court in Florida were discovered now in the Shirley Bernstein case and Simon Bernstein case.

56. Like Spargo, a formal complaint was made by Petitioner against Judge Jorge Labarga at the Florida State Judicial Qualifications Commission.

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<sup>3</sup> See,

<http://www.troyrecord.com/general-news/20081210/ex-judge-tom-spargo-indicted-by-feds-for-corruption>

57. Complaints against the involved licensed attorneys in the Proskauer Billing lawsuit heard by Labarga were filed in both the respective New York, Virginia and Florida State Bar Associations and - or appropriate State Attorney Discipline bodies.

58. Fraud by the Florida Bar in the handling of formal complaints was clearly present in the underlying Proskauer Rose Billing Lawsuit specifically involving Proskauer Rose Partner Chris Wheeler wherein the Florida Bar falsely and fraudulently determined that Proskauer was not responsible for Intellectual Property and Patent work at the USPTO despite the fact that the Florida Bar was clearly presented with a Private Placement Memorandum involving Wachovia on behalf of Iviewit that specifically referenced in the Private Placement that Proskauer Rose Partner Ken Rubenstein was Patent Counsel in the Iviewit matters and that Proskauer Partner Wheeler was listed as an Advisor to Iviewit on the Wachovia Private Placement.<sup>4</sup>

59. Upon information and belief, these fraudulent actions by Proskauer Rose and related parties in the fraudulent Wachovia Private Placement Memorandum constituted Securities Fraud in violation of SEC laws and rules.

60. Upon information and belief, attorneys Tescher and Spallina, centrally involved in the Simon and Shirley Bernstein Estates and Trusts herein have recently been charged and convicted in SEC violations and Insider Trading in another case where their roles as Fiduciaries were violated and where attorney Spallina pleaded guilty to a Felony and has now lost his Florida law license<sup>5</sup>.

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<sup>4</sup> See, Wachovia PPM

<http://www.iviewit.tv/CompanyDocs/Wachovia%20Private%20Placement%20Memorandum%20BOOKMARKED.pdf>;

Further, see Evidence provided to the Florida Bar.

<http://www.iviewit.tv/CompanyDocs/2003%2004%2030%20Bernstein%20response%20Florida%20Bar%20Wheeler%20BOOKMARKED.pdf>

<sup>5</sup> See, SEC Complaint and “SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant”

<http://www.sec.gov/news/pressrelease/2015-213.html>

61. This fraudulent determination by the Florida Bar was further fraudulently supported by Partner Jerald Beer of the Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell law firm during that time<sup>6</sup>.
62. The Ciklin law firm is now the current PR of the Simon Bernstein Estate brought in by Florida Licensed attorney Peter Feaman before Judge Martin Colin.
63. Upon information and belief, Florida Licensed attorney Peter Feaman, in addition to representing "Creditor" William Stansbury, is also Chief Counsel for the State Republican Party.
64. Upon information and belief, the Ciklin Managing Partner Alan Ciklin is the brother of the current Chief Judge Cory Ciklin of the 4th DCA who married a Paralegal to another Ciklin partner Martens and further that Ciklin and Labarga were both appointed to the 4th DCA at the same time by former Governor Crist<sup>7</sup>.
65. The Ciklin law firm has previously been publicly accused by a sitting Judge of maintaining 2 sets of "books" at the firm as follows:

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and Government Complaint @  
<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>  
and Consent Orders  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tesch er%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>  
and

Bernstein Emergency Petition before in Florida Probate May 2013 @  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>.

<sup>6</sup> See,  
<http://iviewit.tv/CompanyDocs/2004%2010%2022%20Florida%20Bar%20Response%20to%20Petition%20to%20Supreme%20Court.pdf>

<sup>7</sup> See, <http://www.palmbeachbar.org/judicial-profiles/2002/>; Further see  
<http://www.4dca.org/judges/ciklin.shtml>;  
See further;  
[http://weblogs.sun-sentinel.com/news/politics/palm/blog/2008/12/crist\\_puts\\_labarga\\_ciklin\\_on\\_4.html](http://weblogs.sun-sentinel.com/news/politics/palm/blog/2008/12/crist_puts_labarga_ciklin_on_4.html)

“Evidence obtained during the case provided an inside look into the inner workings of one of Palm Beach County's most influential real estate, land use and commercial litigation firms.

Chernow-Brown noted the evidence presented at trial showed the firm maintained at least two separate balance sheets, both dated Oct. 31, 2012. Accounts receivable listed on one were omitted on the other, Chernow-Brown wrote.

“Importantly, unbilled time, life insurance proceeds receivables and over \$1 million in cash value of life insurance policies were completely missing from both balance sheets,” Chernow-Brown wrote.”

She concluded the firm was obligated to keep books for all the property of the firm, under the firm's partnership agreement.”

66. The Judge further went on to note about the Ciklin firm:

“The evidence on this factual issue raises a real possibility of a charade being played out in order to manipulate a matter pending in the Family Division of this Court.”<sup>8</sup>

67. Nearly a year and a half ago in August 2014, “Creditor” Stansbury's attorney Peter Feaman went as far as demanding that the current PR Brian O'Connell of the Ciklin law firm in the Simon Bernstein case “pick up the baton” in the efforts to remove Ted Bernstein as Trustee noting both that not only have Accountings not been performed for the Trusts and Estates but also that Ted Bernstein was not a valid Trustee by the express terms of the Trust.<sup>9</sup>

68. This request by Feaman of Simon Bernstein PR O'Connell went as far as requesting that O'Connell file his own Petition to remove Ted Bernstein, yet, to this date nearly a year and a half later, Brian O'Connell of the Ciklin law firm has never done so despite the fact that Ted

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<sup>8</sup> See,  
<http://insurancenewsnet.com/oarticle/2014/09/19/Powerful-WPB-law-firm-ordered-to-pay-22-million-to-retired-partner-a-557684.html>.

<sup>9</sup> See,  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

Bernstein has been proven to be intimately involved and central to the actions of Tescher and Spallina where Trusts are lost, documents are lost and no proper accounting occurs.

**The Instant Case Before Judge John L. Phillips**

**Fundamental Denial of Due Process, Bias, Prejudice, Appearance of Impropriety, Reasonable Fear that a Fair Trial Can Not be Obtained, Competency of Judge to Act**

69. Upon information and belief, Judge John L. Phillips is a Palm Beach County Judge sitting in the North Branch acting as a Probate Judge herein.
70. As such, Judge John L. Phillips actually knows and should know he has an Oath to uphold the US Constitution and State Constitution of Florida.
71. As such, at all times relevant herein, Judge John L. Phillips actually knows and should know that fundamental US Constitutional Due Process requires fair Notice and an Opportunity to be Heard at a meaningful time and in a meaningful manner.
72. During the pendency of a Petition for All Writs filed by Petitioner Eliot I. Bernstein at the Florida Supreme Court including Writs of Prohibition and Mandamus with respect to Judge Martin Colin, current PR of the Simon Bernstein Estate Brian O'Connell of the Ciklin law firm brought into the Estate by Creditor Stansbury attorney Peter Feaman filed for a Status Conference after the case was transferred to Judge Phillips.
73. It is expressly noted that the re-filed Petition for All Writs with the Florida Supreme Court on June 30, 2015 expressly included a request for a Stay and Injunctive and other relief by the Florida Supreme Court further raising the novel and important Statewide issue of whether the Florida Courts themselves could be a proper forum consistent with due process to even hear the Bernstein matters herein for a variety of reasons including but not limited to current Chief Judge Labarga's involvement the frauds upon the Florida Courts in the Proskauer Billing lawsuit.

74. It was expressly noted that the Proskauer Rose firm had “billed” for Estate Planning work involving Simon Bernstein and Bernstein family matters.

75. A status conference was scheduled by the PR O’Connell firm and held before Judge John L. Phillips at the North Branch on July 30, 2015.

76. During this Status Conference, Petitioner Bernstein attempted to Object before Judge Phillips to raise the issues of the pending Petition for All Writs and related relief and Judge Phillips, upon information and belief being words heard by Petitioner, Judge Phillips indicated this Petition could be discussed at a Case Management Conference that was being scheduled.

77. Again on July 30, 2015 at the Status Conference, Judge Phillips indicated at or near the close the issue of the Petition for All Writs filed by Petitioner Eliot Bernstein would be addressed at the Case Management Conference.

78. Petitioner Bernstein was acting Pro Se and without Florida Licensed counsel at this time.

79. On several occasions during the pendency of the Petition for All Writs and at all relevant times herein, Petitioner Bernstein sought support from Creditor Stansbury and his licensed attorney Peter Feaman for his Petition for All Writs and other relief making similar requests of the PR Brian O’Connell at the Ciklin law firm.

80. Prior to a Case Management Conference held by Judge Phillips at the North Branch on Sept. 15, 2015, Petitioner Bernstein specifically sought determination from the PR O’Connell firm on the Plan and Scheduling of issues to be heard and to further avoid delay and cost having been rendered indigent status by the continuing frauds herein.

81. Judge Phillips had actual knowledge and knew and at all times should have known that the Case Management Conference was Noticed and Scheduled for the Simon Bernstein case, not the Shirley Bernstein or other related cases.

82. After close of business hours on the eve of the Case Management Conference scheduled with Judge Phillips for Sept. 15, 2015, Petitioner Bernstein received a Filing by attorney Alan Rose on behalf of Ted Bernstein, still acting as Trustee despite licensed attorney Peter Feaman urged PR O'Connell in August of 2014 to file his own Petition to remove Ted Bernstein including but not limited to on grounds of the express language which Disqualified Ted and failures to account and waste of assets in the case as neither PR O'Connell nor Creditor attorney Peter Feaman took subsequent action to Remove Ted Bernstein despite the fact that Judge Colin who had denied Creditor Stansbury standing had now been suspiciously "Recused" within 24 hours of denying a subsequent mandatory Disqualification as a necessary and material fact witness to the fraud upon the Court by Ted's attorneys Tescher and Spallina before Colin while also acting as Fiduciaries.

83. Creditor Stansbury attorney had previously written to Alan Rose about his own "conflicts of interest" in representing Ted Bernstein yet had taken no further action by the time the Case Management Conference was held by Judge Phillips on Sept. 15, 2015.

**Judge Phillips Must be Mandatorily Disqualified for "Pre-Judging" the Case and for Bias, Prejudice and Reasonable Fear of Inability to Obtain a Fair Trial and Due Process**

84. While never permitting Petitioner Bernstein to be Heard on his Petition for All Writs at the Case Management Conference on Sept. 15, 2015 despite 2 specific representations to the contrary on July 30, 2015 by Judge Phillips, Judge Phillips fundamentally prejudiced the case and created the reasonable fear that Petitioner would never receive fair trial right from the outset of the Case

Management Conference by claiming: “ I'm not here to question some other judge's order. You won't have me saying he was wrong. “

85. While this statement was in response to Creditor attorney Feaman questioning the Transfer to the North Branch, Judge Phillips determined from the outset and pre-judged Petitioner Bernstein's Petition for All Writs which sought to Void Judge Colin's Orders and declared him a necessary and material fact witness.

86. Judge Phillips must be mandatorily disqualified on these grounds alone.

87. Yet Judge Phillips pre-judging, bias, prejudice and knowing mis-statement of law and procedure in Florida went further saying

“ If somebody made a mistake and you all think there's relief that should be granted to correct his mistake that's what the 4th is for. Please have a seat.”

88. It was only confirmed and discovered by Petitioner on Dec. 3, 2015 by Licensed attorney Peter Feaman that, contrary to Judge Phillips gross misstatement, Florida has Rule 1.540 that permits a Trial Judge to in fact void such orders.<sup>10</sup>

89. Further, the Florida Supreme Court has confirmed that Trial Courts and Judges in Florida have inherent power and authority to correct frauds in the court and preserve the integrity of proceedings.<sup>11</sup> Judge Phillips thus not only falsely represented his powers to a Pro Se party but could have simply brought up in Case Management if he wanted Eliot Bernstein to file a separate Stay despite the Stay request and Writs pending that Phillips said would be discussed.

90. This Florida Supreme Court case makes it clear that “Finally, allegations of an attorney's filing of fraudulent documents in connection with his or her client's lawsuit would warrant a referral of

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<sup>10</sup> See, [http://phonl.com/fl\\_law/rules/frcp/frcp1540.htm](http://phonl.com/fl_law/rules/frcp/frcp1540.htm)

<sup>11</sup> See, :Pino v the Bank of New York, Feb. 2013,  
<http://www.floridasupremecourt.org/decisions/2013/sc11-697.pdf>

that attorney to The Florida Bar for a possible violation of the Code of Professional Responsibility. See *id.* at 954 & n.2.” (emphasis added).<sup>12</sup>

91. The failure to take appropriate action as required by the Judicial Canons and Rules against attorneys Tescher & Spallina by Judge Colin is precisely one of the grounds upon why his Orders should be voided and yet Judge Phillips made it crystal clear from the outset he would be taking no such action with Judge Colin and later goes on to compound the bias, prejudice and reasonable fear of not getting a fair trial when he professes his “love” for Judge Colin who is a material and fact witness as set forth above who should have his Orders voided.
92. The remainder of the Transcript makes it clear how Judge Phillips prejudged and pre-determined any claims of Petitioner Bernstein by cutting off and denying any fair opportunity to be heard on any issue.
93. This is further compounded and egregious where Pro se Petitioner Bernstein is having to be the on to try and step up and notify Judge Phillips that even licensed attorney PR O’Connell deemed Ted Bernstein to be invalid yet O’Connell failed to do so even though it was O’Connell that brought the matter on to be heard before Phillips in the first instance.
94. Instead, Judge Phillips commits even further egregious and knowing Due process violations by permitting Alan Rose who has been claimed by Feaman to have conflicts of interest (not raised before Phillips but raised during Colin days) and claimed by both Feaman and O’Connell to be representing a Trustee Ted Bernstein who isn’t valid and yet Phillips denies Eliot Bernstein to be heard there and instead allows Alan Rose to co-opt O’Connell’s Management Conference to Schedule a Trial in Shirley Bernstein’s case which was never Noticed to be Heard in the first

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<sup>12</sup> See, <http://www.floridasupremecourt.org/decisions/2013/sc11-697.pdf>

instance denying due process both on the count of improper Notice and on Opportunity to be heard.

95. Judge Phillips clearly knew he was in the Simon Bernstein case and Petitioner Bernstein and Attorney at Law Peter Feaman attempted to clarify the matter and thus Phillips knew what he was doing when he improperly noticed a Trial to be scheduled in Shirley Bernstein when the case was noticed for Simon Bernstein and thus Judge Phillips failure to sua sponte correct the matter on his own motion is further proof of bias, prejudice and reasonable fear of the inability to obtain a fair trial all of which mandates that Judge Phillips must be mandatorily disqualified.

96. The net effect of the due process violations and knowingly improper conduct by Judge Phillips is to again Deny Petitioner Eliot Bernstein fair opportunity to be heard and have Trial Counsel similar to the fraud upon the Court committed by Labarga in the Proskauer Billing lawsuit where it is later shown to Judge Colin that Ted Bernstein's attorneys Tescher & Spallina involved in the fraud are intimately involved with the Proskauer firm in the Boca Raton, Florida community.

97. It is only recently discovered this week on or about Dec. 1, 2015 that the 4th DCA denied Petitioner's Writs as "moot" when no possible legal determination could be on "mootness" for the Mandamus petition and voiding of Judge Colin's Orders and determination of Colin as a necessary and material fact witness nor could the application for a Stay and Injunctive relief be determined as "moot" bringing the case back to that portion of the Writ and Petition that was filed in the Florida Supreme Court as to the novel and important statewide issue of whether the State of Florida and Florida Courts can provide due process in the Eliot Bernstein family matters..

98. Yet, despite the fact that the 4th DCA just ruled and a reasonable argument could be made that not only should Judge Colin's Order denying Creditor Stansbury out of the Shirley and Simon Estates and Trusts be "re-heard" filed by Feaman, Feaman could have reasonably determined that until the 4th DCA spoke on Petitioner Bernstein's Petitions, there was a reasonable basis to hold off before Phillips on a motion to Stay and Disqualify as unless someone had improper "inside" knowledge of what the 4th DCA was going to do, the 4th DCA could have issued a Show Cause Order for the Writs to be responded to thereby creating the Stay of the lower court rendering action before Phillips unnecessary and moot yet it was just discovered yesterday Dec. 3rd, 2015 that Feaman will not take any such action before Phillips leaving Eliot Bernstein standing alone pro se at an improperly scheduled trial before Phillips on Dec. 15th, 2015 even though Feaman's client Creditor Stansbury has sued Ted Bernstein and Tescher and Spallina in their fiduciary capacities both in the Civil court of Judge Kelley and the Estate cases all further calling into question the integrity of proceedings before Phillips as a further basis to disqualify.

99. The Petition for All Writs brings up very serious actions in the case including but not limited to proven fraud and fraud on the court, beneficiaries, including allegations of fraud against the original Personal Representatives and Trustees, the attorneys Tescher & Spallina<sup>13</sup>, who were directly involved in the drafting of specific Trust and Estate documents directly at issue before Judge Phillips.

100. The Petition for All Writs further brings up that, not only has one of the direct employees who was under the direction, control and management of Attorneys Tescher & Spallina, a

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<sup>13</sup> Tescher and Spallina have recently been charged by the Securities & Exchange Commission for charges of Insider Trading. See

<http://www.wsj.com/articles/sec-charges-five-with-insider-trading-over-2011-gilead-deal-1443460420>  
and

<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

Paralegal-Notary named Kimberly Moran, Admitted to Criminal charges in her acts of forging and fraud in preparation of FIVE Notarizations on dispositive documents of likely beneficiaries and a sixth POST MORTEM forgery for Simon Bernstein in the case in documents the law firm of Tescher & Spallina, P.A. **then fraudulently deposited** with the Palm Beach Court of Martin Colin and then later Attorney Spallina admitted to Palm Beach County Sheriff officers that he and his partner, Donald Tescher. Esq., further fraudulently altered a Shirley Bernstein trust document but also that Palm Beach County Probate Court Judge Martin Colin was a direct material and fact Witness to the fraud in and and upon the Court and thus was mandated to Disqualify himself from the proceedings from the start and void his Orders, not simply issue a Recusal.

101. Colin's Recusal came a day after denying his own Disqualification Motion filed by Eliot Bernstein seeking to strike and void entirely all Colin's Orders for the proven and multiple Frauds on the Court that have occurred and reset the case and replace all parties involved in the Frauds, including but not limited to, counsel, courts officials and court appointed fiduciaries involved or potentially involved with the prior frauds and frauds on the court in the cases. As Colin interfered and steered the transfer of the cases to the North District and ultimately Phillips after his recusal, this would be cause to reset the whole jurisdiction and transfer.

102. In fact, the precise circumstances of the "Recusal" and Transfer of this case leading to Judge John L. Phillips presiding is brought up and pending before the Florida Supreme Court presently and has been pending at all times Judge John L. Phillips has presided in this case.

103. In fact, proceeding without determination of the transfer issues raised in the All Writ Petition further denies due process, allegedly continues a fraud on the court and continues to causes waste, fraud and abuse for all parties and for all of the following reasons:

a. As noted in the Petition for All Wrts, not only is Mandamus sought to force Judge Colin to issue a mandatory Disqualification in this case, not a Recusal, but further seeks Prohibition as Judge Colin, upon receiving the last motion for Disqualification on or about May 14, 2015, initially Denies the motion as insufficient and then, within 24 hours or less Sua Sponte “recuses” himself and afterwards proceeds to have “conversations” with other Judges in the Palm Beach Court Southern District interfering with the transfer process, in a case where Colin was already Petitioned to be a Material Fact Witness in the Fraud upon his Court. Colin’s Order and actions steer the case to the North District where the cases first ended up before one Judge Coates who ultimately at the first hearing, after denying any conflict with Petitioner, he suddenly Sua Sponte recused himself for multiple conflicts that should have precluded his involvement and mandated his mandatory disqualification before a hearing was even scheduled (wasting more time and costs of 5-10 attorneys who attended) and sending the cases before Judge John L. Phillips.

b. That Eliot Petitioned in the All Writ that Colin in fact allegedly knowingly transferred the case to Coates to give Proskauer Rose the confidential court files for their use in the matters they are involved in and giving them unfair advantage and knowing after gaining access to the files Coates would be forced out by his conflicts with Eliot and Iviewit. It should be noted that North District is the furthest courthouse approx 20-30

miles traveled for all parties involved, including 5-10 attorneys per hearing, fueling even more estate waste fraud and abuse as those attorney all have offices minutes away from the Palm Beach Main Courthouse.

i. Judge Coates also is alleged to maintain an interest in the Iviewit Companies as Proskauer Rose the law firm was a direct shareholder in the companies involved and where these companies and the Intellectual Properties which are suspended at the USPTO and are still under ongoing investigations and legal actions that directly implicate Proskauer and its partners, associates, of counsel et al.

ii. Ironically enough, the first Judge where this case was steered by Judge Martin Colin's direct involvement while he was knowingly claimed to be a material and fact witness happens to be Judge Coates who just happened to not only turn out to formerly be a Partner at Proskauer Rose but who was reminded at the only appearance of this case in his Court in July of 2015 that Judge Coates was personally known to Eliot I. Bernstein as having worked at a Proskauer office right "across the hall" from their client Eliot I. Bernstein and the Iviewit companies in Boca Raton, Florida where some of the original Thefts of the Technology rights and inventions were occurring at the time and that his former firm Proskauer was not only conflicted in these matters but also was a Counter Defendant in the very matters before him that he was adjudicating upon.

iii. Judge Coates ultimately recused himself on his own initiative from all of the cases herein although one case out of six, appears to have mistakenly not had a Recusal Order issued presently.

iv. That it is alleged that the intended party that Colin may have intended to steer the cases to all along was Judge Phillips, as it is suspected Colin knew that Judge Coates was a former Proskauer Rose partner and that Eliot had included Proskauer in the Estate Cases before him now as Counter Defendants in certain actions in these matters and that Eliot had sued Proskauer previously and was pursuing them currently in other federal civil and criminal actions ongoing.

c. Further, the Petition for All Writs brings up whether the State of Florida Courts, presently headed by Chief Judge Jorge Labarga, can even be a fair and proper jurisdiction to hear any of these matters for a variety of reasons including but not limited to Judge Labarga's direct involvement in a prior case involving False Billing and Fraudulent Patent Applications filed in part by the international law firm of Proskauer Rose (where Judge Coates worked) involving Eliot I. Bernstein and his father Simon's Intellectual Property rights valued by Leading Experts in the digital video and imaging fields as worth Billions.

d. Moreover, the Petition for All Writs brings up for review and petitions and pleads making it clear that Eliot I. Bernstein seeks as relief the Vacating and Voiding of All Orders of Judge Martin Colin certainly at least from the time when he became a material and fact witness to the fraudulent dispositive documents being filed by Officers

of the Court from the Tescher & Spallina law firm in Colin's court that were used to illegally seize dominion and control of the Estates and Trusts fiduciary capacities, illegally alter beneficiaries and loot the Estates and Trusts of Simon and Shirley Bernstein of millions of dollars and yet despite a mandatory disqualification on his own initiative as proscribed by judicial canon and statute continued to adjudicate outside the color of law. Colin then denied motions to voluntarily disqualify himself filed by Eliot.

e. For Phillips to act on Colin's prior Orders, as he does, without first knowing if the Orders of Colin will be stricken, "putting the cart before the horse," again causes fraud, waste and abuse of the Court and all parties time and monies, especially if the Colin Orders are stricken and all actions must then be reversed.

f. The All Writs Petition makes it clear that under law Eliot I. Bernstein has the right to seek challenge, voiding and vacating of any such Orders in all jurisdictions where Fraud Upon the Court has occurred.

g. Yet, while the Petition for All Writs was first filed and pending ( and remains pending ) at the Florida Supreme Court, the current PR of Simon Bernstein's Estate Brian O'Connell's office filed prematurely to bring the cases onto the docket before Judge John L. Phillips for a Conference to set a schedule for other conferences and hearings to be held although PR O'Connell's office did not file or propose any Order for which motions and hearings should be held and this first appearance occurred before Judge John L. Phillips on or about July 30, 2015.

h. Approximately 7-8 lawyers for other parties appeared and Eliot I. Bernstein appeared in person at this first appearance before Judge John L. Phillips on

July 30, 2015 and while Judge Phillips himself took No Notice or Acknowledgement on his own action of the pending Petition for All Writs at the Florida Supreme Court in this case where millions of dollars and properties are alleged to have been looted and illegally distributed, where admissions of crimes have already occurred in the filings before the Court, where murder has been alleged by Ted Bernstein to state authorities, Judge John L. Phillips did at least say twice on the Record during this first appearance when Eliot I. Bernstein brought up the pending Petition for All Writs that this Petition would be addressed at the next Court appearance and ultimately the parties were directed to work amongst themselves to arrive at a proposed schedule to hear matters by the next appearance.

i. Despite this direction by the Court and despite the fact that it was the PR of Simon Bernstein's Estate Brian O'Connell's office who had called for the original conference before Judge Phillips, on the *eve of the night before the second appearance on September 15, 2015 and after close of business hours at 5:18pm* no proposed Schedule had been made by the PR Brian O'Connell but instead attorney Alan Rose, attorney for alleged successor Trustee Ted Bernstein who is a business partner with Attorneys Tescher & Spallina and Ted's prior counsel who are at the center of the fraud upon the Court, proceeded to file an *after hours after close of business filing* with Judge John L. Phillips seeking to completely re-do and change the Schedule for the next morning to now be a schedule to attack and attempt to neutralize Eliot and appoint Guardians for Eliot Bernstein's children and Eliot Bernstein where no pleading for such had been made.

j. The Exhibit has material misrepresentations of case information and attempts to shift the court's focus from rectifying and dealing with the fraud on the court and other frauds on beneficiaries to an assault of Slanderous and Defamatory information and case twisting to portray Petitioner Eliot as a cause of the problems in the matter and attempt to annihilate his and his children's rights and Judge Phillips held the hearing threatening contempt to Eliot and searching to see if there were guardianship pleadings regarding Eliot. Some of the key points of misrepresentation by Rose to Phillips are as follows:

i. The TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE starts as follows,

“The overarching issue in these cases is Eliot Bernstein. He is not named as a beneficiary of anything; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel.”

That in fact, Ted Bernstein and his clients, business partners and Attorneys at Law, Tescher and Spallina and their co conspirators, Alan B. Rose, Esq. and approximately six other lawyers who have all resigned due to irreconcilable differences with Ted after the Law Firm Tescher & Spallina, PA was found to have COMMITTED A FRAUD ON THE COURT AND FRAUD ON THE BENEFICIARIES, which has derailed with intent the proceedings and inheritances and cost the injured parties millions more while the fraud was NOT LEGALLY remedied by Judge Colin but instead carefully and craftily continued. That the crimes were uncovered, prosecuted in part and led to arrest, all due to the efforts of Eliot Bernstein and where Alan Rose is a central suspect in the alleged crimes under ongoing investigations, has numerous conflicts and adverse

interests (also a counter defendant in the matters at hand) and so one can see how he tries to twist the truth to a new Judge Phillips.

ii. If Judge Phillips had reviewed the record and determined who and why the hearings were held and who caused problems with the Estates and Trusts by committing FELONY CRIMINAL ACTS, he would have noticed that Eliot only reported the crimes. The costs incurred by all Beneficiaries, Creditors, Interested Parties, the courts, etc. are wholly attributable to Ted Bernstein and his minion of attorneys at law who have tried to defend the criminal acts done, attorneys at law, Donald Tescher, Robert Spallina, Alan B. Rose, et al. This toxic pleading by Rose should have led to sanctions by Judge Phillips for wholly distorting the record.

iii. The second sentence of the TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE filing of Rose states,

“With regard to Judge Colin's final action before recusing himself, Eliot's delay of the Trust's sale of real estate is going on six months, and already his objections and "appeal" to the Florida Supreme Court have cost the Trust more than \$125,000. These sums are not insignificant in this case – these are relatively small trusts and estates which likely will have between \$1 million to \$2 million left to distribute in the end. Even less with every billable hour incurred, especially if things continue on their current path.”

Wherein the delay in sale of real property again stems from a court order whereby it was found that Alan Rose and Ted Bernstein had failed to notify beneficiaries and interested parties of the sale of Simon's home in an undisclosed transaction

with undisclosed terms and conditions of the sale and Judge Colin ceased the proposed sale. Again costs incurred by the failure of the fiduciary and his counsel to follow probate rules and statutes. Rose's estimation for a value of the Estates and Trusts years after the decedents deaths exhibits another glaring violation of probate rules and statutes by the alleged fiduciary Ted Bernstein and the former fiduciaries in that NO ACCOUNTINGS have been provided for Shirley's Trust and in Simon Trust, accounting does not start with an opening balance done after the decedent's death for over two years and the prior accountings by Tescher and Spallina that were required upon their removal for fraud and more were never done and never requested by Ted in violation of probate rules and statutes and accounting rules.

k. The next sentence is wholly false, whereby Rose states,

"For reasons which will become apparent to the Court, although these matters should be fully concluded by now – Shirley died first, nearly five years ago, and Simon followed nearly three years ago – it feels like we still are closer to the starting line than the finish line. **The sole reason [emphasis added]** for the lack of progress is their disinherited son, Eliot Bernstein."

First off Eliot is not a disinherited son by Shirley Bernstein as when she died the Eliot Bernstein Family Trust was a one-third beneficiary of the Shirley Trust, which became irrevocable upon her death and only due to the frauds proven and alleged and through fraudulent documents submitted in the matters to the courts and others, the beneficiaries have come into question, the fiduciaries are in question, as well as the validity of the dispositive documents. Where the Governor Rick Scott has already found that documents attempting to disinherit

Eliot in Simon case, a Will and Amended Trust allegedly signed 48 days prior to Simon's death, are again improperly notarized and the Governor's office has taken action against another notary in these matters and the documents are still being investigated as wholly fraudulent. Alan Rose is knowledgeable of these crimes of his colleagues Tescher and Spallina and Ted who recruited him and yet attempts to spin the truth to the newly appointed Judge Phillips in efforts to hide and conceal the fraud and the true cause of why the matter is before him and Phillips claiming he is "stupid" in the hearing acts as if he has read nothing in the docket and goes along with Rose's story, precluding Eliot from responding to the wholly false claims.

1. The next statement in Rose's diatribe of lies reads,

"If the Court were to appoint a guardian ad litem ("Guardian") for Eliot's three kids, who are beneficiaries of both trusts, everything else could be resolved quickly and easily between the remaining parties. Instead, while Eliot continues to turn the courtroom into his private circus and continues his online attacks, the limited assets in these estates and trusts continue to dwindle. This has been going on far too long, and now that this Court is overseeing these matters, 1 Eliot must be stopped before it is too late to salvage anything for the beneficiaries."

Rose fails to mention to this Court and in fact lies at the second hearing and states there have been no guardianship pleadings in the Simon and Shirley cases for a Guardian, where he is fully cognizant he filed and had heard a guardianship hearing and was denied by Judge Colin as there was absolutely no basis for a guardian as already exhibited herein. From the hearing transcript Rose states,

10 THE COURT: Is there a motion for

11 appointment of a GAL? Has a motion been filed  
12 by someone?

13 MR. ROSE: I think the -- my understanding  
14 is the beneficiaries were about to file one. I  
15 don't think they filed yet. There is a pending  
16 motion to appoint an attorney for the children.  
17 It's sort of a similar issue. Maybe  
18 Mr. O'Connell can -- it's on one of his lists  
19 of motions.

...

14 THE COURT: Okay. Great. This is the way  
15 I intend to proceed -- I love Marty Colin.  
16 This guy is a judge that's been around a long  
17 time. I know him. He's an entirely different  
18 guy than me. I expect that your experience  
19 with Judge Colin has been different than  
20 sitting here with me. Am I right? I never  
21 appeared in front of him as a judge -- I never  
22 appeared in front of him while he's a judge and  
23 while I was a lawyer. He appeared in front of  
24 me while he was a lawyer and I was a judge. I  
25 don't know how he is as a judge but I am pretty

1 sure he's a different guy than me. Nice guy.  
2 I like him. But we're different judges. Your  
3 experiences with Judge Colin, put them aside.  
4 You're having an experience with me now. We  
5 have to do it the way I do it or else I'll mess  
6 up.

7 The second thing I have on my list of  
8 things to ask you about that I've been jotting  
9 down here is this request for guardian ad  
10 litem. I think I remember asking and being  
11 told that no one has filed a formal request for  
12 appointment of a guardian ad litem; is that  
13 correct?

14 MR. O'CONNELL: Correct.

**15 MR. ROSE: In these four cases no one has  
16 done that yet.**

One look at the docket and the court could see that multiple attempts have been made by Rose et al. to try and gain guardianship and have failed repeatedly. Further, Eliot's

children are not beneficiaries under the Shirley Bernstein Trust as of the date December 08, 2010 when it became irrevocable with Ted Bernstein, Pamela Bernstein Simon and their lineal descendants considered predeceased for all purposes of the Shirley Trust. Per Robert Spallina who drafted the documents, when under interrogation by Palm Beach County Sheriff officers stated,

“SPALLINA REITERATED THAT HER DOCUMENTS READ THAT UPON SIMON'S DEATH, EVERYTHING (HER ASSETS) WENT TO JILL, LISA, AND ELIOT.” Further Spallina states, “HE SAID SIMON TOLD HIM THAT HE WANTED TO MAKE THE NECESSARY CHANGES TO HAVE BOTH TRUSTS READ THAT THE 10 GRANDCHILDREN WERE THE BENEFICIARIES. HE TOLD ME THAT HE TOLD SIMON (SI AS HE CALLS HIM) THAT HE COULD NOT MAKE THOSE CHANGES TO SHIRLEY'S TRUST BECAUSE SHE HAD WROTE TED AND PAM AND THEIR CHILDREN AS PREDECEASED IN HER TRUST. SPALLINA REITERATED THAT SIMON CAN DO WHATEVER HE WANTS WITH HIS ESTATE, BUT ALL HE CAN DO WITH SHIRLEY'S TRUST IS GIVE IT TO LISA, JILL, AND ELIOT'S CHILDREN.”

Yet, Alan Rose continues to attempt to perpetrate this Fraud on the Court that Eliot is not a beneficiary in efforts to try and eliminate Eliot, the bane of his existence, in part why he can no longer represent parties other than himself as a Counter Defendant and also due to his direct involvement in continuing the fraud through toxic vexatious slanderous filings and continued fraud upon the court and beneficiaries.

m. That Eliot had tried at the first hearing and at the second hearing of Phillips to put forth an order for case management into the record but Judge Phillips repeatedly denied his efforts, chastising him for speaking, threatening contempt and other bantering of Eliot to deny his rights and precluding his statement from the record. The statement was as follows:

**PETITIONER'S STATEMENT ABOUT WHAT SHOULD HAVE HAPPENED AT**

**STATUS CONFERENCE - ORDER FOR HEARINGS IF DUE PROCESS WAS**

**AFFORDED**

1. Determine Non Conflicted Venue – Federal/State, if Federal transfer cases to Federal Court, all of them, Simon Estate has already intervened and been accepted in the Federal Court under Judge Robert Blakey, if State with Federal Monitor oversight to restrict further state run fraud on the court.
2. Reset all probate/trust cases due to Fraud on the Court and Fraud by the Court as prescribed by law and strike all previous orders, remove invalid pleadings filed by parties involved in the fraud on the court and fraud on the beneficiaries et al.
3. Remove all parties involved directly or retained by any party involved in the prior fraud on the court, including but not limited to Alan B. Rose, Esq. and Ted S. Bernstein both directly involved and benefiting from the prior fraud on the court and both involved directly with the fraud perpetrated by Tescher and Spallina et al.
4. Remove all cases out of Palm Beach county, possibly state, perhaps have judge from other state or fed monitor of state court hear proceedings to parse the multiple conflicts.
5. Return ALL assets and personal properties of Simon and Shirley Bernstein to the court, including home and condo sold and any other tangible personal property or distributions made.
6. Have Spallina Tescher et al. involved in the fraud return all fees and put up bonding or other sources of funding for Court costs, attorney fees for innocent injured parties from the fraud now necessitating these legal costs and to fund for independent forensic document examination and forensic accountings caused by their intentional interference with expectancies and causing adversity and turmoil between parties.
7. Immediate court ordered production of all parties involved in the fraud of all documents, accounts, records of any sort, including the courts records, all certified, including but not limited to:
  - a. Depositions, Interrogatories, etc. paid for by bad actors
  - b. As Tescher and Spallina have provide upon their COURT ORDERED production of records after the court learned of their admitted fraudulent alteration of a Shirley Trust document to Palm Beach County Sheriff investigators, NO original documents, including but not limited to, all the Dispositive Documents they alleged to have executed with Simon and Shirley, the court should immediately seize all of their records and demand the original documents. It is alleged that virtually all of the records (approximately 9000 pages) of production produced by Tescher and Spallina are fraudulent and were carefully crafted for months after

their law firm was found committing fraud on the court and fraud on the beneficiaries to try and cover up their crimes further. It should be noted in the first hearing before Judge Colin, when he infamously stated that he had enough evidence at that time to read attorneys at law and fiduciaries Tescher and Spallina and their client, alleged fiduciary Ted Bernstein, their Miranda warnings, that attorney Spallina stated after admitting that documents had been submitted to the Court and others that were fraudulently notarized, including Post Mortem for Simon, that he knew of nothing else in the cases wrong at the time or done fraudulently. Yet several months later, while being investigated by Palm Beach County Sheriff investigators admitted to fraudulently altering himself, after discussions with his partner Donald R. Tescher, Esq, a Shirley Trust document. This concealment of the truth, along with Colin's allowing attorneys and fiduciaries involved in the original fraudulent activity to continue, turned into almost two years of proceedings attempting to demonize Eliot Bernstein as the cause and seek guardians and contempt proceedings and more, all bleeding the Estates and Trusts in court costs and attorney fees with scienter.

- c. All of Simon Bernstein's business records and properties remain missing and unaccounted for and must be returned to the Court and distributed to the beneficiaries, fiduciaries and interested parties for examination
- d. Parties needing to produce all records and assets at this time, include but are not limited to, Alan B. Rose, Ted Bernstein, Gerald Lewin, Proskauer Rose LLP, Foley & Lardner LLP (including Hopkins Sutter documents acquired by Foley & Lardner ) Steven Lessne, Esq., Brian O'Connell, Esq., Judge Martin Colin, Judge David French, Judge Howard Coates, Judge John Phillips, Steven Greenwald, Esq., Traci Kratish, Esq., Oppenheimer Trust Company of New Jersey, Oppenheimer Trust Company of Delaware, JP Morgan, Heritage Union Life Insurance Company and all successors, LaSalle National Trust Company and others.
- 8. The Court must demand untampered with, signed and verified IRS certified tax returns for Simon and Shirley including for all companies owned, trusts, etc.
- 9. Distribute immediate Emergency funds to Eliot and his family who have been harmed for three years with no caveats attached to the funds other than to be reduced fairly when beneficiaries are determined and construction hearings completed.
- 10. Hold hearings to remove Ted Bernstein, Alan Rose, Esq. and John Morrissey, Esq. as Fiduciaries and/or Counsel
- 11. Hold Will and Trust Construction hearings after hearings to remove Ted, as it would be wasteful to everyone to hold construction hearings where fiduciaries with adverse interests and conflicts are allowed to argue before the court and pervert the record and then have to overturn such rulings and proceedings conducted with fraudulent fiduciaries and counsel acting in violation of law and ethics rules.

- a. Have hearings to determine new successor trustees. Corporate Trustee with Eliot as a Co-trustee to save legal costs by accessing records that have been suppressed and insure no further fraud occurs)
- b. Determine Authenticity
- c. Determine Beneficiaries

12. Start with Eliot first Petition, since default by all parties, all reliefs granted.

- n. That Alan Rose, Esq. denied to Judge Phillips that guardian pleadings for Eliot and his children were filed in the Court when it was approximately year earlier where Alan Rose argued his own pleading for guardianship which was denied by the Court on August 20, 2014, with the court claiming, "In addition, to the extent that it would be necessary, the Court waives any requirement for the appointment of a guardian ad litem and further finds that, in respect to the Agreement and this Order, the Agreement is in the best interests of the minor children and that Eliot and Candice Bernstein adequately represent the interests of their minor children." It should be noted that Alan Rose and Ted Bernstein then went on to violate this Court order to pay for three minor children's school tuition that was court ordered and all three children were without notice removed from school after the second day when the Trustee Ted and his counsel Alan Rose failed to comply with the Order leading to massive damages to the children in their school futures.
- o. This second appearance before Judge Phillips also generating fees for approximately 5-7 attorneys, all having to drive over 40 miles and all wasting time and money for a third hearing in approximately four months to achieve nothing but churning of legal bills and scheduling a hearing in a different case than was scheduled for hearing.

p. Sure enough, the next morning before Judge John L. Phillips, Judge Phillips proceeds to allow attorney Alan Rose to take over the schedule and course of proceedings despite the fact that not only did his filing come **after close of business hours** the night before but also despite the fact that 2 other Florida licensed attorneys, the PR Brian O'Connell of the Estate of Simon Bernstein and attorney Peter Feaman for a Creditor William Stansbury who is suing Ted Bernstein and the Estate both agreed that the first Order of business should be a hearing to remove Ted Bernstein as an alleged Trustee and both had already filed motions before Judge Colin showing that Ted Bernstein is not properly acting as a Trustee and that he and his counsel Rose were alleged to be violating ethical cannons and fiduciary duties, yet Phillips ignored this information and moved in favor of Rose's request.

q. This last minute **after close of business hours filing** by Alan Rose and Judge Phillips conduct in permitting this after hours business filing to take over the case that day on September 15, 2015 under the circumstances and history of this case is sufficient to demonstrate lack of impartiality, bias and prejudice against Eliot I. Bernstein and a reasonable fear that he will not receive a fair trial before Judge Phillips sufficient to mandate Disqualification by Judge Phillips itself.

r. Still, the express words and conduct of Judge Phillips itself during this appearance culminating in the Order issued September 24, 2015 further provide the factual basis to mandate the Disqualification of Judge John L. Phillips since a careful and proper review of said Audio transcripts of said proceeding (it is presumed that Judge Phillips recorded the hearings as is his typical practice) will demonstrate notable bias and

prejudice toward Eliot I. Bernstein creating the reasonable fear that he can not receive a fair trial before Judge Phillips.

s. It is noted that Candice Bernstein, wife of Eliot Bernstein, contacted the Court of Judge John L. Phillips the day after this appearance on or about Sept. 16, 2015 to determine how to obtain an audio transcript and yet over 10 days later, neither Candice nor Eliot Bernstein have heard back from the Court of Judge Phillips in this request further demonstrating bias, prejudice and lack of impartiality and creating the reasonable fear that a fair trial can not occur before Judge Phillips and thus mandating Disqualification.

t. At the time of this second appearance before Judge John L. Phillips on Sept. 15, 2015, at no time anytime during this appearance did Judge Phillips even acknowledge the pending Petition for All Writs at the Florida Supreme Court which brings up very serious alleged criminal acts, fraudulent acts, acts showing Judge Colin as a material and fact witness, acts implicating the validity of ALL orders of Judge Colin, acts calling into question Chief Judge LaBarga himself, acts calling into question the transfer of the cases to Judge Phillips himself as the intended receipt of the cases through Colin's direct interference Post Recusal and whether as a matter of fundamental US Constitutional Due Process the Florida Courts can even be a proper jurisdiction to hear these cases and yet not only does Judge John L. Phillips wholly disregard this petition as if it did not even exist, but further acts with express words and conduct to deny and cut off and deprive Eliot I. Bernstein's fair Opportunity to be heard due process rights throughout the proceeding this day.

u. That at the second hearing, while demanding the scheduling of a hearing in a different case, Phillips requested the parties to identify how much time a Shirley Trust construction would take. When Rose stated it would take a day, Eliot Bernstein objected and stated that additional time of a day or two would be required as it would have to first entail a hearing to remove Ted Bernstein as Trustee first, as is allowed under Florida Probate Statute for a Trust Construction but Phillips again rudely cut off Eliot's request and moved forward scheduling only a day for the Trust Construction to be heard. The problem for Ted and Rose, also ignored by Judge Phillips is that if Ted is not a valid Trustee as claimed by the PR and others how can he conduct further hearings and further, if the outcome of the Trust Construction does not come out as intended by Rose, Ted Bernstein and his lineal descendants will receive nothing and thus Ted cannot impartially represent the trust when his own pecuniary interest is at stake, creating an imparsable conflict of interest that makes him have adverse interests to certain alleged beneficiaries.

v. That at the second hearing scheduling conference Judge Phillips denied to hear a Petition for Attorney fees to be paid by the Estate for Eliot and his minor children beneficiaries, where the need for legal representation is a direct cause of proven frauds of on the court and the beneficiaries by the prior removed fiduciaries Tescher and Spallina and the current alleged fiduciary Ted Bernstein and then instead of providing payment for counsel, scheduled the trust construction hearing whereby Judge Phillips knew Eliot and his minor children would be deprived counsel at the hearing. Where Judge Phillips should have seen the need for counsel caused by the fraud which force trust construction and validity hearings on the victims and ordered those who directly caused the disputes

through fraudulently altering the dispositive documents in the matters and causing the need for counsel now to post bonding or other remedies to cover such costs and not order the Estate to pay them further harming the beneficiaries.

w. These actions here not only demonstrate the lack of impartiality of Judge Phillips but further the competency of this Judge, both which mandate Disqualification.

x. Judge Phillips knew and should have known that due process is a fundamental US Constitutional right and the fair Opportunity to be heard is a part of that right.

y. Judge Phillips knew and should have known that a Petition such as the Petition for All Writs which calls up for review the fundamental fairness of the Florida Courts to act in these cases is central to any ability to move the case forward in his Court.

z. Yet without deciding, determining, or even acknowledging these Petitions by Eliot I. Bernstein, and the seriousness of the claims made, Judge Phillips not only denies Eliot Bernstein the fair opportunity to be heard by cutting him off repeatedly and not providing a fair opportunity but instead Judge Phillips goes even further making the fatal error of proclaiming actual “Love” for Judge Martin Colin, such that Judge Phillips proclaims his “Love” for Judge Martin Colin twice on the record without ever acknowledging, hearing, deciding or determining whether Colin is a Material Fact Witness or a participant in the Fraud In his Court, without permitting Eliot Bernstein the fair opportunity to be heard to proclaim that Judge Colin is a material and fact witness and instead Judge Phillips permits the attorney for Ted Bernstein, Alan B. Rose, Esq. who is at the center of the fraud with Tescher & Spallina to take over the proceedings, not

even having the PR Brian O'Connell be heard who was the attorney who first Noticed the Conference that lead to this appearance in the first instance.

## **OTHER ISSUES REQUIRING DISQUALIFICATION**

104. As pointed out in the Petition for All Writs pending with the Florida Supreme Court, Judge Martin Colin somehow had allowed attorneys Tescher & Spallina as well as alleged Trustee Ted Bernstein to Not provide any Accounting in the cases of the Simon and Shirley Bernstein Trusts for YEARS, violating Probate Rules and Statutes, despite being notified expressly by an Emergency filing made by Eliot I. Bernstein in May of 2015 detailing various acts of fraud and wrongdoing upon the court and before the Court in an Estate that should be worth in the millions, may in fact be worth be billions but somehow has been depleted to perhaps \$2 million or less at this time without Accountings or accountability by fiduciaries and attorneys at law moving in fraud.

105. Proskauer Rose also was involved in prior Estate Planning for Simon Bernstein who was a 30% shareholder in the Iviewit Technologies and now where current alleged Trustee Ted Bernstein alleged on the night of Simon Bernstein's passing that this may be "murder" and called with others for a Sheriff's investigation and Coroner's investigation claiming Simon's girlfriend may have poisoned him.

106. Estate Planning was done at great expense to Simon and Eliot by Proskauer in addition to the Intellectual Property work, as Proskauer felt it was best to distribute the stock of the Iviewit companies into irrevocable trusts created for their children while the stock was at a relatively low value after seed investments, including from Wayne Huizenga and other institutional investors, the company had a Private Placement Memo with Wachovia, contracts with Fortune 100

companies for licensing of the IP and had Goldman Sachs preparing to go IPO at the height of the internet boom before the controlled bust, where it was anticipated the stock price would skyrocket. The intellectual properties being backbone technologies now power over 90% of internet transmissions. With the stocks transferred pre-IPO the growth would grow in the children of Eliot and Simon and skip taxes on the growth and transfer of the stocks that occur if it was done post-IPO, therefore the estate plans were being rushed as things were moving light speed toward IPO and Simon prepared plans as did Eliot for his children. Further bias, prejudice, lack of impartiality and a reasonable fear that a fair trial can not be held is demonstrated by Judge Phillips issuing the Order for Construction the Shirley Bernstein Trust case, which case and pleadings were not Noticed to be Heard at the second hearing as it was a hearing in the Simon Bernstein Estate and when Eliot Bernstein attempted to clarify the matter and set straight the case being heard before the court that day the bias and prejudice was further exaggerated by Judge Phillips repeatedly denying Eliot I. Bernstein fair opportunity to be heard to even clarify on the Record which Case Judge Phillips was even discussing and issuing Orders under.

107. Due process requires fair notice and an opportunity to be heard. The Shirley Bernstein Trust case was not Noticed for hearing at the time of the appearance in Simon's Estate case noticed by the PR Brian O'Connell and the resulting VOID Order was issued on a pleading in the Shirley Trust case.

108. The Order issued by Judge Phillips in a case Not noticed to be heard and denying opportunity to even clarify on the record all the while disregarding any of the fundamental due process issues

raised in the Petition for All Writs embodies all the grounds that mandate disqualification at this time.

109. Attorney at Law and new PR O'Connell has already Petitioned the Court that Ted is invalid as Trustee under the terms of the Trust and Attorney at Law Peter Feaman for the creditor William Stansbury has made a written statement entered into the court record that Ted and Alan Rose should be removed and are acting improperly in the Federal Insurance Case under Judge John Robert Blakey involving the Estate of Simon and more and yet Phillips in the second hearing held by him allows Alan Rose to run the hearing scheduled by the PR O'Connell who virtually says nothing on the record and turn the hearing into a discussion about Shirley Bernstein's trust and schedule with Phillips a hearing for trust construction in Shirley's Trust which Rose was petitioning for without proper notice.

110. Rose also attempts to schedule a hearing to have a guardian placed on Eliot Bernstein and his children. where no motion was filed for such guardianship and no notice of hearing was scheduled for one and where Rose when asked by Phillips if a motion for guardianship had been filed, stated one had not been filed and factually failed to Disclose that in a prior Hearing for guardianship Rose was denied a Guardian motion for Eliot Bernstein and his children a year earlier on the same flawed logic he claimed to Phillips.

#### **Rule 2.330 Grounds.**

**(e) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and promptly filed. A motion made during hearing or trial shall be ruled on immediately.**

111. This Motion is timely because all actions past and future of Judge Phillips are void as his mandatory disqualification from the matters should have occurred the instant he was aware that he was a material and fact witness in regard to the Colin alleged improper transfer to his Court and thus all judicial acts, present, past and future are all grounds for immediate investigation, disqualification and a voiding of any/all orders and sanctions for the attempt to continue the fraud on the court that started with Colin by violating Judicial Cannons, Probate Rules and Regulations and law and continuing the fraudulent acts without rectifying the past fraud first.

112. Said Orders of Judge John L. Phillips and other material information requiring Disqualification further defined herein embody the conduct which mandates Disqualification and thus this motion for Disqualification is therefore timely and appropriate.

113. Finally, since it was only learned yesterday that Petitioner Eliot Bernstein can not get an Original Certified Transcript of the Sept. 15, 2015 Case Management Conference before Phillips, the motion is further timely for that reason and all the reasons set out herein as the Un-certified and un-signed copy of the Transcript provided by Stansbury to Petitioner and cited herein not only potentially has errors but is filled with statements by Judge Phillips that he is “not smart”, “stupid”, talks about wrestling an octopus.

114. Until such time as the frauds upon the court is corrected and due process restored, any such motion presently is timely herein.

#### **Rule 2.330 Grounds.**

##### **(f) Determination - Initial Motion.**

**The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other**

**reason for denial shall be stated, and an order of denial shall not take issue with the motion.**

115. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Phillips has to voluntarily and mandatorily disqualify under Judicial Canons, Attorney Conduct Codes and Law as stated herein.

**Rule 2.330 Grounds.**

**(g) Determination - Successive Motions.**

**If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.**

116. Petitioner states there have been no Successive Motions.

**Rule 2.330 Grounds.**

**(h) Prior Rulings.**

**Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.**

117. Petitioner seeks that upon disqualification of Judge Phillips, that all prior factual or legal rulings be vacated by the successor judge due to the alleged continued civil torts against Petitioner by Judge Colin and his successors.

118. That further, Petitioner seeks a replacement Judge, who is not a member of the same jurisdiction as Judge Colin or Phillips and who is not a member of the Florida Bar to preside over the cases of Judge Colin/Coates/Phillips involving the Estates and Trusts of Simon and Shirley

Bernstein and the case involving the Trusts of Petitioner's minor children. This request due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida and certainly not by the 15th Judicial, perhaps the conflicts now include any members of the Florida Bar for reasons cited herein and in the All Writ and therefore Petitioner is seeking this Court to move the matters to a Federal Court or find other suitable remedy in such serious case where the Court is alleged part of the frauds and adhering to rules and regulations is of primary concern due to the past three years of alleged fraud.

119. The following cases that Judge Phillips now presides over are all tainted for the same reasons as stated herein and Judge Phillips should immediately voluntarily disqualify himself from these cases as well, voiding any/all orders, etc. and turning over the court records to Petitioner for review and save Petitioner the expense and aggravation of having to file Disqualification pleadings and subpoenas in each case to force his mandated disqualification and release of critical to the case court records already requested in the All Writs Petition pending:

- a. Case# 502012CP004391XXXXSB – Simon Bernstein Estate
- b. Case# 502011CP000653XXXXSB – Shirley Bernstein Estate
- c. Case# 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- d. Case# 502014CP003698XXXXSB – Shirley Trust Construction
- e. Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case  
OLD Case# 502014CA014637XXXXMB

**Rule 2.330 Grounds.**

**(i) Judge's Initiative.**

**Nothing in this rule limits the judge's authority to enter an order  
of disqualification on the judge's own initiative.**

120. Petitioner states that Judge Phillips should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him as a potential witness regarding the alleged improper

post recusal steering of the cases by Colin but has thus far failed to do so and instead rushed into hearings without first addressing these fundamental issues of fair and impartial due process. If for any reason Judge Phillips finds this Motion legally insufficient, Judge Phillips must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes, Probate Rules and Statutes and Law for the reasons stated herein, whether pled sufficiently or not by Pro Se Eliot Bernstein.

**Rule 2.330 Grounds.**

**(j) Time for Determination.**

**The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.**

121. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner's children are in life threatening dangers due to the abusive and fraudulent Probate rulings and proceedings for the last three year which have directly and intentionally interfered with inheritances/expectancies causing massive harms to them caused directly by the Fraud on the Court by the Court Appointed Attorneys at Law and Fiduciaries and potentially the Court itself and this requires that this Disqualification be made instantly. Delays cause further ongoing harms and damages of Petitioner's minor children and Petitioner's family which results in additional liabilities to those parties ultimately held accountable for the criminal acts, civil torts and frauds that occurred in Judge Colin and Judge French's courts.

122. That PRIOR to any other actions by Judge Phillips, this Disqualification must first be ruled on.

**Florida Statutes 38.10**

**Disqualification of judge for prejudice; application; affidavits; etc.—**

**Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.**

123. Petitioner has supplied a legally sufficient Affidavit herein.
124. Judge John L. Phillips is again mandated to be Disqualified under the Rules by both express words, conduct and by omissions by creating a reasonable fear by the party Eliot I. Bernstein that he will not receive a fair trial as defined herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Phillips immediately mandatorily disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Phillips that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law. Further, all Orders of Judge Phillips should be voided including the Mediation scheduled for Dec. 4th, 2015 at 10 am EST and Trial Scheduled for Dec. 15th, 2015.

Under Penalties of perjury, I, Eliot Ivan Bernstein, swear under oath and affirm that I have read the foregoing and the facts alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 4th day of December, 2015

Respectfully Submitted,

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> ST  
Boca Raton, FL 33434  
Telephone. 561-245-8588  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

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Eliot Ivan Bernstein

**CERTIFICATE OF SERVICE**

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 4th day of December, 2015.

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Eliot Ivan Bernstein

**STATE OF FLORIDA**

**COUNTY OF PALM BEACH COUNTY**

Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by Eliot Bernstein who is known to me or produced the following identification.\_\_\_\_\_

NOTARY PUBLIC

Print name of Notary:

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Notary Signature:

X\_\_\_\_\_

Stamp

My commission expires: \_\_\_\_\_

## **AFFIDAVIT**

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge John L. Phillips is true and correct to the best of his knowledge and belief and that he fears that for all the reasons herein he will not receive a fair and impartial trial with due process and procedure.

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Eliot Ivan Bernstein

December 04, 2015

STATE OF FLORIDA  
COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by  
Eliot Ivan Bernstein who is known to me or produced the following identification

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Notary Public

Print name: \_\_\_\_\_

Notary Signature: \_\_\_\_\_

Stamp

My commission expires: \_\_\_\_\_