

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA FOURTH
DISTRICT, 1525 PALM BEACH LAKES
BLVD., WEST PALM BEACH, FL 33401

CASE NO.: 4D16-0064 L.T. No.:
2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN v. TED BERNSTEIN, AS TRUSTEE. ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

APPENDIX

INDEX

1. Order of Judge Phillips Denying Mandatory Disqualification - First one
2. Petition for Mandatory Disqualification
3. Transcript of Sept. 15, 2015 Case Management Conference
4. Notice of Case Management Conference filed by PR O'Connell for Sept. 15, 2015.
5. Underlying Petition for All Writs against Judge Colin pending at the relevant times herein.
6. Underlying Order of Judge Colin ordering Tescher and Spallina to turn over all originals in the case, such production having not been complied with at the relevant times herein where a Trial was illegally scheduled and heard by Judge Phillips.
7. Underlying Order of Judge Colin denying prior efforts to put a Guardian on Eliot's minor children.

Dated: January 29, 2016

/ s /Eliot Ivan Bernstein

Eliot Ivan Bernstein
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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 29th day of January, 2016.

/ s / Eliot Ivan Bernstein

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Appendix 1

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

PROBATE DIVISION IH
CASE NO. 502014CP003698XXXXNB

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

Plaintiff(s)

v.

ALEXANDRA BERNSTEIN; ET AL.
Defendant(s).

**ORDER DENYING PETITIONER'S VERIFIED SWORN EMERGENCY PETITION
AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF
CIRCUIT JUDGE JOHN L. PHILLIPS**

THIS MATTER came before the Court in chambers, upon Petitioner's VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L PHILLIPS (DE #94), and his NOTICE OF CORRECTION filed December 4, 2015, (DE # 96), alleged to apply to other applicable related cases:

2012CP004391 –Simon Bernstein Estate

2011CP000653 – Shirley Bernstein Estate

2014CP002815 – Oppenheimer v. Bernstein Minor Children

2015CP001162- Eliot Bernstein v. Trustee Simon Trust Case

Old Case -2014CA014637.

The Court has reviewed same and upon consideration it is

ORDERED and ADJUDGED that the Petition for Disqualification, and the Notice of Correction as set forth above, are **DENIED** as legally insufficient..

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 8th day of December, 2015.



JOHN L PHILLIPS
Circuit Judge

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Appendix 2

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

**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.¹

¹ 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

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."²

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

² 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."³

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.

³ 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.⁴

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 license⁵.

⁴ 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>

⁵ 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 time⁶.
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 Crist⁷.
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:

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%20Pe tition%20Freeze%20Estates%20Orginal%20Large.pdf>.

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

⁷ 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

“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.”⁸

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.⁹

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

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

⁹ 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.¹⁰

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.¹¹ 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

¹⁰ See, http://phoni.com/fl_law/rules/frcp/frcp1540.htm

¹¹ 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).¹²

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

¹² 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 & Spallina¹³, 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

¹³ 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 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 Writs, 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, I 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_u, 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 34th ST
Boca Raton, FL 33434
Telephone: 561-245-8588
iviewit@iviewit.tv

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.

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.

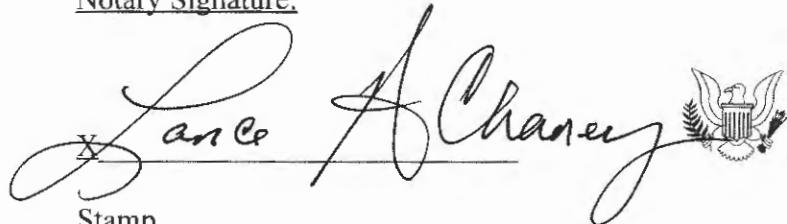
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NOTARY PUBLIC

Print name of Notary:

LANCE A. CHANEY

Notary Signature:



Lance A. Chaney

Stamp

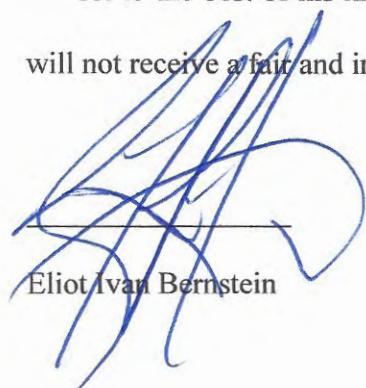
My commission expires: 04/06/2018



Lance A. Chaney
Notary Public
State of Florida
My Commission Expires 04/06/2018
Commission No. FF 110089

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.



Eliot Ivan Bernstein

December 04, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

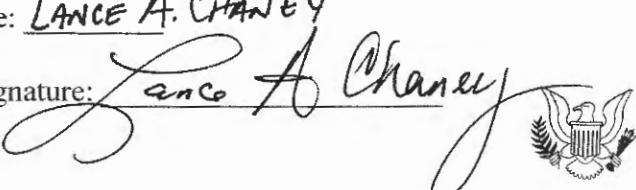
Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by

Eliot Ivan Bernstein who is known to me or produced the following identification

CALIFORNIA DRIVER LICENSE

Notary Public

Print name: LANCE A. CHANEY

Notary Signature: 

Stamp

My commission expires: 04/06/2018

Lance A. Chaney
Notary Public
State of Florida
My Commission Expires 04/06/2018
Commission No. FF 110089

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,

NOTICE OF CORRECTION

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

/

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

Petitioner Eliot I. Bernstein reserves the right to correct and amend and supplement this Notice of Correction and underlying Petition for Mandatory Disqualification as the law and justice allows. Should any party be deemed aggrieved by this Notice of Correction without a Sworn Amended Petition being filed, it is requested that such party Notify Petitioner forthwith



and that despite any corrections or irregularities provided the Petition remains legally sufficient to mandate the Disqualification of Judge John L. Phillips immediately.

1. Par. 27: Should be corrected to read: "Judge Phillips now becomes a material and fact witness" instead of "new".
2. Par. 41: Should be corrected to read: "and for her to call me back", not "be" back but further reiterated that my wife Candice Bernstein is the one on the call asking to be called back with me present at the time.
3. Par. 43: Should be corrected to reflect "June 30, 2015" and not July 30, 2015.
4. Par. 54: Should be amended to add and read at the end of the sentence: "and / or the proper Iviewit company".
5. Par. 73: Should be amended to add the word "in" to the sentence to read "involvement in the frauds upon the Florida Courts."
6. Par. 82: Should be amended to add the word "having" so that it reads "Peter Feaman having urged PR O'Connell in August of 2014".
7. Par. 89: Should be amended to add "or Eliot Bernstein could have simply sought leave to file a separate motion for a Stay and Injunctive relief other relief if he had been afforded a proper due process opportunity to be heard in a meaningful way at a meaningful time" at the end of the paragraph.
8. Par. 93: Should be corrected to say the word "one" instead of "on" so it reads: "having to be the one to step up".
9. Par. 102: Should be corrected to read: "was" instead of "is" and should say: "was brought up and pending before the Florida Supreme Court and was pending at all times relevant to Judge

A handwritten signature in blue ink, appearing to read "John L. Phillips".

John L. Phillips committed the due process and other errors and issued the Trial Order for Dec. 15, 2015 in the Shirley Bernstein case not Noticed to be heard on Sept. 15, 2015."

10. Par. 103 (a) should be corrected to read: "As noted in the Petition for All Writs and Stay and Injunctive relief" , thus Adding "and Stay and Injunctive relief" ,
11. Par. 103(m) should be corrected to read as follows: "The statement was prepared to read as follows if due process had not been denied".

Petitioner Eliot I. Bernstein reserves the right to correct and amend and supplement this Notice of Correction and underlying Petition for Mandatory Disqualification as the law and justice allows. Should any party be deemed aggrieved by this Notice of Correction without a Sworn Amended Petition being filed, it is requested that such party Notify Petitioner forthwith and that despite any corrections or irregularities provided the Petition remains legally sufficient to mandate the Disqualification of Judge John L. Phillips immediately.

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

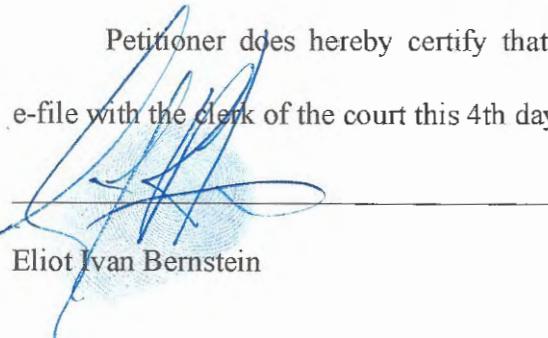
Respectfully Submitted,


Eliot Ivan Bernstein
2753 NW 34th ST
Boca Raton, FL 33434
Telephone. 561-245-8588
iviewit@iviewit.tv

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.

Eliot Ivan Bernstein



Appendix 3

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 502014CP003698XXXXNB

TED BERNSTEIN,

Plaintiff,

-VS-

DONALD R. TESCHER, ELIOT IVAN BERNSTEIN,
LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, et al.,

Defendants.

TRIAL BEFORE THE HONORABLE
JOHN L. PHILLIPS
VOLUME 1 PAGES 1 - 114

Tuesday, December 15, 2015
North County Courthouse
Palm Beach Gardens, Florida 33410
9:43 a.m. - 4:48 p.m.

Reported By:
Shirley D. King, RPR, FPR
Notary Public, State of Florida
West Palm Beach Office Job #1358198 - VOL 1

2
1 APPEARANCES:

2 On behalf of the Plaintiff:

3 ALAN ROSE, ESQUIRE
4 GREGORY WEISS, ESQUIRE
5 MRACHEK FITZGERALD ROSE KONOPKA
6 THOMAS & WEISS, P.A.
7 505 South Flagler Drive, Suite 600
8 West Palm Beach, Florida 33401
9 Phone: 561.655.2250
10 E-mail: Arose@mrachek-law.com

11 On behalf of the Defendant:

12 ELIOT IVAN BERNSTEIN, PRO SE, ESQUIRE
13 2753 NW 34th Street
14 Boca Raton, Florida 33434
15 Phone: 561.245.8588
16 E-mail: Iviewit@iviewit.tv

17 On behalf of Molly Simon, Alexandra, Eric & Michael
18 Bernstein:

19 JOHN P. MORRISSEY, ESQUIRE
20 LAW OFFICE OF JOHN P. MORRISSEY, P.A.
21 330 Clematis Street
22 Suite 213
23 West Palm Beach, Florida
24 Phone: 561.833.0866
25 E-mail: John@jmorrisseylaw.com

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2 I N D E X
3 - - -
4

5 WITNESS: DIRECT CROSS REDIRECT RECROSS

6 ROBERT SPALLINA

7 BY MR. ROSE: 11
BY MR. MORRISSEY: 82
8 BY MR. BERNSTEIN: 91

9 - - -
10

11 E X H I B I T S
12 - - -
13

14

15	NUMBER	DESCRIPTION	PAGE
16	PLAINTIFF'S EX. 1	COPY OF SHIRLEY'S WILL	34
17	PLAINTIFF'S EX. 2	SHIRLEY BERNSTEIN TRUST AGREEMENT	62
18	PLAINTIFF'S EX. 3	FIRST AMENDMENT OF SHIRLEY BERNSTEIN'S TRUST	39
19	PLAINTIFF'S EX. 4	SI'S NEW WILL	70
20	PLAINTIFF'S EX. 5	SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT	72
21	PLAINTIFF'S EX. 7	DOCUMENT	20
22	PLAINTIFF'S EX. 9	11/16/07 INTAKE SHEET	13
23	PLAINTIFF'S EX. 10	MEETING NOTES	14
24	PLAINTIFF'S EX. 11	4/19/08 LETTER	27
25	PLAINTIFF'S EX. 13	NOTES	46
	PLAINTIFF'S EX. 14	EMAIL FROM ELIOT BERNSTEIN	61
	PLAINTIFF'S EX. 15	5/24/12 LETTER	64
	PLAINTIFF'S EX. 16	DURABLE POWER OF ATTORNEY	66
	PLAINTIFF'S EX. 17	LETTER	73

1
2 - - -
3 E X H I B I T S (cont'd)
4 - - -
5

6 PLAINTIFF'S EX. 18 DEATH CERTIFICATE 74
7 PLAINTIFF'S EX. 40A-F GREENWALD DOCUMENTS 17
8

9 DEFENDANT'S EX. 1 FIRST AMENDMENT TO SHIRLEY 102
10 BERNSTEIN TRUST AGREEMENT
11
12
13
14
15
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1 | PROCEEDINGS

— — —

3 THE COURT: We're here on the Bernstein case.
4 Everybody ready to go?

5 MR. ROSE: Good morning, Your Honor. Yes.

6 Alan Rose on behalf of the plaintiff, Ted S.
7 Bernstein, as successor trustee.

8 THE COURT: Okay.

9 MR. ROSE: And with me is my partner, Greg
10 Weiss. May not be for the whole trial, but he is
11 with us for the beginning.

12 THE COURT: Okay. Well, great. Thanks for
13 coming.

14 And who's on the other side?

15 MR. BERNSTEIN: Eliot Bernstein, pro se, sir.

16 THE COURT: Okay. You're not going to have
17 any counsel? Who's with you at the table?

18 MR. BERNSTEIN: That's my lovely wife,
19 Candice.

20 THE COURT: All right. And why are you at the
21 table?

22 MR. BERNSTEIN: That's one of the questions I
23 would like to address. I'm here individually.

24 THE COURT: Right.

25 MR. BERNSTEIN: And I was sued individually.

1 But I'm also here on behalf, supposedly, of my
2 minor children, who aren't represented by counsel.
3 And I'm sued as a trustee of a trust that I've
4 never possessed.

5 THE COURT: Are you asking me a question?

6 MR. BERNSTEIN: Yes.

7 THE COURT: What's the question?

8 MR. BERNSTEIN: Well, my children are being
9 sued.

10 THE COURT: What's the question?

11 MR. BERNSTEIN: And I was sued as their
12 trustee, but I'm --

13 THE COURT: Stop, please.

14 MR. BERNSTEIN: Yes, sir.

15 THE COURT: I would love to talk with you all
16 day --

17 MR. BERNSTEIN: Okay.

18 THE COURT: -- but we're not going to have
19 that happen.

20 MR. BERNSTEIN: Okay.

21 THE COURT: This is not a conversation. This
22 is a trial. So my question is, What is your
23 question? You said you had a question.

24 MR. BERNSTEIN: I tried to get counsel for my
25 children who was willing to make a pro hoc vice --

1 THE COURT: When will you ask me the question?

2 Because this is all --

3 MR. BERNSTEIN: Well, I'd like to stay the
4 proceeding.

5 THE COURT: Okay. The request for a
6 continuance is denied. Thank you.

7 MR. BERNSTEIN: Have you read the filing I
8 filed? Because my children are minor --

9 THE COURT: Was that your question?

10 MR. BERNSTEIN: Well, my children are
11 minors --

12 THE COURT: Please stop.

13 MR. BERNSTEIN: -- and they're not represented
14 here.

15 THE COURT: What is your name again, sir?

16 MR. BERNSTEIN: Eliot Bernstein.

17 THE COURT: Okay. Mr. Bernstein, I'll be
18 courteous, unless it doesn't work; then I'll be
19 more direct and more aggressive in enforcing the
20 rules that I follow when I conduct trials.

21 I've asked you several times if you had
22 questions. You finally asked me one, and it was,
23 Did you read my filing? No, I did not. You asked
24 for a continuance. I have denied that because it's
25 untimely.

1 Now I'm turning back to the plaintiff, and
2 we're going forward with this trial. That is one
3 day set on my docket. We're going to have this
4 trial done by the end of the day. You'll have half
5 the time to use as you see fit; so will the other
6 side. I'll not care if you waste it, but I'll not
7 participate in that. Thank you.

8 Now, from the plaintiff's side, what is it
9 that the Court is being asked to decide today?

10 MR. ROSE: Before I answer, could
11 Mr. Morrissey make an appearance, sir?

12 THE COURT: All right.

13 MR. MORRISSEY: Yes, I'm here on behalf of
14 four of the defendants, Judge, four adult
15 grandchildren, Alexandra Bernstein, Eric Bernstein
16 Michael Bernstein and Molly Simon, all of whom have
17 joined in the plaintiff's complaint today.

18 THE COURT: Okay. Last time I'll ask this
19 question of the plaintiff. What is it that I'm
20 asked to decide today?

21 MR. ROSE: We are asking you to decide whether
22 five testamentary documents are valid, authentic
23 and enforceable. And that is set forth in count
24 two of the amended complaint in this action. The
25 five documents are a 2008 will of Shirley

1 Bernstein, a 2008 trust of Shirley Bernstein, and
2 an amendment by Shirley Bernstein to her 2008
3 trust.

4 THE COURT: When was the amendment?

5 MR. ROSE: Amendment was in November of 2008.

6 THE COURT: All right. So there's also a 2008
7 amendment?

8 MR. ROSE: Yes, sir. In fact, I have a -- I
9 don't know if you can read it, but I did put up
10 here on the -- there are seven testamentary
11 documents. We believe five of them to be valid and
12 operative, and two of them to have been with --
13 revoked by later documents.

14 So for Shirley, there are three documents that
15 count two seeks you to determine are valid,
16 authentic and enforceable according to their terms.

17 And for Simon Bernstein, he has a 2012 will,
18 and a 2012 amended and restated trust agreement.
19 And we're asking that these five documents be
20 validated today.

21 There also is a 2008 will and trust that
22 you'll hear testimony were prepared, but have been
23 revoked and superseded by later documents.

24 THE COURT: Does everybody agree that Simon's
25 2008 will and trust are invalid or is there some

1 claim that they're valid?

2 MR. ROSE: I can't answer.

3 THE COURT: All right. I'll ask.

4 Are you claiming that the Simon Bernstein 2008
5 will or 2008 trust are valid, or do you agree that
6 they are invalid?

7 MR. BERNSTEIN: Well, I individually disagree.

8 THE COURT: Okay. Thank you.

9 MR. BERNSTEIN: And my children --

10 THE COURT: I just wanted to know --

11 MR. BERNSTEIN: -- aren't represented by
12 counsel, so they can't have an opinion --

13 THE COURT: Okay.

14 MR. BERNSTEIN: -- even though they're parties
15 to the case.

16 THE COURT: Okay. Like I say, you can waste
17 all your time you want. I won't object to it, but
18 I won't participate in it.

19 You can put on your first witness.

20 MR. ROSE: Thank you. Plaintiff will call
21 Robert Spallina.

22 Thereupon,

23 (ROBERT SPALLINA)

24 having been first duly sworn or affirmed, was examined
25 and testified as follows:

1 THE WITNESS: I do.

2 MR. ROSE: May I approach, Your Honor?

3 THE COURT: Sure. All approaches are okay.

4 MR. ROSE: Okay. I brought for Your Honor --
5 would you like a book instead of the exhibits?

6 THE COURT: Nothing better than a huge book.

7 MR. ROSE: We may not use all of them, but
8 we'll adjust it later.

9 THE COURT: All right.

10 MR. ROSE: And then I was going to hand the
11 witness the original for the admission into the
12 court file as we go.

13 THE COURT: All right.

14 MR. ROSE: I have a book for Mr. Eliot
15 Bernstein.

16 DIRECT EXAMINATION

17 BY MR. ROSE:

18 Q. Would you state your name for the record?

19 A. Robert Spallina.

20 Q. Did you know Simon and Shirley Bernstein,
21 Mr. Spallina?

22 A. Yes, I did.

23 Q. And when did you first meet Simon and Shirley
24 Bernstein?

25 A. In 2007.

1 Q. What was your occupation at the time?

2 A. I was working as an estate planning attorney.

3 Q. With a law firm?

4 A. Yes.

5 Q. And what was the name of the law firm?

6 A. Tescher, Gutter, Chaves, Rubin, Ruffin and
7 Forman and Fleisher.

8 Q. And did Simon and Shirley Bernstein retain
9 your law firm?

10 A. Yes, they did.

11 Q. I'm going to approach with Exhibit No. 9 --
12 Plaintiff's Exhibit 9. Ask if you'd identify that
13 document?

14 A. This was an intake sheet to open up the file,
15 dated November 16th of 2007.

16 Q. And the clients are Simon and Shirley
17 Bernstein?

18 A. The clients were Simon and Shirley Bernstein,
19 yes.

20 MR. ROSE: I would move Exhibit 9 into
21 evidence, Your Honor.

22 THE COURT: Any objection?

23 [No verbal response]

24 THE COURT: No objection being stated, I'll
25 receive that as Plaintiff's 19.

1 (Plaintiff's Exhibit No. 9 was received into
2 evidence.)

3 BY MR. ROSE:

4 Q. Now, what was the purpose of Simon and Shirley
5 Bernstein retaining your law firm?

6 A. They wanted to review and go over their
7 existing estate planning and make changes to their
8 documents.

9 Q. I'm going to hand you Exhibit No. 10, and ask
10 you if you can identify for the record Exhibit 10.

11 A. These are meeting notes, my meeting notes,
12 and -- and then partner Don Tescher's meeting notes from
13 several different meetings that we had with Si and
14 Shirley during the time following them retaining us as
15 clients.

16 Q. And is it your standard practice to take notes
17 when you're meeting with clients?

18 A. Yes.

19 Q. And were these notes kept in your company's
20 files and were they produced with Bates stamp numbers?

21 A. Yes, they were.

22 MR. ROSE: I would move Exhibit 10 into
23 evidence, Your Honor.

24 THE COURT: Is there any objection to the
25 exhibit?

1 [No verbal response].

2 THE COURT: No objection being stated, they'll
3 be received as Plaintiff's 10.

4 (Plaintiff's Exhibit No. 10 was received into
5 evidence.)

6 BY MR. ROSE:

7 Q. Now, for today's purposes, are those notes in
8 chronological or reverse chronological order?

9 A. This is reverse chronological order.

10 Q. Okay. Can you go to the bottom of the stack
11 and start with the earliest notes. Do they reflect a
12 date?

13 A. Yes. 11/14/07.

14 Q. And if you'd turn to the last page, is that
15 your partner's notes that are in evidence?

16 A. Yes. We both would always take notes at the
17 meetings.

18 Q. And so the first -- was that the first meeting
19 with Mr. Simon or Shirley Bernstein?

20 A. I believe so, yes.

21 Q. Now, before you met with Simon and Shirley
22 Bernstein, did you have any prior relationship with
23 them?

24 A. No, we did not.

25 Q. Did you personally know either of them before

1 that date?

2 A. No, I did not.

3 Q. 11/14/2007. Okay. And if you'd just flip
4 back to the client intake. I think that was dated
5 November the 26th?

6 A. It was two days later, 11/16. The file was
7 opened two days later.

8 Q. So file open.

9 Now, did you know in advance of the meeting
10 what they were coming in to talk about?

11 A. Yeah. They were coming in to talk about their
12 estate planning.

13 Q. And did they provide you in advance of the
14 meeting with any of their prior estate planning
15 documents?

16 A. I believe we had copies of documents. I don't
17 know if they provided them at that meeting or if they
18 provided them before for us to look at, or after, but I
19 know that there were existing documents that were in our
20 file.

21 Q. Okay. Let me approach and hand you
22 Exhibit 40A, which is -- bears Tescher Spallina
23 Number 1.

24 Does that appear to be an envelope from
25 Stephen Greenwald --

1 A. Yes.

2 Q. -- directed to Simon Bernstein?

3 A. Yes, it is.

4 Q. And copy of this was in your files when they
5 were produced?

6 A. Yes.

7 Q. And was Stephen Greenwald the prior lawyer
8 that represented Simon and Shirley Bernstein, as far as
9 you know?

10 A. Yes. Yes, he was.

11 Q. I'm going to hand you Exhibit 40B, which is a
12 letter from Mr. Greenwald to Simon and Shirley
13 Bernstein.

14 Is that also -- is that also provided in your
15 files?

16 A. Yes, sir.

17 Q. Does it bear a Bates stamp of your law firm?

18 A. Yes, it does.

19 Q. Okay. And does Mr. Greenwald, in that letter,
20 disclose what he is sending to Simon --
21 Mr. and Mrs. Simon L. Bernstein?

22 A. Yes, he did. Their estate planning documents,
23 including their ancillary documents, their wills, their
24 trusts, health care powers, durable powers and living
25 wills.

1 Q. And if -- I'll show you 40C, D, E and F, and
2 ask if you can identify these as some of the documents
3 that were included with the letter from Mr. Greenwald?

4 A. We have each of the first codicils to
5 Mr. and Mrs. Bernstein's wills, and we have each of
6 their wills.

7 MR. ROSE: I would move Exhibit 40A through F
8 into evidence, Your Honor.

9 THE COURT: Any objection?

10 [No response.]

11 THE COURT: No objection being stated, I'm
12 going to receive this as Plaintiff's 40A through F.

13 (Plaintiff's Exhibit Nos. 40A-F were received
14 into evidence.) A B C D E F

15 BY MR. ROSE:

16 Q. Within Exhibit 40, is there a will and a --
17 for Simon and a will for Shirley?

18 A. Yes, there is.

19 Q. And could you tell the Court the date of those
20 documents?

21 A. August 15, 2000.

22 THE COURT: Are both documents the same date?

23 THE WITNESS: Yes, they are, Your Honor.

24 THE COURT: All right. Thanks. I just wanted
25 to make sure I don't get confused.

1 BY MR. ROSE:

2 Q. Can you generally describe what the estate
3 plan reflected in Exhibit 40 would be, who are the
4 beneficiaries and what percentages?

5 A. Okay. Just give me a minute. I haven't seen
6 these in...

7 The plan under the documents -- and let me
8 just make sure it's the same under both documents. The
9 plan under the documents was to provide all the assets
10 to the survivor of Shirley and Si, and that at the death
11 of the survivor of the two of them, assets would pass
12 to -- it appears to be Ted, Pam, Eliot, Jill and Sue and
13 Lisa -- and Lisa. So it looks to be a typical estate
14 plan; everything would pass to the survivor at the first
15 death, and then at the second death everything to the
16 children.

17 Q. How many of the children under the 2000
18 documents?

19 A. This shows all five. The will shows all five.

20 Q. What page are you looking at?

21 A. The first page of the will. Is this -- oh,
22 no. That's just as to tangible personal property. I'm
23 sorry.

24 Q. That's okay. Are you on -- are you in Simon's
25 or Shirley's?

1 A. I'm in -- on both documents, to make sure the
2 disposition was the same.

3 Q. Okay. So on the page -- the first page, it
4 talks under --

5 A. It speaks to tangible personal property.

6 Q. Split equally among the five children?

7 A. Among the five children.

8 Q. Let me just stop you one second right there.

9 If you would, turn --

10 MR. ROSE: This might help, Your Honor, if
11 you'd turn to Tab 7. It may be out of order.

12 Might be a good time just to go over the family
13 tree and let -- get everyone on the same page of...

14 We prepared a chart, and I'm going to put
15 the -- it lists Simon and Shirley and the names of
16 their children on the second line, and then under
17 each child with arrows, the names of the
18 grandchildren and which parents they belong to.

19 THE WITNESS: This looks accurate.

20 MR. ROSE: I would move Exhibit 7 into
21 evidence, Your Honor.

22 THE COURT: Any objection?

23 [No response.]

24 THE COURT: No objection being stated, that's
25 in evidence as Plaintiff's 7.

1 (Plaintiff's Exhibit No. 7 was received into
2 evidence.)

3 | BY MR. ROSE:

4 Q. So under the 2000 documents, for personal
5 property, it's split among the five children.

6 And when you get to the residuary estate or
7 the amount that was put into trusts, who are the
8 beneficiaries?

9 A. Again, at the death of the survivor of the two
10 of them, tangible personal property would go to the five
11 children, and the residuary of the estate would go to
12 four of the five children. It appears that Pam is cut
13 out of these documents. And I recall that now, yes.

14 Q. Okay. So under the 2000 documents, Eliot
15 Bernstein would get 25 percent of the residuary?

16 A. Correct.

17 Q. Now, if you look at page 5, it talks
18 about -- page 5, near the top, it says "upon the death
19 of my husband," then "the principal of his trust shall
20 pass," and then the next sentence says "to the extent
21 that said power of appointment -- oh, "and such shares
22 equal or unequal and subject to such lawful trust terms
23 and conditions as my husband shall by will appoint."

24 Do you see what I'm talking about?

25 A. Yes, I do.

1 Q. That's a power of appointment?

2 A. Correct.

3 Q. And then it says, the next sentence, To the
4 extent the power of appointment is not effectively
5 exercised, then it goes to the four of the five
6 children?

7 A. Correct.

8 Q. So under the 2000 documents, the survivor
9 would have the power to give it all to one?

10 A. Correct.

11 Q. And theoretically change it and give some to
12 Pam?

13 A. That's true, by the language of this document.

14 Q. Okay. So I'm just going to write. We have a
15 power of appointment, which we don't need to belabor, in
16 favor of the survivor; and then if it's not exercised,
17 Eliot gets 25 percent, and three other siblings get the
18 balance?

19 A. 25 percent each.

20 Q. Okay.

21 A. Equal shares.

22 Q. Now, when Simon and Shirley came to you, did
23 they give you an indication whether they wanted to keep
24 in place the 2000 structure?

25 A. No. They wanted to change the dispositions

1 under their documents.

2 Q. Okay. So if we work through your notes now,
3 which are in evidence as Exhibit No. 10, the first
4 meeting was November the 14th, 2007. You had a
5 discussion about Simon's net worth -- Simon and
6 Shirley's net worth, how much money they had at that
7 time?

8 A. Yes.

9 Q. Okay. I'm going to show you Exhibit No. 12
10 before we --

11 Do you recognize the handwriting on
12 Exhibit 12?

13 A. No.

14 Q. Okay. I believe it's Simon Bernstein's
15 statement of his net worth.

16 But you have seen this document before?

17 A. I don't recall.

18 Q. Okay. And you're not familiar with his
19 handwriting to --

20 A. No. Other than his signature.

21 Q. That's fine.

22 But during the discussion, did you discuss
23 Simon's net worth?

24 A. Yes. Both my partner and I.

25 Q. And if I look at Mr. Tescher's notes, which

1 are a little easier to read, he lists the joint
2 brokerage account, some money for Simon, Simon, a
3 house -- the house appears to have a million dollar
4 mortgage -- a condo, some miscellaneous and some life
5 insurance. And he totals -- that totals to 13 million,
6 and then he lists 5 million for 33 shares of the
7 company.

8 Do you see that?

9 A. Yes, I do.

10 Q. Okay. So if I add up what Mr. Tescher wrote
11 in his notes, I get to about \$18 million.

12 And this is on November the 14th of '07,
13 around 18 million, but that includes life insurance?

14 A. Yes, it does.

15 Q. Okay. Now, did you meet with them -- how long
16 were these meetings with Simon and Shirley Bernstein?

17 A. They could be an hour; sometimes more.

18 Q. Now, if we flip through your notes, does it
19 reflect a second meeting?

20 A. Yes, it does.

21 Q. And what's the date of the second meeting?

22 A. 12/19/07.

23 Q. And do you have any -- I'm sorry. 12/19?

24 A. 12/19/07.

25 Q. Okay. And what's the -- let's just put all

1 the dates up here. That was the second meeting.

2 Are there notes from a third meeting?

3 A. The next meeting was January 31, '08.

4 Q. Okay. Is there a fourth meeting?

5 A. March 12 of '08.

6 Q. Now, just to put this in perspective, the
7 document that we are going to -- well, the document
8 that's been admitted into probate in this case is a will
9 of Shirley Bernstein that bears a date of May 20, 2008.

10 Does that sound consistent with your memory?

11 A. Yeah, it was clearly 2008.

12 MRS. CANDICE BERNSTEIN: Excuse me. Can you
13 turn that so we can see it?

14 THE WITNESS: Sure. Sorry.

15 THE COURT: Ma'am, you are not a party. You
16 are not an attorney. And you are not really
17 supposed to be sitting there. I'm letting you sit
18 there as a courtesy. If you ask for and inject
19 yourself any further in the proceeding than that,
20 I'll have to ask you to be seated in the gallery.

21 Do you understand?

22 MRS. CANDICE BERNSTEIN: Yes, sir.

23 THE COURT: Thank you.

24 BY MR. ROSE:

25 Q. So you have four meetings with Simon and

1 Shirley Bernstein.

2 And did it take that long to go over what they
3 wished to do with their estate planning documents?

4 A. It was more of us, you know, trying to get a
5 handle on everything that they had, the business, prior
6 planning. From the first meeting to the March meeting,
7 it was only a couple of months. The holidays were in
8 there. So it wasn't uncommon for us to meet with a
9 client more than once or twice when they had a
10 sophisticated plan and asset schedule.

11 Q. At this time --

12 A. By the last meeting, we knew what we needed to
13 do.

14 Q. And around this -- based on your notes, did
15 Simon Bernstein believe he had a net worth all in of
16 about 18 million when he met with you?

17 A. Yeah, it appears that way, 18, 19 million
18 dollars.

19 Q. And did he discuss at all with you that he was
20 involved in a business at that time, an insurance
21 business?

22 A. Yes.

23 Q. And did he give you an indication of how well
24 the business was doing at around the times of these
25 meetings between November 2007 and March or May of 2008?

1 A. Yeah, the business was doing well at that
2 time. He was -- he was very optimistic about the future
3 of the business.

4 Q. Now, did you do any -- did you prepare any
5 documents before the will was signed in May? Did you
6 prepare drafts of the documents?

7 A. Yes, we did. We always prepare drafts of
8 documents.

9 Q. And did you share the drafts with Simon and
10 Shirley?

11 A. Yes, we did.

12 Q. Okay. I'm going to hand you Exhibit 11, and
13 ask if you can identify that for the record?

14 A. This is a letter from our firm dated April 19
15 of 2008. It's transmitting the documents to the client,
16 with an explanation that they could follow, better than
17 reading their documents -- a summary of the documents.

18 Q. Is that a true and authentic copy of a
19 document that you created?

20 A. Yes, it appears to be.

21 MR. ROSE: I would move Exhibit 11 into
22 evidence, Your Honor.

23 THE COURT: All right. Any objection?

24 [No response.]

25 THE COURT: All right. Then that's in

1 evidence as Plaintiff's 11.

2 (Plaintiff's Exhibit No. 11 was received into
3 evidence.)

4 BY MR. ROSE:

5 Q. And if I read Exhibit 11, the first three
6 words say, "Enclosed are drafts of each of your wills
7 and revocable trusts, the children's family trust, each
8 of your durable powers of attorney, designations of
9 health care surrogate and living wills," correct?

10 A. Yes.

11 Q. So about a month and 11 days before anything
12 was signed, documents were sent by Federal Express to
13 Simon and Shirley Bernstein?

14 A. Correct.

15 Q. And it appears to have gone to Simon's
16 business?

17 A. Yes.

18 Q. Now, if you look at -- does your -- does your
19 letter, sort of in laymen's terms, rather than reading
20 through the legalese of a will, explain what the estate
21 planning was under the documents that have yet to be
22 signed but that you were preparing?

23 A. Yes, it does, as much as possible in laymen's
24 terms.

25 Q. Can you just give us a short -- well, the will

1 itself for both Simon and Shirley was a relatively
2 simple will that poured over into a revocable trust, one
3 for each?

4 A. Yes, poured over wills for both.

5 Q. And whoever died first would inherent the
6 personal property?

7 A. All tangible personal property under the will
8 would pass to the survivor.

9 Q. So assuming Simon survived Shirley, he would
10 be the sole beneficiary of her estate?

11 A. Correct.

12 Q. And then any of her residuary would go into a
13 trust?

14 A. That's correct.

15 Q. And he, in fact, outlived Shirley?

16 A. He did.

17 Q. Okay. Now, if you go to the second page, at
18 the top, you describe the will of Shirley Bernstein.
19 It's essentially identical to Si -- it says "Si."

20 Just for the record, that's Simon shorthand?

21 A. Yes.

22 Q. Si is the personal representative of Shirley's
23 estate, and Ted is designated as successor if Simon is
24 unable to serve.

25 That was what was in the document you sent in

1 April?

2 A. Yes. I believe so, yes.

3 Q. And that provision remained in the final
4 documents you signed?

5 A. Yes.

6 Q. Now, did Ted eventually become a successor
7 personal representative upon Simon's death?

8 A. Yes, he did.

9 Q. Then you next start to talk about the Simon L.
10 Bernstein trust agreement.

11 And theoretically, that was going to be the
12 primary testamentary document?

13 A. Correct, it was.

14 Q. And that's fairly standard?

15 A. Yes. When a client wants to avoid probate, we
16 use a revocable trust to title assets in prior to death.
17 Those assets remain confidential; they're not part of
18 the court record. And the trust is also used to avoid
19 the need for the appointment of a guardian in the event
20 of incapacity, because there's a successor trustee
21 mechanism.

22 Q. Okay. Now, under Simon's trust agreement,
23 moving down to the third paragraph, under that heading,
24 it says that both trusts provide for mandatory income
25 distributions. And then the next sentence starts, "Upon

1 Shirley's death, she has been given a special power to
2 appoint the remaining assets of both the marital trust
3 and the family trust to any of your lineal descendants
4 and their spouses, a power to redirect and reallocate."

5 Do you see that?

6 A. Yes.

7 Q. Now, is that consistent with the way the
8 documents were intended to be drafted?

9 A. Yes, it is.

10 Q. And I guess it's sort of similar to what
11 existed in the 2000 wills?

12 A. Yes. Typically, you give the survivor of the
13 spouse a power to appoint in the event that they want to
14 change any of the estate planning of the first to die.
15 Found in most first marriage documents with only
16 children from that marriage.

17 Q. And this is a first marriage with all five
18 children being the product of the same marriage --

19 A. Yes.

20 Q. -- as far as you know?

21 A. As far as I know.

22 Q. And as far as you know, Simon and Shirley
23 Bernstein, they each married only once in their
24 lifetime, to each other?

25 A. That's all I know.

1 Q. If you flip to the next page, there's a
2 shorter paragraph for Shirley.

3 It basically says -- it's virtually identical,
4 except that Simon is the initial successor, and after
5 that, Ted would be Simon's replacement if he passed
6 away?

7 A. Correct.

8 Q. And is that the mechanism by which Ted
9 Bernstein became the successor trustee in this lawsuit?

10 A. Yes, it is.

11 Q. Now, if Shirley died first, then did the
12 documents give Simon the same power of appointment over
13 the assets in her trust that was provided for in the
14 Simon document if he died?

15 A. Same power of appointment was in both
16 documents. They were identical documents, with one
17 exception.

18 Q. And what was the exception; the name of the
19 successor trustee?

20 A. The name of the successor trustee.

21 Q. And then Simon wanted his then business
22 partner, Bill Stansbury, to be his successor trustee in
23 both his will and his trust, and Shirley wanted her
24 oldest son, Ted, to be her successor in both documents?

25 A. Correct. The signer, non-survivor.

1 Q. Okay. And Shirley, I guess it says here, also
2 made a specific gift of \$200,000 to someone named
3 Matthew Logan?

4 A. Correct.

5 Q. If you look at our family tree chart, I think
6 Matthew Logan is under Ted.

7 He is the son of Ted's second wife, Deborah?

8 A. Correct.

9 Q. Okay. So there was a \$200,000 special gift to
10 Matthew that was in the documents that you sent on
11 April 9th?

12 A. Correct.

13 Q. Then you prepared family trusts for the
14 children.

15 Were those trusts created at the time?

16 A. Yes, they were.

17 Q. Now, after you sent your letter on April 9th,
18 did you have a further discussion with Simon and Shirley
19 before the documents were signed?

20 A. I can't recall, but we probably -- we probably
21 did, to set up a meeting and talk -- you know, either,
22 A, talk about the documents, the draft documents, any
23 changes that they wanted to make on the draft documents.
24 It would be typical of us to do that, although I don't
25 have any meeting notes that showed that, so...

1 Q. Now, under -- we'll talk -- let's talk about
2 the ones that matter.

3 Because Shirley died first, her 2008 trust
4 became the beneficiary of her estate?

5 A. Correct.

6 Q. And then Simon had a power of appointment,
7 correct?

8 A. Um-hum.

9 Q. And if -- you have to say yes or no.

10 A. Yes.

11 Q. And if he didn't exercise the power of
12 appointment, was there a default set of beneficiaries
13 that were designated in the documents you drafted in
14 2008?

15 A. Yes.

16 Q. And what was the default set of beneficiaries?

17 A. Simon had and Shirley had in their documents
18 excluded Pam and Ted at the death of the survivor of the
19 two of them.

20 Q. Okay. So if the power of appointment was not
21 properly exercised, it would just go to three, and Eliot
22 would end up with 33 and a third percent and two of the
23 other sisters would get the balance?

24 A. That's correct.

25 Q. Did Simon and Shirley eventually execute

1 documents in 2008?

2 A. Yes, they did.

3 Q. I'm going to hand you Exhibit No. 1, which
4 is --

5 A. A copy of Si's will from --

6 Q. Do you have Exhibit 1?

7 A. Excuse me. Sorry. Shirley's will.

8 Q. Is that a conformed copy of the document?

9 A. Yes, it is.

10 MR. ROSE: I would move Exhibit 1 into
11 evidence.

12 THE COURT: Any objection?

13 [No response.]

14 THE COURT: That's in evidence as
15 Plaintiff's 1.

16 (Plaintiff's Exhibit No. 1 was received into
17 evidence.)

18 BY MR. ROSE:

19 Q. Now, that says "conformed copy." If I turn to
20 the last page, there's no handwritten signatures.

21 A. Correct.

22 Q. Do you know where the original of that
23 document sits today?

24 A. It was filed with the court.

25 Q. Okay. So somewhere in the courthouse, the

1 original goes.

2 And that's something that the client would
3 keep?

4 A. Correct. This is what we would send to the
5 client to include with their files.

6 Q. When you filed the original with the court,
7 did anyone object while Simon was alive?

8 A. No.

9 Q. Okay. I'm going to hand you Exhibit No. 2.
10 Do you recognize that document?

11 A. Yes. This is Shirley's trust agreement that
12 she executed in 2008.

13 Q. Now, does that document have copies of her
14 signature?

15 A. Yes. These are actual copies of the signing
16 parties and their signatures.

17 Q. And how many originals would have been created
18 of this document?

19 A. We always created three originals of the trust
20 agreements.

21 Q. Okay. Now, if you turn to the next -- if you
22 turn to the last page, it says that Shirley put a dollar
23 into her trust when it was created.

24 A. Yes.

25 Q. And that's to make it a valid trust?

1 A. Yeah, I mean, it's not required today, but
2 it's pretty much just form to show a dollar. She had
3 certainly funded it more than that.

4 Q. And eventually Shirley put some assets into
5 the trust?

6 A. Yes.

7 Q. Okay. And if you go to the page before that,
8 page 27, it appears to be a signature page, correct?

9 A. Yes.

10 Q. Now, were you one of the witnesses to the
11 signature of Shirley Bernstein on Exhibit 2?

12 A. Yes, I was.

13 Q. And were you present with Shirley Bernstein
14 and the other witness, Traci Kratish, at the time of the
15 execution of the documents?

16 A. Yes, I was.

17 Q. And they're notarized by someone named
18 Kimberly Moran.

19 Does she work for your office?

20 A. Yes, she did.

21 Q. And through her involvement with your firm
22 and -- did she personally know Shirley and Traci
23 Kratish, as well as yourself?

24 A. Yes, she did.

25 Q. Now, at the same time that Shirley signed her

1 documents, did Simon sign a similar set of 2008 will and
2 trust, similar to the drafts that were sent in April?

3 A. Yes, he did. We were all sitting in the main
4 conference area in their offices together.

5 Q. In Simon's office or your office?

6 A. In Simon's offices.

7 Q. Okay. So why would someone from your office
8 come to Simon's office rather than rely on the notary
9 that they have there?

10 A. Because we wanted to accommodate Shirley and
11 Si in their offices and not have them travel.

12 Q. You personally went there. Did you personally
13 go through to make sure that the documents were signed
14 with all the formalities required under Florida law to
15 make them valid and enforceable?

16 A. Yes, we did. That's why we were there.

17 Q. And if Simon did not have a 2008 will
18 and -- sorry.

19 If Simon did not have a 2002 will and trust,
20 would it be your belief that the 2008 will and trust
21 would be valid?

22 A. Yes.

23 Q. Were they properly signed with all the same
24 testamentary formalities required by Florida law?

25 A. Yes, they were.

1 Q. Okay. Did Shirley at some point amend her
2 trust agreement?

3 A. Yes, she did.

4 Q. And do you recall why she amended it?

5 A. She amended it to remove Matt Logan from the
6 document that she had included previously as a specific
7 device.

8 Q. Do you know why Matt was removed?

9 A. It's attorney-client privilege.

10 Does it matter?

11 Q. I'll withdraw the question.

12 Was Matthew removed at the direction of
13 Shirley?

14 A. Yes.

15 Q. I'll withdraw --

16 A. Yes. Yes. Yes.

17 Q. Did Shirley sign a document that effectively
18 removed Matthew?

19 A. Yes, she did.

20 Q. Let me hand you Exhibit No. 3, and ask you if
21 you recognize that document?

22 A. Yes, I do.

23 Q. Now, was this document signed with the same
24 testamentary formalities as the 2008 trust?

25 A. Yes, it was.

1 MR. ROSE: We would move Exhibit 3 into
2 evidence, Your Honor.

3 THE COURT: Any objection?

4 [No response.]

5 THE COURT: All right. That's in evidence as
6 Plaintiff's 3.

7 (Plaintiff's Exhibit No. 3 was received into
8 evidence.)

9 BY MR. ROSE:

10 Q. Now, if you look -- there's a paragraph 1 and
11 a paragraph 3, but no paragraph 2.

12 Do you know why that is?

13 A. It's just a mistake in drafting.

14 Q. And did you specifically discuss with Shirley,
15 whose privilege I technically would control -- my client
16 would control --

17 Did you specifically discuss with Shirley the
18 fact that the effect of the first amendment would be to
19 remove the specific gift that she had made for Matthew
20 Logan?

21 A. Yes. Even prior to the signing of the
22 document.

23 Q. And is this the last relevant testamentary
24 document that Shirley ever signed that you're aware of?

25 A. Yes, it is.

1 Q. Did you meet with Simon and Shirley in person
2 to talk about this amendment?

3 A. Si had called me and said that Shirley had a
4 change to her documents, and asked me to give her a call
5 and have lunch with her. I called her. We arranged for
6 a meeting in her house to execute the document.

7 Q. Now, you brought your -- you brought Kimberly
8 with you to get -- for convenience and to make sure the
9 documents were properly executed?

10 A. Correct. She had -- she had her personal
11 assistant that was there, Rachel Walker, to serve as
12 another witness.

13 Q. Just so I don't have to go back, what's the
14 date of the amendment?

15 A. November 18th, 2008.

16 Q. So now we five documents that exist; 2008,
17 will, trust, will, trust, and an amendment to Shirley's
18 trust.

19 Did you share any of those documents with any
20 of Simon and Shirley's children at that time?

21 A. No, we did not.

22 Q. Did any of the -- did any of the children play
23 any role in bringing Simon or Shirley to your offices?

24 A. Not that I'm aware, no.

25 Q. Did any of the children accompany them

1 to -- any time they came to visit you, did any of the
2 children come with them, drag them along?

3 A. No.

4 Q. So you prepared -- did you do some other
5 estate planning in addition to the 2008 testamentary
6 documents?

7 A. Yes, we did.

8 Q. Can you briefly describe some of the things
9 you did?

10 A. We had set up a Florida limited partnership.
11 We created a general partner entity for that
12 partnership, a limited liability company.

13 Q. What's the name of the Florida limited
14 partnership?

15 A. Bernstein Family Investments, LLLP.

16 Q. Was that an entity that was in existence or
17 was it created under your direction?

18 THE COURT: Can I stop you a second? Is this
19 going to help me figure out the validity of the
20 testamentary documents?

21 MR. ROSE: Only in the very narrowest sense.
22 I'm just trying to establish that they had a very
23 lengthy and extensive relationship, and they did a
24 lot of estate planning for Simon and Shirley. But
25 I'll be very brief.

1 THE COURT: Well, if that becomes relevant
2 later, perhaps you could come back to it. But I
3 don't see the relevance at this point, so I'll ask
4 you to move on.

5 MR. ROSE: Yes, sir.

6 BY MR. ROSE:

7 Q. Now, was Simon concerned at all about asset
8 protection as part of some of the things you discussed?

9 A. Yes, he was.

10 Q. Now, we have -- did you have any discussion
11 with him about who was expected to live longer or if
12 either of them had health problems that you had any
13 knowledge of?

14 A. Si was not -- he was in good health, but he
15 had had some heart issues. And Shirley had had other
16 issues as well. And I think it -- early on, he didn't
17 know, but as the relationship went on, we kind of knew
18 that Shirley was sicker than him and would probably pass
19 first.

20 Q. So Shirley died -- it's in the public
21 record -- but December --

22 A. 2010, yeah.

23 Q. -- 8th. So Simon was her -- he survived her;
24 he becomes the sole beneficiary as far as tangible
25 personal property under her will?

1 A. Yes, he does.

2 Q. The residuary goes into the Shirley Bernstein
3 Trust?

4 A. That's correct.

5 Q. He's the sole successor trustee and the sole
6 beneficiary --

7 A. Yes, he is.

8 Q. -- during the term of his life?

9 A. Correct.

10 Q. Now, was there a great deal of effort put into
11 inventorying the assets, things like that?

12 A. No, there wasn't. For purposes of opening up
13 Shirley's probate, we had asked Si to estimate the value
14 of, you know, her tangible personal property. And
15 that's what we included on the inventory that was filed
16 in the probate.

17 Q. Now, if I'm correct, 2010 was the year there
18 were no estate taxes at all?

19 A. No estate taxes.

20 Q. Simon's the sole beneficiary?

21 A. Sole beneficiary. Even if there were taxes,
22 there wouldn't have been any tax on the first death,
23 because everything went to Si, and there was a marital
24 deduction.

25 Q. While Simon was alive, did Ted have any access

1 to the documents, as far as you know? Did you ever send
2 the testamentary documents of Simon or Shirley to Ted?

3 A. No, we did not.

4 Q. Did Ted play any role in the administration of
5 the estate while Simon was alive?

6 A. No, he did not.

7 Q. Did any of the other children play any role in
8 the administration of the estate while Simon was alive?

9 A. No, they did not.

10 Q. Now, did you have to -- well, strike that.

11 Because it was only Simon, was it sort of the
12 decision by Simon, That I don't want to spend a lot of
13 time and money in this estate because it's just wasting
14 my own money?

15 A. Yes.

16 Q. And that's not unusual in a situation where
17 you have a surviving spouse that's the sole beneficiary?

18 A. Correct.

19 Q. Now, did there come a point in time when Pam,
20 who was not a named beneficiary of the -- Shirley's
21 documents, learned of the fact that she had been
22 excluded?

23 A. Yes, there was.

24 Q. Okay. And did you get involved with
25 discussions with Pam or her lawyer?

1 A. She had hired an attorney, who had made a
2 request to get a copy of her mother's documents. And I
3 called Si, spoke to Si about it, and he authorized me
4 giving Pam those documents -- or her attorney those
5 documents.

6 Q. Were they provided to any of the other
7 children; that would be Ted or his brother, Eliot, or
8 his two sisters, Lisa or Jill?

9 A. No, they were not.

10 Q. And did Simon Bernstein at some point decide
11 to change his testamentary documents?

12 A. Yes, he did.

13 Q. Do you recall approximately when that
14 happened?

15 A. Early 2012, he called and requested that we
16 meet to go over his documents.

17 Q. I'm going to hand you an exhibit marked
18 Exhibit 13, and ask you if you recognize those as your
19 own notes?

20 A. Yes. These are my notes from that meeting in
21 2012.

22 MR. ROSE: I would move Exhibit 13 into
23 evidence, Your Honor.

24 THE COURT: Any objection?

25 [No response.]

1 THE COURT: All right. That's in evidence as
2 Plaintiff's 13 then.

3 (Plaintiff's Exhibit No. 13 was received into
4 evidence.)

5 BY MR. ROSE:

6 Q. Now, during this meeting, did Simon discuss
7 the possibility of altering his estate plan?

8 A. Yes, he did.

9 Q. Did you also go over his current finances?

10 A. Yes, we did.

11 Q. Now, we've seen from 2007 that he had
12 disclosed about \$18 million.

13 As part of the meeting in February of 2012, he
14 gave you sort of a summary of where he stood at that
15 time?

16 A. Yes, he did.

17 Q. And what was the status of the Shirley
18 Bernstein probate administration in early 2012, about
19 13 months after she passed away?

20 A. It was still not closed.

21 Q. Do you know why it was not closed?

22 A. I think that we were still waiting -- I'm not
23 sure that -- we were still waiting on waivers and
24 releases from the children to close the estate, to
25 qualify beneficiaries under the estate if Si were to

1 die. We had to get waivers and releases from them.

2 Q. Standard operating procedure?

3 A. Standard operating procedure.

4 Q. Okay. So Simon here, it says -- it says at
5 the top "SIPC receivable."

6 Do you know what that is?

7 A. Yes, I do. That was -- Si had made an
8 investment in a Stanford product that was purported to
9 be a CD; it was an offshore CD. And when the Stanford
10 debacle hit, I guess he filed a claim with SIPC to get
11 those monies back, because it was supposedly a cash
12 investment.

13 Q. And so he invested in a Ponzi scheme and lost
14 a bunch of money?

15 A. Correct.

16 Q. Some of the 18 million he had in 2007 he lost
17 in the next four and a half years in investing in a
18 Ponzi scheme?

19 A. That's correct.

20 Q. And then the maximum that the SIPC -- which is
21 like the FDIC for investments.

22 You're familiar with that, correct?

23 A. Yes.

24 Q. The maximum is 500,000.

25 You don't actually necessarily recover

1 500,000? You have a receivable, right?

2 A. Yes.

3 Q. Do you know how much he actually realized from
4 the SIPC?

5 A. I believe he never received anything.

6 Q. Okay. And then it said, LIC receivable,
7 \$100,000.

8 Am I reading that correct?

9 A. Yes.

10 Q. And LIC was the company he was involved, with
11 others?

12 A. Yes.

13 Q. Okay. So I put here 600 that he put, but the
14 600 is really probably closer to 100 if you didn't get
15 the SIPC money?

16 A. Correct.

17 Q. So I'm going to just put a little star here
18 and put it's really 100,000, and sort that out.

19 So then he says -- he has -- Si's estate, this
20 would be his personal assets. He's got an interest in
21 the LLLP.

22 That is not relevant to discuss how it was
23 formed, but there was an LLLP that was owned, some by
24 Si's trust, some by Shirley's trust?

25 A. Correct.

1 Q. And at the time, he thought the value was
2 1,150,000 for his share?

3 A. That's correct.

4 MR. BERNSTEIN: Can I object, Your Honor?

5 THE COURT: What's the objection?

6 MR. BERNSTEIN: Relevance.

7 THE COURT: Overruled.

8 MR. BERNSTEIN: Okay.

9 BY MR. ROSE:

10 Q. And then he had an IRA that says 750,000.

11 A. Correct.

12 Q. And those two things totaled 1,550,000?

13 A. No. They totaled one million nine. Right?

14 Q. Okay. You're right.

15 You wrote next to it "estate tax."

16 What does that mean, on the side next to it?

17 A. I think what I had done was offset the value
18 of the assets in his estate by the loans that were
19 outstanding at the time.

20 Q. And it shows a million seven in loans?

21 A. A million seven in loans.

22 Q. So we had loans back in 2008 -- I'm sorry.

23 November of 2007 time period -- or 2008, which were
24 only -- so we have loans now, you said, a million seven?

25 A. Well, he had a \$1.2 million loan with

1 JP Morgan that was collateralized with the assets of the
2 LLLP.

3 Q. And then you list -- just to speed up, then
4 you have -- underneath that, it says Shirley's asset was
5 empty, right? Because whatever was in had gone to
6 Simon?

7 A. Yeah, her estate had nothing in it.

8 Q. She had a Bentley, I think, when she died.

9 Do you know what happened to the Bentley?

10 A. I wasn't aware that she had a Bentley.

11 Q. Did you come to learn that she had a Bentley
12 and Simon gave it to his girlfriend, and she traded it
13 in at the dealership and got a Range Rover?

14 A. Much, much, much later on --

15 Q. But you know --

16 A. -- after Si's death.

17 Q. But you know that to be the case?

18 A. I wasn't aware that it was traded for the
19 Range Rover. I thought he bought her the Range Rover.
20 I didn't realize he used a Bentley to do it.

21 Q. Okay. Somehow you know the Bentley became
22 something for Maritza?

23 A. Yes.

24 Q. That's the name of his girlfriend?

25 A. Yes.

1 Q. Okay. Then it says, in Shirley's trust,
2 condo, one million -- I'm sorry. I should go to the
3 next column. It says "FMV."

4 That would be shorthand for Fair Market Value?

5 A. Yes.

6 Q. So condo, 2 million, which is here; house,
7 3 million; half of the LLLP, which is Shirley's half
8 after -- I assume, after the deduction of the loan, was
9 800,000?

10 A. Um-hum.

11 Q. Then it says "LIC." That's the company Life
12 Insurance Concepts that Mr. -- that Simon, his son Ted,
13 and a gentleman named Bill Stansbury had formally been
14 involved, another attorney, shares by then. Because
15 we're in February of 2012.

16 But, in any event, that's Simon's company?

17 A. Correct.

18 Q. And he told you in 2007 it was worth --
19 Mr. Tescher's -- notes, like -- his interest was worth
20 5 million.

21 What did he tell you it was worth in 2012?

22 A. Zero.

23 Q. Then underneath that -- I put zero here, so
24 zero today.

25 So his net worth -- and then there was a home

1 that he owned for -- that Eliot lives in, right? He
2 didn't really own it, but he controlled it, Simon?

3 A. Yes.

4 Q. Okay. Did you set up the entity that owned
5 the home?

6 A. Yes, I did.

7 Q. Just to save time, there's an entity called
8 Bernstein Family Realty that owns the house.

9 Simon controlled that entity while he was
10 alive?

11 A. Yes, he did.

12 Q. And his estate holds a mortgage on the house
13 for 365,000?

14 A. Correct.

15 Q. So there's some interest there.

16 He didn't put it on his sheet when he talked
17 to you, but that still would have existed in some form,
18 right?

19 A. Yes.

20 Q. And it still exists to this day.

21 We don't know the value of it, but there still
22 is a mortgage, right?

23 A. Yes.

24 Q. Okay. But either way, the point of this whole
25 story is, his net worth went down significantly between

1 2007 and 2012?

2 A. Yes, it did.

3 Q. And in your world, that's not uncommon, with
4 the stock market crash, the depression, things like
5 that, that a lot of clients with high net worth would
6 have suffered losses during that time?

7 A. Many, many of them did. And even the values
8 that are on this sheet were not the real values.

9 Q. We know that the --

10 A. Clients have a tendency to overstate their net
11 worth.

12 Q. All right. And we know the Ocean Drive house
13 sold for about a million four?

14 A. Correct.

15 Q. And the Court -- there's an order that
16 approved the sale, the gross sale price of a million one
17 for St. Andrews?

18 A. Correct.

19 Q. Okay. So that's still -- that's less than
20 half, even then, Simon thought he would get.

21 Now, if you look at the bottom of the
22 Exhibit No. 13, it says a word, begins with an "I." I
23 can't really read it.

24 Can you read that?

25 A. Insurance.

1 Q. Well, did you have some discussions with Simon
2 about his insurance?

3 A. Yes, we did.

4 Q. In fact, I think -- Mr. Spallina, we talked
5 about he had -- I'm sorry.

6 Mr. Tescher's notes had a \$2 million life
7 insurance?

8 A. Correct.

9 Q. Okay. Is this the same life insurance?

10 A. Yes, it is.

11 Q. And was there a discussion about -- I guess it
12 says 1 million --

13 That's one million seven-fifty?

14 A. A million 75 -- yeah, one million seven-fifty
15 was the value of the policy.

16 Q. And the death benefit was a million six?

17 A. Million six. There was a small loan or
18 something against the policy.

19 Q. Okay. And then it says "Maritza."

20 What was Maritza down there for?

21 A. Si was considering changing -- the purpose of
22 the meeting was to meet, discuss his assets. And he
23 was, you know, having a lot of, I guess, internal -- he
24 had received another letter from his daughter -- he
25 asked me to read the letter from Pam -- that she still

1 was not happy about the fact that she had been
2 disinherited under her mother's documents if the assets
3 were to pass under the documents and he didn't exercise
4 his power of appointment. And this meeting was to kind
5 of figure out a way, with the assets that he had, to
6 take care of everybody; the grandchildren, the children,
7 and Maritza.

8 And so he thought maybe that he would change
9 the beneficiary designation on his life insurance to
10 include her. And we had talked about providing for her,
11 depending on -- an amount -- an increasing scale,
12 depending on the number of years that he was with her.

13 Q. So if you look at the bottom, it says 0 to
14 2 years, 250.

15 Is that what you're referring to?

16 A. Yes. Two to four years, 500,000. And then
17 anything over plus-four years would be -- I think that's
18 600,000.

19 Q. Now, during this discussion, was Simon
20 mentally sharp and aware of what was going on?

21 A. Oh, yeah. Yeah, he was -- he was the same
22 Simon. He was just -- you know, he was struggling with
23 his estate now. He was getting -- he felt -- I guess he
24 was getting pulled. He had a girlfriend that wanted
25 something. He had his daughter who, you know, felt like

1 she had been slighted. And he wanted to try to make
2 good by everybody.

3 Q. And at that point in time, other than the
4 house that he had bought that Eliot lived in, were you
5 aware that he was supporting Eliot with a very
6 significant amount of money each year?

7 A. I was not.

8 MR. BERNSTEIN: Object to the relevance.

9 THE COURT: Overruled.

10 BY MR. ROSE:

11 Q. Okay. So that's February.

12 A. Yes.

13 Q. What happens next in relation to Simon coming
14 in to meet with you to talk about changing his
15 documents?

16 A. He had called me on the phone and he -- we
17 talked again about, you know, him changing his
18 documents. He had been thinking about giving his estate
19 and Shirley's estate to his grandchildren. And at the
20 February meeting, I did not think it was a great idea
21 for him to include his girlfriend, Maritza, as a
22 beneficiary of the life insurance policy.

23 Q. He took your advice? He didn't change that,
24 as far as you know?

25 A. He did not.

1 Q. Okay. I'm sorry. Continue.

2 A. He did not.

3 I had suggested that he provide for her in
4 other ways; a joint account that would pass to her at
5 his death, but not to mix her in with his family in
6 their dispositive documents. And he ultimately took
7 that advice and decided that he wanted to give his
8 estate to his ten grandchildren, and that the policy --
9 which I had never seen a copy of the policy, but, you
10 know -- he had had. And I knew that he was paying for
11 it, because -- it almost lapsed, or did lapse at one
12 point, and it got reinstated -- that that policy was to
13 pass to an insurance trust that named his five children
14 as beneficiaries.

15 Q. And that's something Simon specifically
16 discussed with you when you were going over his estate
17 planning in 2012?

18 A. Correct -- or something that we had known
19 about before that meeting. But he was -- at the
20 meeting, he was starting to talk about doing a change to
21 the beneficiary designation to include Maritza, and I
22 wanted to talk him out of that.

23 Q. And at some point, he made a decision to
24 actually change his documents, correct?

25 A. He did. He did.

1 Q. And did he direct you to set up any kind of a
2 communication with his children?

3 A. Yes. He said, I want you to get -- put
4 together a conference call with me and you and my five
5 children so I can talk to them about what I want to do
6 with my estate and Shirley's estate.

7 THE COURT: All right. This would be a good
8 time for us to take a pause for a morning break.
9 We'll be in session again in 10 minutes.

10 As far as time use goes, so far Plaintiff's
11 side has used 60 minutes. So you have 90 remaining
12 in your portion of the day. And that's where we
13 stand.

14 MR. ROSE: We'll be well within our time, sir.

15 THE COURT: Great. Okay.

16 We'll be in recess for ten minutes. Is ten
17 minutes enough time for everybody? That's what
18 it'll be then.

19 (A break was taken.)

20 THE COURT: We're ready to proceed. Please
21 continue.

22 MR. ROSE: Thank you.

23 BY MR. ROSE:

24 Q. I think we were when Shirley died in December
25 of 2010, and you meet with Si, according to

1 Plaintiff's 13, on February 1st of 2012.

2 I think by May of 2012 was when this
3 conference call that you mentioned was?

4 A. Yes, it was.

5 Q. Okay. And did the five children attend the
6 conference call?

7 A. Yes, they all did.

8 Q. Were you present on the call?

9 A. Yes, I was.

10 Q. Was Simon present?

11 A. Yes, he was.

12 Q. Where was Simon physically during the call?

13 A. His office -- I believe his office.

14 Q. Were you in the same room as Simon?

15 A. No, I was not.

16 Q. You were in your office?

17 A. I was in my office.

18 Q. Okay. Generally, what was discussed during
19 this conference call?

20 A. Simon wanted to talk to his children about
21 providing for his estate and his wife's estate to go to
22 the ten grandchildren; wanted to have a discussion with
23 his children and see what they thought about that.

24 Q. And was he asking them for their approval or
25 permission or...

1 A. Well, I think he wanted to see what they all
2 thought, you know, based on things that had happened in
3 the past and documents that had been created in the
4 past. And I don't know that it was going to sway his
5 opinion, but when he told me, you know, to -- you know,
6 to have the conference call, to contact his -- he said,
7 This is what I'm going to do, so...

8 Q. During the call, did Simon ask his children if
9 anybody had an objection to him leaving his and
10 Shirley's wealth to the ten grandchildren?

11 A. Yes. He asked what everybody thought.

12 Q. Did Eliot respond?

13 A. Yes, he did.

14 Q. What did he say?

15 A. I'm paraphrasing, but he said something to the
16 effect of, Dad, you know, whatever you want to do,
17 whatever makes you happy, that's what's important.

18 Q. Did you also discuss during that call the need
19 to close Shirley's estate?

20 A. Yes, we did. We had told Si that we needed to
21 get back the waivers of accounting, the releases, and we
22 asked -- he asked them to get those back to us as soon
23 as possible.

24 Q. Okay. If I hand you Exhibit 14, it appears to
25 be an email from Eliot Bernstein to you addressing the

1 waiver that he needed to sign?

2 A. Yes, it is.

3 MR. ROSE: I move Exhibit 14 into evidence.

4 THE COURT: Any objection?

5 [No response.]

6 THE COURT: All right. That's in evidence
7 then as Plaintiff's 14.

8 (Plaintiff's Exhibit No. 14 was received into
9 evidence.)

10 MR. ROSE: As a matter of housekeeping, Your
11 Honor, I think I might have failed to move in
12 Exhibit 2, which is Shirley Bernstein's 2008 trust
13 agreement, which I would move, to the extent it's
14 not in evidence, 1, 2 and 3, which are the
15 operative documents Mr. Spallina's already
16 testified about.

17 THE COURT: Any objection?

18 MR. BERNSTEIN: What was that? I'm sorry.

19 THE COURT: Is there any objection to
20 Plaintiff's 1, which is the will of Shirley
21 Bernstein, Plaintiff's 2, which is the Shirley
22 Bernstein Trust Agreement, and Plaintiff's 3, which
23 is the First Amendment to the Shirley Bernstein
24 Trust Agreement?

25 MR. BERNSTEIN: No.

1 THE COURT: All right. Those are all in
2 evidence then as Plaintiff's 1, 2 and 3.

3 (Plaintiff's Exhibit No. 2 was received into
4 evidence.)

5 BY MR. ROSE:

6 Q. Okay. This email is dated May -- May 17,
7 2012, from Eliot, correct?

8 A. Yes, it is.

9 Q. This would have been after the conference
10 call?

11 A. This, I believe, was after the conference
12 call, yep.

13 Q. And he says he's attached the waiver
14 accounting and portions of petition for discharge,
15 waiver of service for a petition for discharge, and
16 receipt of beneficiary and consent to discharge that he
17 had signed.

18 Did you receive those from Eliot?

19 A. Yes, I did. We received -- that was the first
20 waivers that we received.

21 Q. Then it says "as I mentioned in the phone
22 call."

23 Did you have any separate phone calls with
24 Eliot Bernstein, you and he, or is he referring to the
25 conference call?

1 A. I think he's referring to the conference call.

2 Q. Okay. I have not yet -- "I have not seen any
3 of the underlying estate documents or my mother's will
4 at this point, yet I signed this document after our
5 family call so that my father can be released of his
6 duties as personal representative and put whatever
7 matters that were causing him stress to rest."

8 Do you see that?

9 A. Yes, I do.

10 Q. Now, while Simon was alive, did you ever get
11 authorization to share the testamentary documents with
12 Eliot Bernstein?

13 A. I did not.

14 Q. Now, after the call and after the discussion
15 with the siblings, did you prepare a draft of -- of new
16 documents for Simon?

17 A. Yes, I did.

18 Q. I'm going to hand you Exhibit 15; ask if
19 that's a letter that you sent to Simon Bernstein
20 enclosing some new drafts?

21 A. Yes, it is.

22 Q. Now, what's the date of that?

23 A. May 24th, 2012.

24 Q. And what's -- what is the summary -- well,
25 strike that.

1 You sent this letter to Simon Bernstein?

2 A. Yes, I did.

3 Q. By FedEx to his home?

4 A. Yes, I did.

5 MR. ROSE: I would move Exhibit 15 in
6 evidence.

7 THE COURT: Any objection?

8 [No response.]

9 THE COURT: All right. That's in evidence as
10 Plaintiff's 15.

11 (Plaintiff's Exhibit No. 15 was received into
12 evidence.)

13 BY MR. ROSE:

14 Q. Okay. So then first page says, "Dear Si, we
15 have prepared drafts of a new will and an amended and
16 restated trust agreement."

17 Are those the 2012 documents that were his
18 final ones?

19 A. Yes, they are.

20 Q. Okay. Then you sort of do the same thing you
21 did in 2008; you give a little summary of what the
22 estate plan is.

23 "Your amended and restated trust provides that
24 on your death, your assets will be divided among and
25 held in separate trusts for your then living

1 grandchildren," correct? I was reading paragraph -- the
2 middle paragraph.

3 A. Yes, I see that. Yes.

4 Q. I actually skipped the part above, which is
5 probably more important, which says -- in the middle of
6 the first paragraph, it says, "In addition, you have
7 exercised the special power of appointment granted to
8 you under Shirley's trust agreement in favor of your
9 grandchildren who survive you."

10 Do you see that?

11 A. Yes.

12 Q. Okay. And so that was Simon's intent as
13 discussed on the conference call?

14 A. Yes, it was.

15 Q. Do you know if you made any changes to these
16 draft documents from May 24th until the day they were
17 signed?

18 A. I don't believe so. If I did, it was for
19 grammar or something else. The dispositive plan that
20 was laid out in this memo was ultimately the subject of
21 the documents that he executed in July.

22 Q. I'm going to hand you Exhibit 16, which is a
23 durable power of attorney.

24 If you flip to Exhibit 16, the last page, does
25 it bear a signature of Simon Bernstein?

1 A. Yes, it does.

2 Q. And it indicates you were a witness to the
3 signature?

4 A. Yes.

5 Q. Along with Kimberly Moran, who is someone from
6 your office?

7 A. Correct.

8 Q. And someone named Lindsay Baxley notarized the
9 documents?

10 A. Yes, she did.

11 Q. Do you know who Lindsay Baxley was?

12 A. Lindsay Baxley worked in Ted and Si's office.

13 Q. She was like a secretary?

14 A. Assistant to Ted, I believe, maybe.

15 Q. Okay. And if you look at --

16 MR. ROSE: Well, first of all, I'll move
17 Exhibit 16 into evidence.

18 THE COURT: Any objection?

19 [No response.]

20 THE COURT: No objection made, then I'll
21 receive this as Plaintiff's 16.

22 (Plaintiff's Exhibit No. 16 was received into
23 evidence.)

24 BY MR. ROSE:

25 Q. If you look at the last page where the notary

1 block is there, it says "personally known" with an
2 underline, or "produced identification" with an
3 underline. And she's checked the box "personally
4 known" -- or she's checked the line.

5 Do you see that?

6 A. Yes.

7 Q. So do you believe that -- did you know Lindsay
8 Baxley by that point in time?

9 A. Yes, I did.

10 Q. And you believe -- she obviously knew Simon,
11 she knew Kim Moran from other dealings between your
12 offices?

13 A. Yes.

14 Q. Okay. And did you all sign this durable power
15 of attorney with testamentary formalities?

16 A. Yes, we did.

17 Q. And what's the date of that?

18 A. July 25, 2012.

19 Q. I'm going to approach with Exhibit 4, and ask
20 you if you recognize Exhibit 4?

21 A. Yes, I do.

22 Q. Okay. And what is Exhibit 4?

23 A. This is Si's new will that he executed in
24 2012, on July 25th, the same day as that durable power
25 of attorney.

1 Q. Now, were you present when Simon executed his
2 new will, which is Exhibit 4?

3 A. Yes, I was.

4 Q. If you turn to the last page --

5 Well, actually, if you turn to the first page,
6 does it say "copy" and bear a clerk's stamp?

7 A. It does.

8 Q. Okay.

9 MR. ROSE: I would represent to the Court that
10 I went to the clerk's office -- unlike with
11 Shirley's will, I went to the clerk's office and
12 obtained a -- like, a copy made by the clerk of the
13 document itself, rather than have the typewritten
14 conformed copy.

15 MR. BERNSTEIN: Can I object to that?

16 THE COURT: What's the objection?

17 MR. BERNSTEIN: Is he making a statement? I'm
18 not sure --

19 THE COURT: You're asking me a question. I
20 don't know.

21 MR. BERNSTEIN: I'm objecting. Is that a
22 statement?

23 THE COURT: The objection is? What are you
24 objecting to?

25 MR. BERNSTEIN: With the statement being

1 from --

2 THE COURT: Okay. That was a statement by
3 somebody who's not a sworn witness, so I'll sustain
4 the objection.

5 MR. BERNSTEIN: And the chain of custody of
6 the document, I'm just trying to clarify that.
7 Okay.

8 THE COURT: The objection was to the
9 statement. I've sustained the objection.

10 Next question, please.

11 BY MR. ROSE:

12 Q. Unlike the trust, how many originals of a will
13 do you have the client sign?

14 A. There's only one.

15 Q. And then you give the client the one with the
16 typewritten -- you call it conformed copy?

17 A. We conform the copy of the will.

18 Q. And after Simon died, was your law firm
19 counsel for the personal representative of the Estate of
20 Simon Bernstein?

21 A. Yes, we were.

22 Q. Did you file the original will with the court?

23 A. Yes, we did.

24 Q. Is it your belief that the original of this
25 document is somewhere in the Palm Beach County Court

1 system with the clerk's office?

2 A. Yes, I do.

3 MR. ROSE: I'd move Exhibit 4 in evidence,
4 Your Honor.

5 THE COURT: All right. Any objection?

6 [No response.]

7 MR. BERNSTEIN: No objection stated, I'll
8 receive this as Plaintiff's 4.

9 (Plaintiff's Exhibit No. 4 was received into
10 evidence.)

11 BY MR. ROSE:

12 Q. Now, if you turn to the next to the last page
13 of Exhibit --

14 A. Yes.

15 Q. -- Exhibit 4, you'll see it bears a signature
16 of Simon Bernstein and two witnesses, yourself and
17 Kimberly Moran, who all assert that you signed in the
18 presence of each other?

19 A. Yes.

20 Q. And then in the next page, it has what would
21 be a self-proving affidavit?

22 A. Correct.

23 Q. Now, if you look at the signature block where
24 the notary signed, where it says "who is personally
25 known to me," it doesn't seem to have a check box there.

1 It just says "who is personally known to me or who has
2 produced [blank] as identification," right?

3 A. Correct.

4 Q. Is this the same person who notarized the
5 exhibit we just put in evidence, Exhibit 15, the durable
6 power of attorney -- 16, the durable power of attorney?

7 A. Yes.

8 Q. Okay. And again, with regard to
9 Exhibit 4 -- strike that.

10 Do you recall where you signed Exhibit 4?

11 A. Yes.

12 Q. In whose office?

13 A. This was also done in Si's office.

14 Q. Okay. So you took -- you went personally
15 again, along with Kim Moran, as your practice, to make
16 sure that the documents were signed properly; true?

17 A. Correct.

18 Q. And that's important because, if the documents
19 aren't properly signed, they might not be valid and
20 enforceable?

21 A. That's correct.

22 Q. And I'm going to hand you Exhibit 5. This is
23 the Simon L. Bernstein Amended and Restated Trust
24 Agreement.

25 Was that signed the same day, at the same

1 time, with the same procedures?

2 A. Yes, it was.

3 Q. And would this have been signed with three
4 originals?

5 A. Yes, it would be.

6 MR. ROSE: I would move Exhibit 5 into
7 evidence, Your Honor.

8 THE COURT: Any objection?

9 [No response.]

10 THE COURT: All right. That's in evidence as
11 Plaintiff's 5.

12 (Plaintiff's Exhibit No. 5 was received into
13 evidence.)

14 BY MR. ROSE:

15 Q. Now, we looked at the history when you did the
16 first set of documents. In the second set, you started
17 in February through July.

18 Did you have a number of telephone conferences
19 with Simon during that time?

20 A. Yes, we did.

21 Q. And at least a couple of face-to-face
22 meetings?

23 A. Yes, we did.

24 Q. Did at any time Simon give you any indication
25 that he was not fully mentally sharp and aware and

1 acting of his own volition?

2 A. Nope. He was Si that we had known since 2007.

3 Q. I'll close with Exhibit 17. This is a letter
4 you sent to Simon Bernstein, enclosing a copy of his
5 conformed will for him.

6 A. Yes, it is.

7 Q. And it's dated the 26th, the day after he
8 signed the documents?

9 A. Correct.

10 Q. And did you also leave him with two of the
11 originals of his trust?

12 A. Yes, we did.

13 MR. ROSE: I move -- did I move 17 in? Or I
14 will move it in.

15 THE COURT: Number 7, is it?

16 MR. ROSE: Seventeen, sir.

17 THE COURT: Oh, I'm sorry.

18 Any objection?

19 [No response.]

20 THE COURT: All right. Then that's in
21 evidence as Plaintiff's 17.

22 (Plaintiff's Exhibit No. 17 was received into
23 evidence.)

24 BY MR. ROSE:

25 Q. Now, Simon passed away on September 13, 2012.

1 Does that sound right?

2 A. Yes, it does.

3 Q. I have Exhibit 18 as his death certificate.

4 MR. ROSE: I'll just move 18 into evidence.

5 THE COURT: Any objection?

6 [No response.]

7 THE COURT: All right. That's in evidence as
8 Plaintiff's 18.

9 (Plaintiff's Exhibit No. 18 was received into
10 evidence.)

11 BY MR. ROSE:

12 Q. So that's the death certificate for Simon
13 Bernstein.

14 Did you have any further discussions or
15 meetings with Simon after he signed the will and trust
16 in 2012 and before he died?

17 A. Not that I recall, no.

18 Q. And you filed a notice of administration,
19 opened an asset, published it in the Palm Beach Daily
20 Review, did what you had to do?

21 A. Yes, we did.

22 Q. And you and Mr. Tescher were the personal
23 representatives of the estate?

24 A. Yes, we were.

25 Q. And you and Mr. Tescher became the successor

1 trustees of Simon's amended trust after he passed away?

2 A. Yes, we did.

3 Q. I guess while he was still alive, he was still
4 the sole trustee of his trust, which was revocable
5 still?

6 A. Correct.

7 Q. And then upon his death, at some point, did
8 Ted Bernstein become aware that he was going to become
9 the successor trustee to the Shirley trust?

10 A. Yes. We had a meeting with Ted.

11 Q. And that was the first time he learned about
12 the contents of her trust, as far as you know?

13 A. Correct.

14 Q. Initially, did anybody object to the documents
15 or the fact that the beneficiaries were supposed to be
16 the 10 grandchildren?

17 A. No.

18 Q. When was there first some kind of an objection
19 or a complaint?

20 A. I can't recall exactly when it happened.

21 Q. Okay. Did you at some point get a letter from
22 a lawyer at the Tripp Scott firm?

23 A. Yes, we did.

24 Q. Okay. I think she was asking you about
25 something called the status of something called I View

1 It Company? Do you recall that?

2 A. Vaguely.

3 Q. Did you know what the Iviewit company was
4 before you received a letter from the Tripp Scott
5 lawyer?

6 A. I'm not sure. I'm not sure. I know today. I
7 can't tell if I'm answering because I know about it
8 today or if I knew about it at that time.

9 Q. Okay. And did -- was she asking for some
10 documents from you?

11 A. Is this Ms. Yates?

12 Q. Yes.

13 A. Yes.

14 Q. And did you provide her with certain
15 documents?

16 A. She had asked for copies of all of Shirley's
17 and Si's estate planning documents.

18 Q. And did you provide her with all of the
19 documents?

20 A. Yes, we did.

21 Q. Was one of the documents that you provided her
22 not an accurate copy of what Shirley had executed during
23 her lifetime?

24 A. That is true.

25 Q. Okay. And I guess I'll hand you Exhibit 6,

1 and this -- is Exhibit 6 a document that is not a
2 genuine and valid testamentary document of Shirley
3 Bernstein?

4 A. That's correct.

5 Q. Can you explain to the Court why Exhibit 6 was
6 prepared and the circumstances?

7 A. It was prepared to carry out the intent of
8 Mr. Bernstein in the meeting that he had had with his
9 five children, and perhaps a vague -- or a layman -- a
10 layman can make a mistake reading Shirley's documents
11 and not understand who the intended beneficiaries were
12 or what powers I had. So this document was created.

13 Q. Is it your belief that under the terms of
14 Shirley's document from -- the ones she actually signed,
15 that Simon had the power to appoint the funds to the ten
16 grandchildren?

17 A. Yes. We -- we prepared the documents that
18 way, and our planning transmittal letter to him
19 reflected that.

20 Q. And this document is, I think you said, to
21 explain it to a layperson in simpler fashion?

22 A. It was created so that the person that, you
23 know, didn't read estate planning documents and prepare
24 estate planning documents for a living -- you know,
25 there was no intent to cut out Pam and Ted's children,

1 basically.

2 Q. Now, did you ever file this exhibit in the
3 courthouse?

4 A. No, we did not.

5 Q. Did you ever use it for any purpose?

6 A. No, we did not.

7 Q. Was it at one point provided to Eliot's
8 counsel?

9 A. Yes, it was.

10 Q. Now, the fact -- putting aside this document,
11 were any of the other documents that we're talking about
12 in any way altered or changed from the ones that were
13 signed by Shirley or Simon?

14 A. No, they were not.

15 Q. Now, after these issues came to light, did
16 Mr. Eliot Bernstein begin to attack you through the
17 internet and through blogging and things like that?

18 A. He was doing that long before this document
19 came to light.

20 Q. Okay. What was Eliot doing?

21 A. His first thing that he did was -- with
22 respect to the courts, was to file an emergency petition
23 to freeze assets and after his brother as successor
24 trustee of his mother's trust had sold the condo.

25 MR. BERNSTEIN: Your Honor, can I object to

1 this line of questioning for relevance to validity?

2 THE COURT: What's the line of questioning
3 you're talking about?

4 MR. BERNSTEIN: The slander defamation going
5 on about me with, you know, what I do and --

6 THE COURT: Well, I wasn't aware there's a
7 line of questioning going on. There is a question.
8 You've objected to it.

9 MR. BERNSTEIN: Yes.

10 THE COURT: What's the objection to that
11 question?

12 MR. BERNSTEIN: The relevancy to a validity
13 hearing.

14 THE COURT: Okay. Can I have the court
15 reporter read the question back?

16 (A portion of the record was read by the
17 reporter.)

18 THE COURT: What is the relevance of whether
19 this guy's posting on Facebook that's negative or
20 not?

21 MR. ROSE: Well, a couple of things, but,
22 primarily, we're just trying to determine whether
23 these documents are valid.

24 THE COURT: Right.

25 MR. ROSE: And he is the only one who's saying

1 they're not valid, so I want to give some
2 explanation as to why he's saying they're not
3 valid, as opposed to --

4 THE COURT: I don't care why he's saying
5 they're valid or invalid. I'll wait to see what
6 the facts are. So I'll sustain the objection.

7 MR. ROSE: That's fine.

8 BY MR. ROSE:

9 Q. Did Simon Bernstein make any special
10 arrangements, other than -- strike that.

11 Did Simon or Shirley make any special
12 arrangements, other than the testamentary documents that
13 are admitted into evidence, for special benefits for
14 Eliot Bernstein and his family?

15 A. No, they did not.

16 Q. Any special education trusts, other than
17 the -- these five documents? And I believe there was
18 some shares of stock that were put in trust for all ten
19 grandchildren, right?

20 A. There was no special arrangements made other
21 than the estate planning documents.

22 Q. After Simon died, did Eliot claim to you that
23 Simon was supposed to have made some special
24 arrangements for him?

25 MR. BERNSTEIN: Object to the relevancy again.

1 THE COURT: Overruled.

2 THE WITNESS: Yes, he did.

3 BY MR. ROSE:

4 Q. Did he ever give you an indication how much
5 money he thought he was going to inherent when his
6 father died, or his children would inherent when his
7 father died?

8 A. Through his subsequent attorney, yes, he did.

9 Q. And how much money did he indicate he thought
10 there should be?

11 A. I heard a number from one of his attorneys of
12 40- to a \$100 million.

13 Q. Are you aware of any assets that Simon
14 Bernstein had other than what he disclosed to you at the
15 two times that we've looked at in 2007 and again in
16 February of 2012?

17 A. No, I am not.

18 MR. ROSE: No further questions, Your Honor.

19 THE COURT: All right. Thanks.

20 Is there any cross?

21 MR. BERNSTEIN: Yes.

22 MR. MORRISSEY: Judge, I have questions as
23 well.

24 THE COURT: Okay. Well, then, let me have the
25 direct finished. That way, all the

1 cross-examination can take place without
2 interruption. So everybody make sure you're
3 fitting within the Plaintiff's side of the room's
4 time limitations. We'll strictly obey those.

5 CROSS (ROBERT SPALLINA)

6 BY MR. MORRISSEY:

7 Q. Good afternoon, Mr. Spallina. My name's John
8 Morrissey. I represent four of the adult grandchildren
9 of Simon Bernstein.

10 And since we're here today about validity, I'm
11 just going to go over, and try to be very brief,
12 concerning the execution of these documents and your
13 knowledge about the execution.

18 Were you a witness of this document, this will
19 that was executed by Shirley Bernstein on May 20th of
20 2008?

21 A. Yes, I was.

Q. And was Diana Banks the other witness?

23 A. Yes, she was.

24 Q. And did you and Diana witness Mrs. Bernstein's
25 execution of this document?

1 A. Yes, we did.

2 Q. You were present during her execution?

3 A. Yes, we were.

4 Q. And was she present during your execution of
5 this document as a witness?

6 A. Yes, she was.

7 Q. And was she, Shirley Bernstein, present during
8 Diana Banks' execution of this document?

9 A. Yes, she was.

10 Q. Okay. And I'm again focused on this
11 Exhibit No. 1, this will of Shirley Bernstein dated
12 May 20th of 2008.

13 Is it your opinion that at the time Shirley
14 Bernstein executed this document she understood
15 generally the nature and extent of her property?

16 A. Yes, she did.

17 Q. Okay. And at the time Shirley Bernstein
18 executed Exhibit 1, did she have a general understanding
19 of those who would be the natural objects of her bounty?

20 A. Yes, she did.

21 Q. Okay. And at the time she -- Shirley
22 Bernstein executed Exhibit 1, did she have a general
23 understanding of the practical effect of this will?

24 A. I believe she did.

25 Q. Okay. And in your opinion, was Shirley

1 Bernstein unduly influenced by any beneficiary of
2 Exhibit 1 in connection with its execution?

3 A. Not to my knowledge.

4 Q. Okay. And do you have any knowledge of any
5 beneficiary or anyone actively procuring Exhibit 1?

6 A. No, I do not.

7 Q. Okay. Moving on to Exhibit 2, which is
8 Shirley Bernstein's trust executed on the same date,
9 that is May 20th of 2008, I'll direct your attention to
10 page 27 of Exhibit No. 2. And it appears that Shirley
11 Bernstein executed that document on May 20th of 2008.
12 And the witnesses were yourself and Traci -- I can't
13 read her last name.

14 A. Traci Kratish.

15 Q. Okay. Did Shirley Bernstein execute
16 Exhibit No. 2 in the presence of both you and Traci
17 Kratish?

18 A. Yes, she did.

19 Q. Okay. And did you execute Exhibit No. 2 in
20 the presence of Shirley Bernstein and Traci Kratish?

21 A. Yes, I did.

22 Q. Okay. And did Traci Kratish execute
23 Exhibit No. 2 in your presence and Shirley Bernstein's
24 presence?

25 A. Yes, she did.

1 Q. Okay. And at the time Shirley Bernstein
2 executed Exhibit No. 2, which is her 2008 trust, is it
3 your opinion that she had a general understanding of the
4 nature and extent of her property?

5 A. Yes, she did.

6 Q. Okay. And at the time that Shirley Bernstein
7 executed Exhibit No. 2, is it your opinion that she
8 understood generally the relationship of those who
9 would -- were the natural objects of her bounty?

10 A. Yes.

11 Q. Okay. And at the time Shirley Bernstein
12 executed Exhibit No. 2, is it your opinion that she
13 generally understood the practical effect of this
14 document?

15 A. I believe she did.

16 Q. Okay. And did you have any belief that
17 Shirley Bernstein was unduly influenced in connection
18 with -- by any beneficiary in connection with her
19 execution of Exhibit No. 2?

20 A. Not to my knowledge.

21 Q. Okay. And do you know or have any information
22 about any beneficiary or anyone else actively procuring
23 Exhibit No. 2?

24 A. I do not.

25 Q. Okay. And with respect -- now we'll move on

1 to Exhibit No. 3, which is the first amendment of
2 Shirley Bernstein's trust, executed on November 18th of
3 2008. And I'll direct your attention on that Exhibit 3
4 to Page No. 2. And on Page No. 2 --

5 Well, let me ask this question. Did Shirley
6 Bernstein execute Exhibit No. 3 in the presence of both
7 you and Rachel Walker?

8 A. Yes, she did.

9 Q. Okay. And did you execute Exhibit No. 3 in
10 the presence of Shirley Bernstein and Rachel Walker?

11 A. Yes, I did.

12 Q. And did Rachel Walker execute this document,
13 Exhibit No. 3, in the presence of Shirley Bernstein and
14 yourself?

15 A. Yes, she did.

16 Q. Okay. And at the time Exhibit No. 3 was
17 executed, is it your opinion that Ms. Bernstein
18 understood generally the nature and extent of her
19 property?

20 A. Yes, I believe so.

21 Q. And is it your opinion that at the time
22 Shirley Bernstein executed Exhibit No. 3, she generally
23 understood the relationship of those who would be the
24 natural objects of her bounty?

25 A. Yes, I believe so.

1 Q. Okay. And at the time Shirley Bernstein
2 executed Exhibit No. 3, is it your opinion that she
3 generally understood the practical effect of this trust
4 amendment?

5 A. Yes, I believe so.

6 Q. Okay. And do you have any knowledge or
7 information about any beneficiary or any other person
8 unduly influencing Shirley Bernstein to execute
9 Exhibit No. 3?

10 A. I do not.

11 Q. Okay. And do you have any knowledge or
12 information about any person, beneficiary or otherwise,
13 actively procuring Exhibit No. 3?

14 A. I do not.

15 Q. Okay. Moving on to Exhibit No. 4 then, which
16 is the will of Simon Bernstein, and that is a will that
17 Mr. Bernstein executed on July -- yes, July 25 of 2012.
18 And let me direct your attention to page 7 of that will,
19 Exhibit No. 4.

20 And did Simon Bernstein execute this document
21 in the presence of you and Kimberly Moran on July 25,
22 2012?

23 A. Yes, he did.

24 Q. And did you execute this document,
25 Exhibit No. 4, as a witness in the presence of Simon

1 Bernstein and Kimberly Moran on that date?

2 A. Yes, I did.

3 Q. And did Kimberly Moran execute Exhibit No. 4
4 as a witness in the presence of Simon Bernstein and
5 yourself?

6 A. Yes, she did.

7 Q. Okay. And on this date -- or at the time of
8 execution on this date of July 25, 2012, did Simon
9 Bernstein understand in a general way the nature and
10 extent of his property?

11 A. Yes, he did.

12 Q. Okay. At the time that Exhibit No. 4 was
13 executed, did Simon Bernstein generally understand the
14 relationship of those who would be the natural objects
15 of his bounty?

16 A. Yes, he did.

17 Q. And at the time Exhibit No. 4 was executed,
18 did -- in your opinion, did Simon Bernstein understand
19 the practical effect of this will?

20 A. Yes, he did.

21 Q. Okay. And do you have any knowledge or
22 information about any person, whether beneficiary or
23 otherwise, actively procuring this Exhibit No. 4?

24 A. No, I do not.

25 Q. Do you have any information about any person,

1 beneficiary or otherwise, unduly influencing Simon
2 Bernstein to execute Exhibit No. 4?

3 A. I do not.

4 Q. Okay. And moving on to the last document
5 then, Exhibit No. 5, which is the Simon Bernstein
6 Amended and Restated Trust Agreement, and I'll direct
7 your attention to page 24 of that Exhibit No. 5.

8 On July 25, 2012, did Simon Bernstein execute
9 this trust agreement in the presence of you and Kimberly
10 Moran?

11 A. Yes, he did.

12 Q. And did you execute this trust, Exhibit No. 5,
13 as a witness in front of Simon Bernstein and Kimberly
14 Moran?

15 A. I did.

16 Q. And did Kimberly Moran execute Exhibit No. 5
17 as a witness in front of Simon Bernstein and yourself?

18 A. She did.

19 Q. Okay. And at the time Simon Bernstein
20 executed Exhibit No. 5, in your opinion, did he
21 generally understand the nature and extent of his
22 property?

23 A. He did.

24 Q. And at the time Exhibit No. 5 was executed,
25 did Simon Bernstein, in your opinion, generally

1 understand the relationship of those who would be the
2 natural objects of his bounty?

3 A. He did.

4 Q. And did Simon Bernstein, when Exhibit No. 5
5 was executed, understand generally the practical effect
6 of this trust agreement?

7 A. Yes, he did.

8 Q. And at the time Exhibit No. 5 was executed, do
9 you have any knowledge about any person, whether
10 beneficiary or otherwise, unduly influencing
11 Mr. Bernstein, Simon Bernstein, to execute this
12 Exhibit No. 5?

13 A. Nothing that I'm aware of.

14 Q. Okay. And do you have any knowledge or
15 information about any person, whether beneficiary or
16 otherwise, actively procuring Exhibit No. 5?

17 A. I do not.

18 MR. MORRISSEY: I have no further questions,
19 Judge.

20 THE COURT: All right. Thanks.

21 Now, is there any cross? You're not required
22 to ask any questions, but you just need to let me
23 know if you're going to.

24 MR. BERNSTEIN: Oh, are you asking me? I had
25 no idea.

1 THE COURT: I'm not asking you. I'm just
2 telling you, if you have questions for the witness,
3 this is your opportunity to ask them; if you don't
4 have any questions, you don't have to ask any. But
5 if you're going to, you have to start now.

6 CROSS (ROBERT SPALLINA)

7 BY MR. BERNSTEIN:

8 Q. Mr. Spallina, you were called today to provide
9 some expert testimony, correct, on the --

10 A. No, I was not.

11 Q. Oh, okay. You're just going based on your
12 doing the work as Simon Bernstein's attorney and Shirley
13 Bernstein's attorney?

14 A. Yes.

15 Q. Okay. Are you still an attorney today?

16 A. I am not practicing.

17 Q. Can you give us the circumstances regarding
18 that?

19 A. I withdrew from my firm.

20 Q. Are you under a consent order with the SEC?

21 MR. ROSE: Objection. Relevance.

22 THE COURT: Sustained.

23 BY MR. BERNSTEIN:

24 Q. Did you sign a consent order for insider
25 trading --

1 A. Yes, I did.

2 Q. -- with the SEC?

3 You did. Can you give us the circumstances of
4 your consent order?

5 MR. ROSE: Objection. Relevance.

6 THE COURT: That won't be relevant. Please
7 move on to the next question.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. Were you -- did you plead to a felony crime?

11 MR. ROSE: Objection. Relevance.

12 THE COURT: Overruled.

13 MR. BERNSTEIN: Well, it's relevant as to --

14 THE COURT: I didn't ask for argument.

15 MR. BERNSTEIN: Well, what did you say?

16 THE COURT: I didn't ask for argument. I
17 sustained the objection -- no, I sustained the last
18 objection. This one I'm overruling.

19 You can answer.

20 MR. BERNSTEIN: I can't ask him if he's a
21 felon?

22 THE COURT: You're asking the wrong guy.

23 MR. BERNSTEIN: Okay. Are --

24 THE COURT: The witness is -- you asked the
25 question.

1 BY MR. BERNSTEIN:

2 Q. Are you a convicted felony?

3 THE COURT: Let's back up a second.

4 MR. BERNSTEIN: Yes, sir.

5 THE COURT: When you're asking for a ruling,
6 and I make one, then we're going to have the
7 witness answer.

8 MR. BERNSTEIN: Okay.

9 THE COURT: I made my ruling. I'm letting the
10 witness answer your earlier question, unless you're
11 withdrawing it. Are you withdrawing your earlier
12 question?

13 MR. BERNSTEIN: No.

14 THE COURT: You can answer the question, which
15 is, did you plead to a felony?

16 MR. BERNSTEIN: Sorry, sir.

17 THE WITNESS: I have not.

18 THE COURT: Okay. Next question.

19 BY MR. BERNSTEIN:

20 Q. Have you pled guilty to a misdemeanor?

21 A. I have not.

22 Q. Were you involved in a insider trading case?

23 MR. ROSE: Objection. Relevance.

24 THE COURT: Sustained. Next question.

25 MR. BERNSTEIN: Does that mean he doesn't have

1 to answer that?

2 THE COURT: How many times have you been in
3 court?

4 MR. BERNSTEIN: Just a few where I've had to
5 do this.

6 THE COURT: You know how this works.

7 MR. BERNSTEIN: I really don't.

8 THE COURT: All right. If I sustain an
9 objection, that's means he does not answer the
10 question.

11 MR. BERNSTEIN: Okay. And overruled?

12 THE COURT: If I overrule an objection, that
13 means the witness does answer the question.

14 MR. BERNSTEIN: Okay.

15 THE COURT: And I've asked you to ask your
16 next question.

17 MR. BERNSTEIN: Okay.

18 BY MR. BERNSTEIN:

19 Q. Is that your picture on the Florida Law
20 Review, SEC case settled against Florida attorneys?

21 MR. ROSE: Objection. Relevance.

22 THE COURT: Sustained.

23 Do you have any questions on the issues that I
24 have to decide in this case?

25 MR. BERNSTEIN: Well, his testimony is based

1 on his truthfulness.

2 THE COURT: My question is, do you have any
3 questions you want to ask about the issues relevant
4 to this case?

5 MR. BERNSTEIN: Yes. This is relevant to this
6 case.

7 THE COURT: I disagree.

8 MR. BERNSTEIN: Oh, okay.

9 THE COURT: I thought I made that very clear
10 in my ruling. You probably want to move on to a
11 relevant issue.

12 MR. BERNSTEIN: Okay.

13 BY MR. BERNSTEIN:

14 Q. Mr. Spallina, have you been in discussion with
15 the Palm Beach County Sheriff's Office regarding the
16 Bernstein matters?

17 MR. ROSE: Objection. Relevance.

18 THE COURT: Overruled.

19 You can answer that.

20 THE WITNESS: Yes, I have.

21 BY MR. BERNSTEIN:

22 Q. And did you state to them that you
23 fraudulently altered a Shirley trust document and then
24 sent it through the mail to Christine Yates?

25 A. Yes, I did.

1 Q. Have you been charged with that by the Palm
2 Beach County Sheriff yet?

3 A. No, I have not.

4 Q. Okay. How many times were you interviewed by
5 the Palm Beach County Sheriff?

6 MR. ROSE: Objection. Relevance.

7 THE COURT: Sustained.

8 BY MR. BERNSTEIN:

9 Q. Did you mail a fraudulently signed document to
10 Christine Yates, the attorney for Eliot Bernstein's
11 minor children?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: Overruled.

14 THE WITNESS: Yes.

15 BY MR. BERNSTEIN:

16 Q. And when did you acknowledge that to the
17 courts or anybody else? When's the first time you came
18 about and acknowledged that you had committed a fraud?

19 A. I don't know that I did do that.

20 Q. Well, you just said you went to the Palm Beach
21 County Sheriff and admitted altering a document and put
22 it in the mail.

23 THE COURT: Let me stop you there. If you
24 want to ask the witness questions, you're permitted
25 to do that. If you would like to argue with the

1 witness, that's not -- do you have any questions
2 you want to ask?

3 MR. BERNSTEIN: Yes.

4 BY MR. BERNSTEIN:

5 Q. So you sent a fraudulent document to Eli
6 Bernstein's minor children's counsel.

7 Can you tell us what that document did to
8 affect the dispositive Shirley trust document?

9 A. It has no effect.

10 Q. What was its intended effect of altering the
11 document?

12 A. To carry out your father's wishes in the
13 agreement that he had made with the five of you for a
14 layperson that would be reading the documents.

15 Q. You were carrying out his wishes by
16 fraudulently altering a document?

17 MR. ROSE: Objection.

18 THE COURT: Sustained.

19 That's argumentative. I don't want you to
20 argue with the witness. That's an argument.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Did the fraudulently altered document change
24 the beneficiaries that were listed in Shirley's trust?

25 A. They did not.

1 Q. Who are the beneficiaries of Shirley's trust?

2 A. It depends on -- under the trust instrument,
3 in the absence of Si exercising his power of
4 appointment, it would be yourself and your two sisters,
5 Lisa and Jill.

6 Q. Oh. So the only beneficiaries in Shirley's
7 trust are me, Lisa and Jill.

8 Is that directly or through a family trust?

9 A. Your father had established -- your parents
10 had established family trusts for the three of you to
11 receive assets from the trust.

12 Q. Okay. So in that document that you sent to
13 Christine Yates, did you include Ted and Pam's lineal
14 descendants under the amendment that you fraudulently
15 drafted and sent to her?

16 MR. ROSE: Objection. Argumentative.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. Did in any way the document that you
20 fraudulently altered and sent to Yates change the
21 beneficiaries from Eliot, Lisa and Jill and their lineal
22 descendants to anybody else?

23 THE COURT: May I ask a question?

24 MR. BERNSTEIN: Yes, sir.

25 THE COURT: This document that you're

1 referring to, is anybody asking me to probate that
2 document?

3 MR. BERNSTEIN: Well, it's part of the estate
4 plan. It's part --

5 THE COURT: Is anybody seeking relief, either
6 you or the other side, under that document?

7 MR. BERNSTEIN: Yeah. They're seeking to
8 change the beneficiaries of my mom's trust through
9 that document and others.

10 THE COURT: You're misperceiving my question.

11 MR. BERNSTEIN: Oh, okay. Sorry.

12 THE COURT: That document, which
13 is -- nobody's put it in evidence; I don't know
14 what it is, but it's -- that thing that you're
15 asking the witness about, is somebody seeking
16 relief based upon that document?

17 MR. ROSE: Absolutely not. The opposite.

18 THE COURT: All right. Are you seeking relief
19 based upon that document?

20 MR. BERNSTEIN: Yeah. Oh, absolutely.

21 THE COURT: All right. Are you claiming that
22 that document is subject to probate?

23 MR. BERNSTEIN: Yeah.

24 THE COURT: Is the lady who's giving you
25 advice your attorney?

1 MR. BERNSTEIN: No.

2 THE COURT: Ma'am, are you admitted to the bar
3 in Florida? Remember what I told you earlier.
4 I've let you sit there as a courtesy. Generally, I
5 don't let wives or friends or anybody else sit at
6 the table where the parties are because it confuses
7 me. But you're giving that guy advice and you're
8 also not listening to me, which I find odd, because
9 I'm going to have you move you back to the gallery
10 now. Please have a seat in the gallery. Please
11 have a seat in the gallery. Please have a seat in
12 the gallery. Soon. When courtesy is not returned,
13 courtesy is withdrawn. Please have a seat in the
14 gallery. Thank you.

15 Do you have any other questions of the
16 witness?

17 MR. BERNSTEIN: Can I submit this as evidence
18 to the Court?

19 THE COURT: Is that the document you've been
20 asking the witness about?

21 MR. BERNSTEIN: Yeah.

22 THE COURT: All right. Any objection to it
23 being received as an exhibit?

24 MR. ROSE: I don't have any objection to it
25 being received as an exhibit. But as Your Honor

1 noted, we aren't seeking to probate it, and we're
2 not suggesting it's valid in the first place.

3 THE COURT: All right. Well, let me see what
4 that document is, so then I'll see if I can make
5 some sense out of it.

6 You can't -- Gary's always afraid that if
7 somebody's not a member of the bar, they might do
8 something bad to me. Officers of the court aren't
9 allowed to do things bad to the judge. Other folks
10 don't know that. And so Gary watches out carefully
11 for my well-being.

12 MR. BERNSTEIN: Gotcha.

13 THE COURT: Okay. So this is a document
14 that's titled "First Amendment to Shirley Bernstein
15 Trust Agreement."

16 MR. BERNSTEIN: Correct.

17 THE COURT: And it's in the book that I've
18 been given earlier by the plaintiff as Tab 6.
19 You're seeking to put it into evidence as
20 Defendant's 1?

21 MR. BERNSTEIN: Okay.

22 THE COURT: Right?

23 MR. BERNSTEIN: Sure. Yes, sir.

24 THE COURT: You're offering it as an exhibit?

25 MR. BERNSTEIN: No, Evidence 1.

1 THE COURT: The objection to it is that it's
2 not relevant?

3 MR. ROSE: Not relevant. Right, relevance.

4 And it's also not something we're seeking to be
5 probated or treated as authentic and genuine.

6 THE COURT: Well, the other side is seeking to
7 use the terms of this document instead of the terms
8 of the amendment that's in evidence, right?

9 MR. ROSE: I don't believe that's what he's
10 doing.

11 THE COURT: I'm not sure what he's doing, but
12 in an abundance of caution, I'm going to receive it
13 for what relevance it might have. I don't perceive
14 any yet, but we'll see what happens.

15 So this is Defendant 1.

16 (Defendant's Exhibit No. 1 was received into
17 evidence.)

18 THE COURT: Any other questions of the
19 witness?

20 MR. BERNSTEIN: Sure.

21 BY MR. BERNSTEIN:

22 Q. You've testified here about Kimberly Moran.

23 Can you describe your relationship with her?

24 A. She's been our long-time assistant in the
25 office.

1 Q. Was she convicted of felony fraudulent
2 notarization in the Estate of Shirley Bernstein?

3 MR. ROSE: Objection. Relevance.

4 THE COURT: Overruled.

5 You're asking if she was convicted of a felony
6 with respect to the Estate of Shirley Bernstein?

7 You can answer the question.

8 MR. BERNSTEIN: Correct.

9 THE WITNESS: I believe she was.

10 BY MR. BERNSTEIN:

11 Q. And what was she convicted for?

12 A. She had notarized the waiver releases of
13 accounting that you and your siblings had previously
14 provided, and we filed those with the court.

15 Q. We filed those with the court.

16 Your law firm submitted fraudulent documents
17 to the court?

18 A. No. We filed -- we filed your original
19 documents with the court that were not notarized, and
20 the court had sent them back.

21 Q. And then what happened?

22 A. And then Kimberly forged the signatures and
23 notarized those signatures and sent them back.

24 Judge Colon has a rule in his court to have
25 those documents notarized, even though that's not the

1 requirement under the Florida Probate Code.

2 Q. So when you didn't follow the rule, you
3 frauded [sic] and forged the document?

4 MR. ROSE: Objection. Argumentative.

5 THE COURT: Sustained.

6 THE WITNESS: I had nothing to do with that.

7 THE COURT: You've got to stop a second.

8 MR. BERNSTEIN: Yes, sir.

9 THE COURT: If you continue to argue with the
10 witness, then I'll assume you don't have any more
11 questions. I sustained that last objection to
12 argumentative.

13 MR. BERNSTEIN: I'm a little confused --

14 THE COURT: I'm sorry about your confusion,
15 but there are ways you could have dealt with that
16 before this trial. If you are confused during the
17 trial, you better get unconfused as quickly as you
18 can because bad things will happen. And I don't
19 want bad things to happen. I want to get the facts
20 so that I can accurately decide the case on its
21 merits.

22 Stop arguing, ask questions, let the witness
23 answer, and listen to any rulings that I make on
24 the objections. That's the last time I'll repeat
25 that advice to you. Thank you.

1 BY MR. BERNSTEIN:

2 Q. What law firm submitted those documents to the
3 court?

4 A. Tescher & Spallina, P.A.

5 Q. Are you a partner in that firm?

6 A. I was.

7 Q. So your firm that you were a partner with sent
8 in documents that were fraudulent to the court?

9 MR. ROSE: Objection. Cumulative.

10 THE COURT: Sustained.

11 BY MR. BERNSTEIN:

12 Q. Did Tescher & Spallina law firm submit
13 Kimberly Moran's forged and fraudulent document waivers
14 to the court?

15 MR. ROSE: Objection. Cumulative.

16 THE COURT: He already said he did.

17 MR. BERNSTEIN: What is that?

18 THE COURT: Cumulative means you've already
19 had that answer given.

20 MR. BERNSTEIN: No, I didn't have that.

21 THE COURT: He's already said that he did.

22 MR. BERNSTEIN: I'm asking if they deposited
23 them with the court.

24 THE COURT: And he said they didn't.

25 MR. BERNSTEIN: Well, I asked him, and he

1 said --

2 THE COURT: I won't argue with you. Do you
3 want to go on to the next item or not?

4 MR. BERNSTEIN: Oh, okay, I do.

5 THE COURT: Okay. Next question, please.

6 BY MR. BERNSTEIN:

7 Q. Did your office -- did you submit documents to
8 close the estate of Shirley with Simon as the personal
9 representative at a time Simon was dead?

10 A. We did.

11 Q. You did? Excuse me? I didn't hear an answer.

12 A. I said yes.

13 Q. So Shirley's estate was closed by a dead
14 personal representative.

15 Can you give me the time that the estate was
16 closed by Simon while he was dead?

17 MR. ROSE: Objection. Argumentative.

18 THE COURT: Overruled.

19 You can answer.

20 THE WITNESS: I believe it was October,
21 November 2012.

22 BY MR. BERNSTEIN:

23 Q. Do you want to check your records on that?

24 A. I believe it was after his death. I know he
25 died September 13, 2012. And we had received late from

1 one of your sisters the signed waiver. So it was
2 probably in November, somewhere around there.

3 Q. You stated that Simon -- that Kimberly did
4 five waivers for the siblings that she sent back in
5 fraudulently to the court through your law firm.

6 Did she also do a fraudulent forged signature
7 of a waiver for Simon?

8 A. I'm not sure. I guess if you're saying she
9 did --

10 Q. Well, the court has on file a waiver of
11 Simon's that she's admitted to.

12 A. We filed all of the waivers originally with
13 the court all signed by the appropriate parties, and the
14 court kicked those back. And she forged and notarized
15 new documents and sent them to the court. She felt she
16 had made a mistake.

17 Q. Okay. Are you aware of an April 9th full
18 waiver that was allegedly signed by Simon and you?

19 A. Yeah. That was the waiver that he had signed.
20 And then in the May meeting, we discussed the five of
21 you, all the children, getting back the waivers of the
22 accountings.

23 Q. Okay. And in that April 9th full waiver you
24 used to close my mother's estate, does Simon state that
25 he has all the waivers from all of the parties?

1 A. He does. We sent out -- he signed that, and
2 we sent out the waivers to all of you.

3 Q. Okay. So on April 9th of 2012, Simon signed,
4 with your presence, because your signature's on the
5 document, a document stating he had all the waivers in
6 his possession from all of his children.

7 Had you sent the waivers out yet as of
8 April 9th?

9 THE COURT: What is it that you want the
10 witness to answer? There was several questions.

11 MR. BERNSTEIN: Oh, compounded a little bit?

12 THE COURT: Yes.

13 MR. BERNSTEIN: Sorry.

14 THE COURT: So you even --

15 MR. BERNSTEIN: I'll kick that back.

16 THE COURT: So you even know the lingo of the
17 objections.

18 MR. BERNSTEIN: I'll kick that back to one at
19 a time, because it's an important point.

20 BY MR. BERNSTEIN:

21 Q. April 9th, 2012, you have a signed full waiver
22 of Simon's that says that he is in possession of all of
23 the signed waivers of all of the parties?

24 A. Standard operating procedure, to have him
25 sign, and then to send out the documents to the kids.

1 Q. Was Simon in possession -- because it's a
2 sworn statement of Simon saying, I have possession of
3 these waivers of my children on today, April 9th,
4 correct, the day you two signed that?

5 Okay. So if you hadn't sent out the waivers
6 yet to the --

7 A. I'm not certain when the waivers were sent
8 out.

9 Q. Were they sent out after the --

10 A. I did not send them out.

11 Q. Okay. More importantly, when did you receive
12 those? Was it before April 9th or on April 9th?

13 A. We didn't receive the first one until May.
14 And it was your waiver that we received.

15 Q. So how did you allow Simon, as his attorney,
16 to sign a sworn statement saying he had possession of
17 all of the waivers in April if you didn't get mine 'til
18 May?

19 MR. ROSE: Objection. I think it's relevance
20 and cumulative. He's already answered.

21 THE COURT: What's the relevance?

22 MR. BERNSTEIN: Oh, this is very relevant.

23 THE COURT: What is the relevance on the issue
24 that I have to rule on today?

25 MR. BERNSTEIN: On the validity? Well, it's

1 relevant. If any of these documents are relevant,
2 this is important if it's a fraud.

3 THE COURT: I'll sustain the objection.

4 MR. BERNSTEIN: Okay. Can I -- okay.

5 BY MR. BERNSTEIN:

6 Q. When did you get -- did you get back prior to
7 Simon's death all the waivers from all the children?

8 A. No, we did not.

9 Q. So in Simon's April 9th document where he
10 says, he, Simon, on April 9th has all the waivers from
11 his children while he's alive, and you didn't even get
12 one 'til after he passed from one of his children, how
13 could that be a true statement?

14 MR. ROSE: Objection. Relevance. Cumulative.

15 THE COURT: Sustained.

16 Here's what I'm going to decide at the end of
17 the day; I'm going to decide whether Shirley's 2008
18 will and trust and 2008 amendment are valid and
19 enforceable. I'm going to decide whether Simon's
20 2012 will and 2012 trust documents are valid and
21 enforceable. You have a lot more on your mind than
22 I have on mine. You do. Right? But those are the
23 things that I'm working on. So I'm focused like a
24 laser and you're focused more like a shotgun. I'm
25 telling you this so that you can focus more tightly

1 on the questions you're asking and the facts you're
2 developing so they'll help me make an accurate
3 decision on those things that I'm going to decide
4 today. You can keep asking questions that don't go
5 anywhere, but I would hope that you'll adjust your
6 approach so that you'll help me make an accurate
7 decision.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. And on validity, let's just get right to that
11 real quick. You've testified to a lot of documents here
12 today, correct, of the estate documents you drafted,
13 correct?

14 A. Yes, I did.

15 Q. Did you gain any pecuniary interest, did you
16 gain any titles in those documents?

17 A. Pecuniary interest? No. I was named by your
18 father as personal representative and trustee of his
19 trust.

20 Q. And so you executed -- you drafted the
21 documents, you signed them as a witness, and you gained
22 interest in the documents, correct?

23 A. No, I did not.

24 Q. You didn't gain interest as a trustee --

25 MR. ROSE: Objection.

1 BY MR. BERNSTEIN:

2 Q. -- or a personal representative of those
3 documents?

4 MR. ROSE: Objection. Cumulative. Asked and
5 answered.

6 THE COURT: Overruled.

7 THE WITNESS: I was named as his personal
8 representative and trustee, along with my partner.

9 BY MR. BERNSTEIN:

10 Q. Did you witness the document?

11 A. I did.

12 Q. Did you draft the document?

13 A. I did.

14 Q. Okay. You mentioned there was Kimberly Moran
15 there at the signing of these documents, correct?

16 A. She was.

17 Q. Okay. Can you point her out, because I'm
18 going to need her to testify as to the validity?

19 A. I do not see her in the courtroom.

20 Q. Okay. You mentioned a Traci Kratish. Can you
21 point her out in the courtroom today to validate the
22 documents?

23 A. I don't see Traci in the room either.

24 Q. So she was another witness that is not here
25 present to validate the documents today? Well, it's

1 awful -- okay.

2 Is Kimberly Moran here who notarized the
3 documents.

4 MR. ROSE: Objection. Cumulative. Asked that
5 a minute ago.

6 MR. BERNSTEIN: I didn't -- did I? Was it
7 Moran --

8 THE COURT: No, I thought it was some other
9 name.

10 MR. BERNSTEIN: So did I.

11 THE COURT: Is Kimberly here?

12 THE WITNESS: She's not.

13 THE COURT: Okay. Next question.

14 BY MR. BERNSTEIN:

15 Q. Okay. Being a former estate planning
16 attorney. To validate a document, wouldn't you have the
17 parties who witnessed and notarized and signed present?

18 MR. ROSE: Objection. Relevance.

19 Misstates --

20 THE COURT: Sustained.

21 BY MR. BERNSTEIN:

22 Q. Is it necessary to validate documents with the
23 necessary notaries and witnesses present?

24 MR. ROSE: Objection. Calls for a legal
25 conclusion.

1 THE COURT: Well, I'm the one that's going
2 make that decision. I don't care what the witness
3 says about the law.

4 MR. BERNSTEIN: I gotcha. Okay.

5 THE COURT: So this would be a good time for
6 us to take a pause. We're not making headway.

7 You ever here of cavitation when it comes to
8 boat propellers?

9 MR. BERNSTEIN: No.

10 THE COURT: Okay. I don't know a lot about
11 the physics of it, but a boat goes forward based on
12 a propeller spinning in the water. And it happens
13 sometimes in racing boats, maybe other boats too,
14 that you get the propeller going so fast or you do
15 something so much with the propeller that it
16 cavitates, which means that it's not actually
17 pushing in the water. It's making a lot of noise.
18 It's spinning like crazy. It's furiously working,
19 but it's not propelling the boat forward. I want
20 to suggest to you that you've hit a point of
21 cavitation. So this would be a good time for us to
22 take our lunch break so that when we get back we'll
23 go forward with this ship that is our trial.

24 MR. BERNSTEIN: How long?

25 THE COURT: It'll be until 1:30.

1 MR. BERNSTEIN: Okay.

2 THE COURT: That'll give everybody a time to
3 revive, if necessary, and we'll reconstitute
4 ourselves at 1:30. Thanks.

5 (A break was taken.)

6 (Proceedings continued in Volume 2.)

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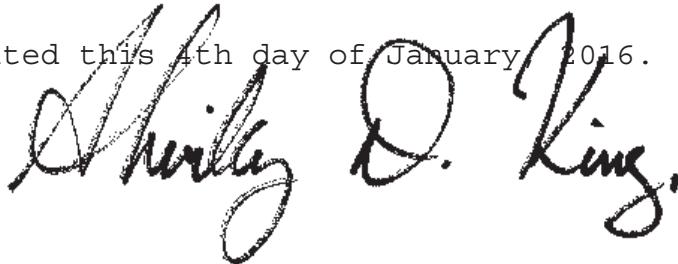
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COUNTY OF PALM BEACH

I, Shirley D. King, Registered Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 4th day of January 2016.



Shirley D. King, RPR, FPR

Job #1358198-VOL 1

<p style="text-align: center;">\$</p> <hr/> <p>\$1.2 49:25</p> <p>\$100 81:12</p> <p>\$100,000 48:7</p> <p>\$18 23:11 46:12</p> <p>\$2 54:6</p> <p>\$200,000 32:2,9</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>0 55:13</p> <p>07 23:12</p> <p>08 24:3,5</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 15:23 34:3,6, 10,15,16 39:10 54:12 61:14,20 62:2 82:14,17 83:11,18,22 84:2,5 101:20, 25 102:15,16</p> <p>1,150,000 49:2</p> <p>1,550,000 49:12</p> <p>10 13:9,10,22 14:3,4 22:3 58:9 75:16</p> <p>100 48:14</p> <p>100,000 48:18</p> <p>11 26:12,21 27:1,2,5,11</p> <p>11/14/07 14:13</p> <p>11/14/2007 15:3</p> <p>11/16 15:6</p> <p>12 22:9,12 24:5</p> <p>12/19 23:23</p> <p>12/19/07 23:22, 24</p> <p>13 23:5 45:18, 22 46:2,3,19 53:22 59:1 73:25 106:25</p> <p>14 60:24 61:3, 7,8</p> <p>14th 22:4 23:12</p> <p>15 17:21 63:18 64:5,10,11</p>	<p>71:5</p> <p>16 65:22,24 66:17,21,22 71:6</p> <p>16th 12:15</p> <p>17 62:6 73:3, 13,21,22</p> <p>18 23:13 25:16, 17 47:16 74:3, 4,8,9</p> <p>18th 40:15 86:2</p> <p>19 12:25 25:17 26:14</p> <p>1st 59:1</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 35:9 36:11 39:11 51:6 55:14 61:12, 14,21 62:2,3 84:7,10,16,19, 23 85:2,7,12, 19,23 86:4</p> <p>20 24:9</p> <p>2000 17:21 18:17 20:4,14 21:8,24 30:11</p> <p>2002 37:19</p> <p>2007 11:25 12:15 22:4 25:25 46:11 47:16 49:23 51:18 53:1 73:2 81:15</p> <p>2008 8:25 9:1, 2,5,6,21,25 10:4,5 24:9,11 25:25 26:15 33:3,14 34:1 35:12 37:1,17, 20 38:24 40:15,16 41:5 49:22,23 61:12 64:21 82:20 83:12 84:9,11 85:2 86:3 110:17,18</p> <p>2010 42:22 43:17 58:25</p> <p>2012 9:17,18 45:15,21</p>	<p>46:13,18 51:15,21 53:1 57:17 59:1,2 62:7 63:23 64:17 67:18,24 73:25 74:16 81:16 87:17,22 88:8 89:8 106:21,25 108:3,21 110:20</p> <p>20th 82:19 83:12 84:9,11</p> <p>24 89:7</p> <p>24th 63:23 65:16</p> <p>25 20:15 21:17, 19 67:18 87:17,21 88:8 89:8</p> <p>250 55:14</p> <p>25th 67:24</p> <p>26th 15:5 73:7</p> <p>27 36:8 84:10</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 38:20 39:1,6, 7,11 51:7 61:14,22 62:2 86:1,3,6,9,13, 16,22 87:2,9, 13</p> <p>31 24:3</p> <p>33 23:6 33:22</p> <p>365,000 52:13</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 67:19,20,22 68:2 70:3,8,9, 15 71:9,10 87:15,19,25 88:3,12,17,23 89:2</p> <p>40 17:16 18:3</p> <p>40- 81:12</p> <p>40A 15:22 17:7, 12</p> <p>40A-F 17:13</p>	<p>40B 16:11</p> <p>40C 17:1</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 20:17,18 23:6 51:20 71:22 72:6,11,12 89:5,7,12,16, 20,24 90:4,8, 12,16</p> <p>500,000 47:24 48:1 55:16</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 76:25 77:1,5 101:18</p> <p>60 58:11</p> <p>600 48:13,14</p> <p>600,000 55:18</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 19:11,20,25 20:1 73:15 82:17 87:18</p> <p>75 54:14</p> <p>750,000 49:10</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>800,000 51:9</p> <p>8th 42:23</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 12:11,12,20 13:1</p> <p>90 58:11</p> <p>9th 32:11,17 107:17,23 108:3,8,21 109:3,12 110:9,10</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>absence 98:3</p>
---	--	---	--

absolutely 99:17,20	affidavit 70:21	60:24 84:10	assume 51:8 104:10
abundance 102:12	affirmed 10:24	appoint 20:23 30:2,13 77:15	assuming 28:9
access 43:25	afraid 101:6	appointment 20:21 21:1,4, 15 29:19 31:12,15 33:6, 12,20 55:4 65:7 98:4	attached 62:13
accommodate 37:10	aggressive 7:19	approach 11:2 12:11 15:21 67:19 111:6	attack 78:16
accompany 40:25	agree 9:24 10:5	approaches 11:3	attend 59:5
account 23:2 57:4	agreement 9:18 29:10,22 35:11 38:2 61:13,22, 24 64:16 65:8 71:24 89:6,9 90:6 97:13 101:15	approval 59:24	attention 82:16 84:9 86:3 87:18 89:7
accounting 60:21 62:14 103:13	agreements 35:20	approved 53:16	attorney 12:2 24:16 27:8 45:1,4 51:14 65:23 67:15,25
accountings 107:22	Alan 5:6	approximately 45:13	71:6 81:8 91:12,13,15 96:10 99:25 109:15
accurate 19:19 76:22 111:2,6	Alexandra 8:15	April 26:14 29:1 32:11,17 37:2 107:17,23 108:3,8,21 109:3,12,17 110:9,10	attorney-client 38:9
accurately 104:20	alive 35:7 43:25 44:5,8 52:10 63:10 75:3 110:11	area 37:4	attorneys 81:11 94:20
acknowledge 96:16	allegedly 107:18	argue 96:25 97:20 104:9 106:2	August 17:21
acknowledged 96:18	allowed 101:9	arguing 104:22	authentic 8:22 9:16 26:18 102:5
acting 73:1	altered 78:12 95:23 97:23 98:20	argument 92:14, 16 97:20	authorization 63:11
action 8:24	altering 46:7 96:21 97:10,16	argumentative 97:19 98:16 104:4,12 106:17	authorized 45:3
actively 84:5 85:22 87:13 88:23 90:16	amend 38:1	arranged 40:5	avoid 29:15,18
actual 35:15	amended 8:24 9:18 38:4,5 64:15,23 71:23 75:1 89:6	arrangements 80:10,12,20,24	aware 39:24 40:24 50:10,18 55:20 56:5 72:25 75:8 79:6 81:13 90:13 107:17
add 23:10	amendment 9:2, 4,5,7 39:18 40:2,14,17 61:23 86:1 87:4 98:14 101:14 102:8 110:18	arrows 19:17	<hr/> B <hr/>
addition 41:5 65:6	amount 20:7 55:11 56:6	assert 70:17	back 8:1 15:4 40:13 42:2 47:11 49:22 60:21,22 79:15
address 5:23	ancillary 16:23	asset 25:10 42:7 50:4 74:19	93:3 100:9 103:20,23 107:4,14,21 108:15,18 110:6
addressing 60:25	Andrews 53:17	assets 18:9,11 29:16,17 30:2	bad 101:8,9 104:18,19
adjust 11:8 111:5	answering 76:7	assistant 40:11 66:14 102:24	balance 21:18 33:23
administration 44:4,8 46:18 74:18	appearance 8:11		
admission 11:11	appears 18:12 20:12 23:3 25:17 26:20 27:15 36:8		
admitted 24:8 80:13 96:21 100:2 107:11			
adult 8:14 82:8			
advance 15:9,13			
advice 56:23 57:7 99:25 100:7 104:25			
affect 97:8			

Banks 82:22	6:6,8,11,14, 17,20,24 7:3, 7,10,13,16,17 8:15,16 9:1,2, 17 10:4,7,9, 11,14 11:15, 20,24 12:8,17, 18 13:5 14:19, 22 16:2,8,13, 21 20:15 23:16 24:9,12,22 25:1,15 27:13 28:18 29:10 30:23 31:9 36:11,13 41:15 43:2 45:10 46:18 49:4,6,8 52:8 56:8 60:25 61:18, 21,22,23,25 62:24 63:12,19 64:1 65:25 68:15,17,21,25 69:5,20 70:7, 16 71:23 73:4 74:13 75:8 77:3,8 78:16, 25 79:4,9,12 80:9,14,25 81:14,21 82:9, 15,19 83:7,11, 14,17,22 84:1, 11,15,20 85:1, 6,11,17 86:6, 10,13,17,22 87:1,8,16,17, 20 88:1,4,9, 13,18 89:2,5, 8,13,17,19,25 90:4,11,24 91:7,23 92:8, 9,13,15,20,23 93:1,4,8,13, 16,19,25 94:4, 7,11,14,17,18, 25 95:5,8,12, 13,16,21 96:8, 15 97:3,4,21, 22 98:18,24 99:3,7,11,20, 23 100:1,17,21 101:12,14,16, 21,23,25 102:20,21	103:2,6,8,10 104:8,13 105:1,11,17, 20,22,25 106:4,6,22 108:11,13,15, 18,20 109:22, 25 110:4,5 111:8,9 Bernstein's 17:5 22:14 61:12 82:24 84:8,23 86:2 91:12,13 96:10 97:6 Bill 31:22 51:13 bit 108:11 blank 71:2 block 67:1 70:23 blogging 78:17 book 11:5,6,14 101:17 bottom 14:10 53:21 55:13 bought 50:19 56:4 bounty 83:19 85:9 86:24 88:15 90:2 box 67:3 70:25 break 58:8,19 briefly 41:8 bringing 40:23 brokerage 23:2 brother 45:7 78:23 brought 11:4 40:7 bunch 47:14 business 25:5, 20,21,24 26:1, 3 27:16 31:21	22,25 63:1,5, 14 65:13 69:16 called 40:3,5 45:3,15 52:7 56:16 75:25 91:8 calls 62:23 Candice 5:19 24:12,22 care 8:6 16:24 27:9 55:6 80:4 carefully 101:10 carry 77:7 97:12 carrying 97:15 case 5:3 10:15 24:8 50:17 93:22 94:20,24 95:4,6 104:20 cash 47:11 causing 63:7 caution 102:12 CD 47:9 certificate 74:3,12 chain 69:5 change 21:11,25 30:14 40:4 45:11 55:8 56:23 57:20,24 97:23 98:20 99:8 changed 78:12 changing 54:21 56:14,17 charged 96:1 chart 19:14 32:5 Chaves 12:6 check 70:25 106:23 checked 67:3,4 child 19:17 children 6:2,8, 25 7:8,10 10:9 18:16,17 19:6, 7,16 20:5,11, 12 21:6 30:16, 18 32:14 40:20,22,25
C			
call 10:20 40:4 58:4 59:3,6,8, 12,19 60:6,8, 18 62:10,12,			

41:2 44:7 45:7	51:11,16 76:1, 3	convicted 93:2 103:1,5,11	24:15,23 26:23,25 29:18
46:24 55:6	company's 13:19	copies 15:16 35:13,15 76:16	34:12,14,24 35:6 39:3,5
57:13 58:2,5	complaint 8:17, 24 75:19	copy 16:4 26:18 34:5,8,19 45:2	41:18 42:1 45:24 46:1
59:5,20,23	compounded 108:11	57:9 68:6,12, 14 69:16,17 73:4 76:22	49:5,7 53:15 56:9 58:7,15, 20 61:4,6,17, 19 62:1 64:7,9
60:8 77:9,25	Concepts 51:12	correct 20:16 21:2,7,10	66:18,20 68:9, 16,19,23 69:2, 8,22,25 70:5
81:6 96:11	concerned 42:7	27:9,14 28:11, 14 29:13 31:7, 25 32:4,8,12	72:8,10 73:15, 17,20 74:5,7
107:21 108:6	conditions 20:23	33:5,7,24 34:21 35:4	77:5 79:2,6, 10,14,18,24
109:3 110:7, 11,12	condo 23:4 51:2,6 78:24	36:8 40:10 43:4,9,17	80:4 81:1,19, 24 90:20 91:1,
children's 27:7 97:6	conduct 7:20	44:18 47:15, 19,22 48:8,16, 25 49:3,11	22 92:6,12,14, 16,22,24 93:3,
Christine 95:24 96:10 98:13	conference 37:4 58:4 59:3,6,19 60:6 62:9,11, 25 63:1 65:13	51:17 52:14 53:14,18 54:8	5,9,14,18,24
chronological 14:8,9	conferences 72:18	57:18,24 62:7 65:1 66:7	94:2,3,6,8,12, 15,22 95:2,7, 9,18 96:7,13,
circumstances 77:6 91:17 92:3	confidential 29:17	70:22 71:3,17, 21 73:9 75:6, 13 77:4 91:9	23 97:18
claim 10:1 47:10 80:22	conform 69:17	101:16 103:8 109:4 111:12, 13,22	98:17,23,25
claiming 10:4 99:21	conformed 34:8, 19 68:14 69:16 73:5	counsel 5:17 6:2,24 10:12	99:5,10,12,18, 21,24 100:2,
clarify 69:6	confused 17:25 104:13,16	69:19 78:8 97:6	18,19,22
clear 95:9	confuses 100:6	count 8:23 9:15	101:3,8,13,17,
clerk 68:12	confusion 104:14	County 69:25 95:15 96:2,5, 21	22,24 102:1,6, 11,18 103:4,
clerk's 68:6, 10,11 70:1	connection 84:2 85:17,18	couple 25:7 72:21 79:21	14,15,17,19, 20,24 104:5,7, 9,14 105:3,8,
client 15:4 25:9 26:15 29:15 35:2,5 39:15 69:13,15	consent 62:16 91:20,24 92:4	court 5:3,8,12, 16,20,24 6:5, 7,10,13,15,18, 21 7:1,5,9,12, 15,17 8:9,12, 18 9:4,6,24	10,14,16,18, 21,23,24
clients 12:16, 18 13:15,17 53:5,10	consistent 24:10 30:7	10:3,8,10,13, 16 11:3,6,9, 12,13 12:22,24	106:2,5,18
close 46:24 60:19 73:3 106:8 107:24	contact 60:6	13:24 14:2	107:5,10,13,
closed 46:20,21 106:13,16	contents 75:12	17:9,11,19,22, 24 19:22,24	14,15 108:9, 12,14,16
closer 48:14	continuance 7:6,24		109:21,23
Code 104:1	continue 57:1 58:21 104:9		110:3,15
codicils 17:4	control 39:15, 16		courteous 7:18
collateralized 50:1	controlled 52:2,9		courtesy 24:18 100:4,12,13
Colon 103:24	convenience 40:8		courthouse 34:25 78:3
column 51:3	conversation 6:21		courts 78:22 96:17
committed 96:18			crash 53:4
communication 58:2			
company 23:7 41:12 48:10			

created 26:19 32:15 35:17, 19,23 41:11,17 60:3 77:12,22	16 30:1 33:18 43:22 50:16 54:16 57:5 64:24 74:3,12 75:7 106:24 110:7	Diana 82:22,24 83:8 die 30:14 47:1 died 28:5 31:11,14 33:3 42:20 50:8 58:24 69:18 74:16 80:22 81:6,7 106:25	divided 64:24 docket 8:3 document 12:13 21:13 22:16 24:7 26:19 28:25 29:12 31:14 34:8,23 35:10,13,18 38:6,17,21,23 39:22,24 40:6 63:4 68:13 69:6,25 77:1, 2,12,14,20 78:10,18
crime 92:10	debacle 47:10	direct 7:19 11:16 58:1 81:25 82:15 84:9 86:3 87:18 89:6	82:16,18,25 83:5,8,14 84:11 85:14 86:12 87:20,24 89:4 95:23 96:9,21 97:5, 7,8,11,16,23 98:12,19,25 99:2,6,9,12, 16,19,22
cross 81:20 82:5 90:21 91:6	Deborah 32:7	directed 16:2	100:19 101:4, 13 102:7 104:3 105:13 108:5 110:9
cross- examination 82:1	December 42:21 58:24	direction 38:12 41:17	documents 8:22, 25 9:11,13,14, 19,23 13:8 15:15,16,19 16:22,23 17:2, 20,22 18:7,8, 9,18 19:1 20:4,13,14 21:8 22:1 25:3 26:5,6,8,15,17 27:12,21 29:4 30:8,15 31:12, 16,24 32:10, 19,22,23 33:13,17 34:1 36:15 37:1,13 40:4,9,16,19 41:6,20 44:1, 2,21 45:2,4,5, 11,16 55:2,3 56:15,18 57:6, 24 60:3 61:15 63:3,11,16 64:17 65:16,21 66:9 71:16,18 72:16 73:8
current 46:9	decided 57:7	directly 98:8	
custody 69:5	decision 44:12 57:23 111:3,7	disagree 10:7 95:7	
cut 20:12 77:25	deduction 43:24 51:8	discharge 62:14,15,16	
 D 	defamation 79:4	disclose 16:20	
Dad 60:16	default 33:12, 16	disclosed 46:12 81:14	
Daily 74:19	Defendant 102:15	discuss 22:22 25:19 39:14,17 46:6 48:22 54:22 60:18	
date 14:12 15:1 17:19,22 23:21 24:9 40:14 63:22 67:17 84:8 88:1,7,8	defendant's 101:20 102:16	discussed 42:8 57:16 59:18 65:13 107:20	
dated 12:15 15:4 26:14 62:6 73:7 83:11	denied 7:6,24	discussion 22:5,22 32:18 42:10 54:11 55:19 59:22 63:14 95:14	
dates 24:1	depending 55:11,12	discussions 44:25 54:1 74:14	
daughter 54:24 55:25	depends 98:2	disinherited 55:2	
day 6:16 8:3,4 52:20 58:12 65:16 67:24 71:25 73:7 109:4 110:17	deposited 105:22	disposition 19:2	
days 15:6,7 27:11	depression 53:4	dispositions 21:25	
dead 106:9,13, 16	descendants 30:3 98:14,22	dispositive 57:6 65:19 97:8	
deal 43:10	describe 18:2 28:18 41:8 102:23	distributions 29:25	
dealership 50:13	designated 28:23 33:13		
dealings 67:11	designation 55:9 57:21		
dealt 104:15	designations 27:8		
Dear 64:14	determine 9:15 79:22		
death 18:10,15 20:9,18 29:7,	developing 111:2		
	device 38:7		

75:14 76:10, 15,17,19,21 77:10,17,23,24 78:11 79:23 80:12,17,21 82:12 97:14 103:16,19,25 105:2,8 106:7 107:15 108:25 110:1,20 111:11,12,16, 21,22 dollar 23:3 35:22 36:2 dollars 25:18 Don 13:12 draft 32:22,23 63:15 65:16 drafted 30:8 33:13 98:15 111:12,20 drafting 39:13 drafts 26:6,7,9 27:6 37:2 63:20 64:15 drag 41:2 Drive 53:12 duly 10:24 durable 16:24 27:8 65:23 67:14,24 71:5, 6 duties 63:6	effort 43:10 Eli 97:5 Eliot 5:15 7:16 11:14 18:12 20:14 21:17 33:21 45:7 52:1 56:4,5 60:12,25 62:7, 18,24 63:12 78:16,20 80:14,22 96:10 98:21 Eliot's 78:7 email 60:25 62:6 emergency 78:22 empty 50:5 Enclosed 27:6 enclosing 63:20 73:4 end 8:4 33:22 110:16 enforceable 8:23 9:16 37:15 71:20 110:19,21 enforcing 7:19 entered 82:14 entity 41:11,16 52:4,7,9 envelope 15:24 equal 20:22 21:21 equally 19:6 Eric 8:15 essentially 28:19 establish 41:22 established 98:9,10 estate 12:2 13:7 15:12,14 16:22 18:2,13 20:6,11 25:3 27:20 28:10,23 30:14 33:4 41:5,24 43:18, 19 44:5,8,13 46:7,24,25 48:19 49:15,18 50:7 52:12	55:23 56:18,19 57:8,16 58:6 59:21 60:19 63:3 64:22 69:19 74:23 76:17 77:23,24 80:21 99:3 103:2,6 106:8, 13,15 107:24 111:12 estimate 43:13 event 29:19 30:13 51:16 eventually 29:6 33:25 36:4 evidence 12:21 13:2,23 14:5, 15 17:8,14 19:21,25 20:2 22:3 26:22 27:1,3 34:11, 14,17 39:2,5,8 45:23 46:1,4 61:3,6,9,14 62:2,4 64:6,9, 12 66:17,23 70:3,10 71:5 72:7,10,13 73:21,23 74:4, 7,10 80:13 99:13 100:17 101:19,25 102:8,17 EXAMINATION 11:16 examined 10:24 exception 31:17,18 excluded 33:18 44:22 Excuse 24:12 34:7 106:11 execute 33:25 40:6 84:15,19, 22 86:6,9,12 87:8,20,24 88:3 89:2,8, 12,16 90:11 executed 35:12 40:9 65:21 67:23 68:1 76:22 82:19 83:14,18,22	84:8,11 85:2, 7,12 86:2,17, 22 87:2,17 88:13,17 89:20,24 90:5, 8 111:20 execution 36:15 82:12,13,25 83:2,4,8 84:2 85:19 88:8 exercise 33:11 55:3 exercised 21:5, 16 33:21 65:7 exercising 98:3 exhibit 12:11, 12,20 13:1,9, 10,22,25 14:4 15:22 16:11 17:7,13,16 18:3 19:20 20:1 22:3,9,12 26:12,21 27:2, 5 34:3,6,10,16 35:9 36:11 38:20 39:1,7 45:17,18,22 46:3 53:22 60:24 61:3,8, 12 62:3 63:18 64:5,11 65:22, 24 66:17,22 67:19,20,22 68:2 70:3,9, 13,15 71:5,9, 10,22 72:6,12 73:3,22 74:3,9 76:25 77:1,5 78:2 82:14,17 83:11,18,22 84:2,5,7,10, 16,19,23 85:2, 7,12,19,23 86:1,3,6,9,13, 16,22 87:2,9, 13,15,19,25 88:3,12,17,23 89:2,5,7,12, 16,20,24 90:4, 8,12,16 100:23,25 101:24 102:16
--	--	---	---

exhibits 11:5	FDIC 47:21	FMV 51:3	Gary's 101:6
exist 40:16	February 46:13	focus 110:25	gave 46:14
existed 30:11	51:15 56:11,20	focused 83:10	50:12
52:17	59:1 72:17	110:23,24	general 41:11
existence 41:16	81:16	folks 101:9	83:18,22 85:3
existing 13:7	Federal 27:12	follow 7:20	88:9
15:19	Fedex 64:3	26:16 104:2	generally 18:2
exists 52:20	felon 92:21	forged 103:22	59:18 83:15
expected 42:11	felony 92:10	104:3 105:13	85:8,13 86:18,
expert 91:9	93:2,15 103:1,	107:6,14	22 87:3 88:13
explain 27:20	5	form 36:2 52:17	89:21,25 90:5
77:5,21	felt 55:23,25	formalities	100:4
explanation	107:15	37:14,24 38:24	gentleman 51:13
26:16 80:2	figure 41:19	67:15	genuine 77:2
Express 27:12	55:5	formally 51:13	102:5
extensive 41:23	file 11:12	Forman 12:7	gift 32:2,9
extent 20:20	12:14 15:6,8,	formed 48:23	39:19
21:4 61:13	20 69:22 78:2,	forward 8:2	girlfriend
83:15 85:4	22 107:10	Found 30:15	50:12,24 55:24
86:18 88:10	filed 7:8 34:24	fourth 24:4	56:21
89:21	35:6 43:15	fraud 96:18	give 18:5 21:9,
	47:10 74:18	110:2	11,23 25:23
F	103:14,15,18	frauded 104:3	27:25 30:12
face-to-face	107:12	fraudulent 97:5	31:12 40:4
72:21	files 13:20	103:1,16	57:7 64:21
Facebook 79:19	16:4,15 35:5	105:8,13 107:6	69:15 72:24
fact 9:8 28:15	filings 7:7,23	fraudulently	80:1 81:4
39:18 44:21	final 29:3	95:23 96:9	91:17 92:3
54:4 55:1	64:18	97:16,23	106:15
75:15 78:10	finally 7:22	98:14,20 107:5	giving 45:4
facts 80:6	finances 46:9	freeze 78:23	56:18 99:24
104:19 111:1	find 100:8	friends 100:5	100:7
failed 61:11	fine 22:21 80:7	front 89:13,17	good 5:5 19:12
Fair 51:4	finished 81:25	full 107:17,23	42:14 56:2
fairly 29:14	firm 12:3,5,9	108:21	58:7 82:7
familiar 22:18	13:5 16:17	fully 72:25	Gotcha 101:12
47:22	26:14 36:21	funded 36:3	grammar 65:19
family 19:12	69:18 75:22	funds 77:15	grandchildren
27:7 30:3	91:19 103:16	future 26:2	8:15 19:18
32:5,13 41:15	105:2,5,7,12		55:6 56:19
52:8 57:5 63:5	107:5	G	57:8 59:22
80:14 98:8,10	fit 8:5	gain 111:15,16,	60:10 65:1,9
fashion 77:21	fitting 82:3	24	75:16 77:16
father 63:5	Fleisher 12:7	gained 111:21	80:19 82:8
81:6,7 98:9	flip 15:3 23:18	gallery 24:20	granted 65:7
111:18	31:1 65:24	100:9,10,11,	great 5:12
father's 97:12	Florida 37:14,	12,14	43:10 56:20
favor 21:16	24 41:10,13	Gary 101:10	58:15
65:8	94:19,20 100:3		Greenwald 15:25
	104:1		16:7,12,19
			17:3

<p>Greg 5:9 gross 53:16 guardian 29:19 guess 30:10 32:1 47:10 54:11,23 55:23 75:3 76:25 107:8 guilty 93:20 Gutter 12:6 guy 92:22 100:7 guy's 79:19</p> <hr/> <p style="text-align: center;">H</p> <p>half 8:4 47:17 51:7 53:20 hand 11:10 13:9 15:21 16:11 26:12 34:3 35:9 38:20 45:17 60:24 63:18 65:22 71:22 76:25</p> <p>handle 25:5 handwriting 22:11,19 handwritten 34:20 happen 6:19 104:18,19 happened 45:14 50:9 60:2 75:20 103:21</p> <p>happy 55:1 60:17 heading 29:23 health 16:24 27:9 42:12,14 hear 9:22 106:11 heard 81:11 hearing 79:13 heart 42:15 held 64:25 high 53:5 hired 45:1 history 72:15 hit 47:10 hoc 6:25</p>	<p>holds 52:12 holidays 25:7 home 51:25 52:5 64:3 Honor 5:5 11:2, 4 12:21 13:23 17:8,23 19:10, 21 26:22 39:2 45:23 49:4 61:11 70:4 72:7 78:25 81:18 100:25</p> <p>hope 111:5 hour 23:17 house 23:3 40:6 51:6 52:8,12 53:12 56:4</p> <p>housekeeping 61:10 huge 11:6 husband 20:19, 23</p> <hr/> <p style="text-align: center;">I</p> <p>idea 56:20 90:25 identical 28:19 31:3,16 identification 67:2 71:2 identify 12:12 13:10 17:2 26:13 important 60:17 65:5 71:18 108:19 110:2</p> <p>importantly 109:11 incapacity 29:20 include 35:5 55:10 56:21 57:21 98:13 included 17:3 38:6 43:15 includes 23:13 including 16:23 income 29:24 increasing 55:11</p>	<p>indication 21:23 25:23 72:24 81:4 individually 5:23,25 10:7 influenced 84:1 85:17 influencing 87:8 89:1 90:10 information 85:21 87:7,12 88:22,25 90:15 inherent 28:5 81:5,6 initial 31:4 Initially 75:14 inject 24:18 insider 91:24 93:22 instrument 98:2 insurance 23:5, 13 25:20 51:12 53:25 54:2,7,9 55:9 56:22 57:13 intake 12:14 15:4 intended 30:8 77:11 97:10 intent 65:12 77:7,25 interest 48:20 51:19 52:15 111:15,17,22, 24 internal 54:23 internet 78:17 interruption 82:2 interviewed 96:4 invalid 9:25 10:6 80:5 inventory 43:15 inventorying 43:11 invested 47:13 investing 47:17 investment 47:8,12</p>	<p>investments 41:15 47:21 involved 25:20 44:24 48:10 51:14 93:22 involvement 36:21 IRA 49:10 issue 95:11 109:23 issues 42:15,16 78:15 94:23 95:3 item 106:3 Iviewit 76:3</p> <hr/> <p style="text-align: center;">J</p> <p>January 24:3 Jill 18:12 45:8 98:5,7,21 John 82:7 joined 8:17 joint 23:1 57:4 JP 50:1 judge 8:14 81:22 90:19 101:9 103:24 July 65:21 67:18,24 72:17 87:17,21 88:8 89:8</p> <hr/> <p style="text-align: center;">K</p> <p>kick 108:15,18 kicked 107:14 kids 108:25 Kim 67:11 71:15 Kimberly 36:18 40:7 66:5 70:17 87:21 88:1,3 89:9, 13,16 102:22 103:22 105:13 107:3 kind 42:17 55:4 58:1 75:18 knew 25:12 42:17 57:10 67:10,11 76:8</p>
--	--	---	---

knowledge 42:13 82:13 84:3,4 85:20 87:6,11 88:21 90:9,14	life 23:4,13 43:8 51:11 54:6,9 55:9 56:22	love 6:15 lovely 5:18 lunch 40:5	maximum 47:20, 24 means 94:9,13 105:18
Kratish 36:14, 23 84:14,17, 20,22	lifetime 30:24 76:23	M	mechanism 29:21 31:8
L	light 78:15,19	made 32:2 39:19 45:1 47:7 57:23 65:15 66:20 68:12 80:20,23 93:9 95:9 97:13 107:16	meet 11:23 23:15 25:8 40:1 45:16 54:22 56:14 58:25
lady 99:24	limitations 82:4	mail 95:24 96:9,22	meeting 13:11, 12,17 14:18 15:9,14,17 22:4 23:19,21 24:1,2,3,4 25:6,12 32:21, 25 40:6 45:20 46:6,13 54:22 55:4 56:20 57:19,20 75:10 77:8 107:20
laid 65:20	limited 41:10, 12,13	main 37:3	meetings 13:13 14:17 23:16 24:25 25:25 72:22 74:15
language 21:13	Lindsay 66:8, 11,12 67:7	make 6:25 8:11 13:7 17:25 18:8 19:1 32:23 35:25 37:13,15 40:8 56:1 71:15 77:10 80:9,11 82:2 93:6 101:4 104:23 111:2,6	member 101:7
lapse 57:11	list 50:3	makes 60:17	memo 65:20
lapsed 57:11	listed 97:24	making 68:17	memory 24:10
laser 110:24	listen 104:23	mandatory 29:24	mentally 55:20 72:25
late 106:25	listening 100:8	March 24:5 25:6,25	mentioned 59:3 62:21
law 12:3,5,9 13:5 16:17 37:14,24 69:18 94:19 103:16 105:2,12 107:5	lists 19:15 23:1,6	marital 30:2 43:23	merits 104:21
lawful 20:22	live 42:11	Maritza 50:22 54:19,20 55:7 56:21 57:21	met 14:21 25:16
lawsuit 31:9	lived 56:4	marked 45:17	Michael 8:16
lawyer 16:7 44:25 75:22 76:5	lives 52:1	market 51:4 53:4	middle 65:2,5
layman 77:9,10	living 16:24 27:9 64:25 77:24	marriage 30:15, 16,17,18	million 23:3,5, 6,11,13 25:16, 17 46:12 47:16
laymen's 27:19, 23	LLP 41:15 48:21,23 50:2 51:7	married 30:23	49:13,20,21, 24,25 51:2,6, 7,20 53:13,16
layperson 77:21 97:14	loan 49:25 51:8 54:17	Matt 38:5,8	54:6,12,13,14, 16,17 81:12
learn 50:11	loans 49:18,20, 21,22,24	matter 33:2 38:10 61:10	mind 110:21
learned 44:21 75:11	Logan 32:3,6 38:5 39:20	matters 63:7 95:16	mine 109:17 110:22
leave 73:10	long 23:15 25:2 78:18	Matthew 32:3,6, 10 38:12,18 39:19	minor 6:2 7:8 96:11 97:6
leaving 60:9	long-time 102:24		minors 7:11
legalese 27:20	longer 42:11		
lengthy 41:23	looked 72:15 81:15		
letter 16:12,19 17:3 26:14 27:19 32:17 54:24,25 63:19 64:1 73:3 75:21 76:4 77:18	losses 53:6		
letting 24:17 93:9	lost 47:13,16		
liability 41:12	lot 41:24 44:12 53:5 54:23 110:21 111:11		
LIC 48:6,10 51:11			

minute 18:5	moving 29:23 84:7 87:15 89:4	25:25 40:15 49:23 86:2 106:21 107:2	October 106:20 odd 100:8 offering 101:24 office 36:19 37:5,7,8 59:13,16,17 66:6,12 68:10, 11 70:1 71:12, 13 95:15 102:25 106:7
minutes 58:9, 11,16,17		number 15:23 55:12 72:18 73:15 81:11	
miscellaneous 23:4	N	numbers 13:20	
misdemeanor 93:20	name's 82:7 named 32:2 36:17 44:20 51:13 57:13 66:8 111:17	O	
misperceiving 99:10	names 19:15,17 narrowest 41:21	obey 82:4 object 10:17 35:7 49:4 56:8 68:15 75:14 78:25 80:25	Officers 101:8 offices 37:4,6, 11 40:23 67:12
mistake 39:13 77:10 107:16	natural 83:19 85:9 86:24 88:14 90:2	objected 79:8 objecting 68:21,24	offset 49:17 offshore 47:9
mix 57:5	nature 83:15 85:4 86:18 88:9 89:21	objection 12:22,24 13:24 14:2 17:9,11 19:22,24 26:23 34:12 39:3 45:24 49:5 60:9 61:4,17, 19 64:7 66:18, 20 68:16,23 69:4,8,9 70:5, 7 72:8 73:18 74:5 75:18 79:10 80:6 91:21 92:5,11, 17,18 93:23 94:9,12,21 95:17 96:6,12 97:17 98:16 100:22,24 102:1 103:3 104:4,11 105:9,15 106:17 109:19 110:3,14 111:25	oldest 31:24 open 12:14 15:8 opened 15:7 74:19
Molly 8:16	non-survivor 31:25	opinion 10:12 60:5 83:13,25 85:3,7,12 86:17,21 87:2 88:18 89:20,25	operative 9:12 61:15
mom's 99:8	Nos 17:13 notarization 103:2	opportunity 91:3	
money 22:6 23:2 44:13,14 47:14 48:15 56:6 81:5,9	notarized 36:17 66:8 71:4 103:12,19,23, 25 107:14	opposed 80:3	
monies 47:11	notary 37:8 66:25 70:24	opposite 99:17	
month 27:11	noted 101:1	optimistic 26:2	
months 25:7 46:19	notes 13:11,12, 16,19 14:7,11, 15,16 22:2,25 23:11,18 24:2 25:14 32:25 45:19,20 51:19 54:6	order 14:8,9 19:11 53:15 91:20,24 92:4	
Moran 36:18 66:5 67:11 70:17 71:15 87:21 88:1,3 89:10,14,16 102:22	notice 74:18 November 9:5 12:15 15:5 22:4 23:12	original 11:11 34:22 35:1,6 69:22,24 103:18	
Moran's 105:13		originally 107:12	
Morgan 50:1		originals 35:17,19 69:12 72:4 73:11	
morning 5:5 58:8		outlived 28:15	
Morrissey 8:11, 13 81:22 82:6, 8 90:18		outstanding 49:19	
mortgage 23:4 52:12,22		overrule 94:12	
mother's 45:2 55:2 63:3 78:24 107:24			
move 12:20 13:22 17:7 19:20 26:21 34:10 39:1 42:4 45:22 61:3,11,13 64:5 66:16 70:3 72:6 73:13,14 74:4 85:25 92:7 95:10 100:9			

overruled 49:7 56:9 81:1 92:12 94:11 95:18 96:13 103:4 106:18	passed 31:5 46:19 73:25 75:1 110:12	past 60:3,4 pause 58:8 paying 57:10 pecuniary 111:15,17 perceive 102:13 percent 20:15 21:17,19 33:22	plan 18:3,7,9, 14 25:10 46:7 64:22 65:19 99:4	11,20 55:4 65:7,23 67:14, 24 71:6 77:15 98:3
overruling 92:18			powers 16:24 27:8 77:12	practical 83:23 85:13 87:3 88:19 90:5
overstate 53:10			practice 13:16 71:15	
owned 48:23 52:1,4			practicing 91:16	
owns 52:8			prepare 26:4,6, 7 63:15 77:23	
P				
P.A. 105:4			prepared 9:22 19:14 32:13 41:4 64:15 77:6,7,17	
Palm 69:25 74:19 95:15 96:1,5,20			preparing 27:22	
Pam 18:12 20:12 21:12 33:18 44:19,25 45:4 54:25 77:25			presence 70:18 84:16,20,23,24 86:6,10,13 87:21,25 88:4 89:9 108:4	
Pam's 98:13			present 36:13 59:8,10 68:1 83:2,4,7	
paragraph 29:23 31:2 39:10,11 65:1,2,6			pretty 36:2	
paraphrasing 60:15			previously 38:6 103:13	
parents 19:18 98:9			price 53:16	
part 29:17 42:8 46:13 65:4 99:3,4			primarily 79:22	
participate 8:7 10:18			primary 29:12	
parties 10:14 35:16 100:6 107:13,25 108:23			principal 20:19	
partner 5:9 13:12 22:24 31:22 41:11 105:5,7			prior 14:22 15:14 16:7 25:5 29:16 39:21 110:6	
partner's 14:15			privilege 38:9 39:15	
partnership 41:10,12,14			pro 5:15 6:25	
party 24:15			probate 24:8 29:15 43:13,16 46:18 99:1,22 101:1 104:1	
pass 18:11,14 20:20 28:8 42:18 55:3 57:4,13			probated 102:5	
			problems 42:12	
			procedure 47:2, 3 108:24	

procedures 72:1 proceed 58:20 proceeding 7:4 24:19 procuring 84:5 85:22 87:13 88:23 90:16 produced 13:20 16:5 67:2 71:2 product 30:18 47:8 properly 33:21 37:23 40:9 71:16,19 property 18:22 19:5 20:5,10 28:6,7 42:25 43:14 83:15 85:4 86:19 88:10 89:22 protection 42:8 provide 15:13 18:9 29:24 57:3 76:14,18 91:8 provided 15:17, 18 16:14 31:13 45:6 76:21 78:7 103:14 providing 55:10 59:21 provision 29:3 public 42:20 published 74:19 pulled 55:24 purported 47:8 purpose 13:4 54:21 78:5 purposes 14:7 43:12 put 9:9 10:19 19:14 20:7 23:25 24:6 35:22 36:4 43:10 48:13, 17,18 51:23 52:16 58:3 63:6 71:5 80:18 96:21 99:13 101:19 putting 78:10	Q qualify 46:25 question 6:5,7, 10,22,23 7:1,9 8:19 38:11 68:19 69:10 79:7,11,15 86:5 92:7,25 93:10,12,14, 18,24 94:10, 13,16 95:2 98:23 99:10 103:7 106:5 questioning 79:1,2,7 questions 5:22 7:22 81:18,22 90:18,22 91:2, 4 94:23 95:3 96:24 97:1 100:15 102:18 104:11,22 108:10 111:1,4 quick 111:11 quickly 104:17	38:4 45:13 71:10 74:17 75:20 76:1 receipt 62:16 receivable 47:5 48:1,6 receive 12:25 17:12 62:18 66:21 70:8 98:11 102:12 109:11,13 received 13:1 14:3,4 17:13 20:1 27:2 34:16 39:7 46:3 48:5 54:24 61:8 62:3,19,20 64:11 66:22 70:9 72:12 73:22 74:9 76:4 100:23,25 102:16 106:25 109:14 recess 58:16 recognize 22:11 35:10 38:21 45:18 67:20 record 11:18 13:10 26:13 28:20 29:18 42:21 79:16 records 106:23 recover 47:25 redirect 30:4 referring 55:15 62:24 63:1 99:1 reflect 14:11 23:19 reflected 18:3 77:19 regard 71:8 reinstated 57:12 relation 56:13 relationship 14:22 41:23 42:17 85:8 Realty 52:8 recall 20:13 22:17 32:20	released 63:5 releases 46:24 47:1 60:21 103:12 relevance 42:3 49:6 56:8 79:1,18 91:21 92:5,11 93:23 94:21 95:17 96:6,12 102:3, 13 103:3 109:19,21,23 110:14 relevancy 79:12 80:25 relevant 39:23 42:1 48:22 92:6,13 95:3, 5,11 102:2,3 109:22 110:1 relief 99:5,16, 18 rely 37:8 remain 29:17 remained 29:3 remaining 30:2 58:11 Remember 100:3 remove 38:5 39:19 removed 38:8, 12,18 repeat 104:24 replacement 31:5 reporter 79:15, 17 represent 68:9 82:8 representative 28:22 29:7 63:6 69:19 106:9,14 111:18 representatives 74:23 represented 6:2 7:13 10:11 16:8 request 7:5 45:2
--	---	---	--

requested 45:15	45:22 46:5	send 35:4 44:1	25 37:10 38:1,
required 36:1	49:9 56:10	108:25 109:10	13,17 39:14,
37:14,24 90:21	58:14,22,23	sending 16:20	17,24 40:1,3,
requirement	61:3,10 62:5	sense 41:21	23 41:24
104:1	64:5,13 66:16,	101:5	42:15,18,20
residuary 20:6,	24 68:9 69:11	sentence 20:20	43:2 44:2
11,15 28:12	70:3,11 72:6,	21:3 29:25	46:17 58:24
43:2	14 73:13,16,24	separate 62:23	61:12,20,21,23
respect 78:22	74:4,11 79:21,	64:25	75:9 76:22
85:25 103:6	25 80:7,8	September 73:25	77:2 78:13
respond 60:12	81:3,18 91:21	106:25	80:11 82:15,19
response 12:23	92:5,11 93:23	serve 28:24	83:7,11,13,17,
14:1 17:10	94:21 95:17	40:11	21,25 84:8,10,
19:23 26:24	96:6,12 97:17	service 62:15	15,20,23 85:1,
34:13 39:4	98:16 99:17	session 58:9	6,11,17 86:2,
45:25 61:5	100:24 102:3,9	set 8:3,23	5,10,13,22
64:8 66:19	103:3 104:4	32:21 33:12,16	87:1,8 91:12
70:6 72:9	105:9,15	37:1 41:10	95:23 97:8
73:19 74:6	106:17 109:19	52:4 58:1	101:14 103:2,6
rest 63:7	110:14 111:25	72:16	106:8
restated 9:18	Rover 50:13,19	Shirley's 18:25	
64:16,23 71:23	Rubin 12:6	22:6 28:22	
89:6	Ruffin 12:6	30:1 34:7	
retain 12:8	rule 103:24	35:11 40:17,20	
retaining 13:5,	104:2 109:24	43:13 44:20	
14	rules 7:20	share 26:9	
returned 100:12	ruling 93:5,9	40:19 49:2	
reverse 14:8,9	rulings 104:23	63:11	
review 13:6		shares 20:21	
74:20 94:20		21:21 23:6	
revocable 27:7		51:14 80:18	
28:2 29:16		sharp 55:20	
75:4		72:25	
revoked 9:13,23	sale 53:16	sheet 12:14	
robert 10:21,23	save 52:7	52:16 53:8	
11:19 82:5	scale 55:11	Sheriff 96:2,5,	
91:6	schedule 25:10	21	
role 40:23	scheme 47:13,18	Sheriff's 95:15	
44:4,7	Scott 75:22	Shirley 8:25	
room 59:14	76:4	9:1,2,14	
room's 82:3	seat 100:10,11,	11:20,23 12:8,	
Rose 5:5,6,9	13	16,18 13:4,14	
8:10,21 9:5,8	seated 24:20	14:19,21 16:8,	
10:2,20 11:2,	SEC 91:20 92:2	12 17:17 18:10	
4,7,10,14,17	94:20	19:15 21:22	
12:20 13:3,22	secretary 66:13	23:16 24:9	
14:6 17:7,15	seeking 99:5,7,	25:1 26:10	
18:1 19:10,20	15,18 101:1,19	27:13 28:1,9,	
20:3 24:24	102:4,6	15,18 30:22	
26:21 27:4	seeks 9:15	31:2,11,23	
34:10,18 39:1,	self-proving	32:1,18 33:3,	
9 41:21 42:5,6	70:21	17,25 35:22	
		36:4,11,13,22,	

71:13 76:17	21:22 22:5,14	73:16 93:4,16	spend 44:12
siblings 21:17	23:2,16 24:25	98:24 101:23	split 19:6 20:5
63:15 103:13	25:15 26:9	104:8	spoke 45:3
107:4	27:13 28:1,9,	sisters 33:23	spouse 30:13
sic 104:3	20,23 29:9	45:8 98:4	44:17
sicker 42:18	30:22 31:4,12,	107:1	spouses 30:4
side 5:14 8:6,8	14,21 32:18	sit 24:17	St 53:17
49:16 58:11	33:6,17,25	100:4,5	stack 14:10
82:3 99:6	35:7 37:1,17,	sits 34:23	stamp 13:20
102:6	19 40:1,20,23	sitting 24:17	16:17 68:6
sign 37:1 38:17	41:24 42:7,23	37:3	stand 58:13
61:1 67:14	43:25 44:2,5,	situation 44:16	standard 13:16
69:13 91:24	8,11,12 45:10	skipped 65:4	29:14 47:2,3
108:25 109:16	46:6 47:4	slander 79:4	108:24
signature 22:20	50:6,12 51:12	slighted 56:1	Stanford 47:8,9
35:14 36:8,11	52:2,9 53:20	small 54:17	Stansbury 31:22
65:25 66:3	54:1 55:19,22	sold 53:13	51:13
70:15,23 107:6	56:13 57:15	78:24	star 48:17
signature's	59:10,12,14,20	sole 28:10	start 14:11
108:4	60:8 63:10,16,	42:24 43:5,20,	29:9 91:5
signatures	19 64:1 65:25	21 44:17 75:4	started 72:16
34:20 35:16	67:10 68:1	somebody's	starting 57:20
103:22,23	69:18,20 70:16	101:7	starts 29:25
signed 26:5	71:23 72:19,24	son 31:24 32:7	state 11:18
27:12,22 29:4	73:4,25 74:12,	51:12	95:22 107:24
32:19 36:25	15 77:15 78:13	sophisticated	stated 12:24
37:13,23 38:23	80:9,11,22,23	25:10	14:2 17:11
39:24 62:17	81:13 82:9	sort 27:19	19:24 70:7
63:4 65:17	87:16,20,25	30:10 44:11	107:3
70:17,24	88:4,8,13,18	46:14 48:18	statement 22:15
71:10,16,19,25	89:1,5,8,13,	64:20	68:17,22,25
72:3 73:8	17,19,25 90:4,	sound 24:10	69:2,9 109:2,
74:15 77:14	11 91:12	74:1	16 110:13
78:13 96:9	106:8,9,16	Spallina 10:21,	stating 108:5
107:1,13,18,19	107:3,7,18,24	23 11:19,21	status 46:17
108:1,3,21,23	108:3 109:1,2,	15:22 54:4	75:25
109:4 111:21	15 110:10	82:5,7 91:6,8	stay 7:3
signer 31:25	Simon's 9:24	95:14 105:4,12	Stephen 15:25
significant	18:24 22:5,23	Spallina's	16:7
56:6	27:15 29:7,22	61:15	stock 53:4
significantly	31:5 37:5,6,8	speaks 19:5	80:18
52:25	43:20 51:16	special 30:1	stood 46:14
signing 35:15	65:12 75:1	32:9 65:7	stop 6:13 7:12
39:21	107:11 108:22	80:9,11,13,16,	19:8 41:18
similar 30:10	110:7,9,19	20,23	96:23 104:7,22
37:1,2	simple 28:2	specific 32:2	story 52:25
Simon 8:16 9:17	simpler 77:21	38:6 39:19	stress 63:7
10:4 11:20,23	SIPC 47:5,10,20	specifically	strictly 82:4
12:8,16,18	48:4,15	39:14,17 57:15	strike 44:10
13:4 14:19,21	sir 5:15 6:14	speed 50:3	63:25 71:9
16:2,8,12,20,	7:15 8:11 9:8		
21 17:17 19:15	16:16 24:22		
	42:5 58:14		

80:10	sway 60:4	terms 9:16	56:3 58:8,10, 14,17 67:8
structure 21:24	sworn 10:24	20:22 27:19,24	72:1,19,24
struggling	69:3 109:2,16	77:13 102:7	75:11 76:8
55:22	system 70:1	Tescher 12:6	82:4 83:13,17, 21 85:1,6,11
subject 20:22		15:22 23:10	86:16,21 87:1
65:20 99:22		74:22,25	88:7,12,17
submit 100:17		105:4,12	89:19,24 90:8
105:12 106:7		Tescher's 13:12	96:17 104:24
submitted		22:25 51:19	106:9,15
103:16 105:2		54:6	108:19
subsequent 81:8		testamentary	times 7:21
successor 5:7		8:22 9:10	25:24 81:15
28:23 29:6,20		29:12 37:24	94:2 96:4
31:4,9,19,20,		38:24 39:23	title 29:16
22,24 43:5		41:5,20 44:2	titled 101:14
74:25 75:9		45:11 63:11	titles 111:16
78:23		67:15 77:2	today 8:9,17,20
Sue 18:12		80:12	9:20 34:23
sued 5:25 6:3,	talked 52:16	testified 10:25	36:1 51:24
9,11	54:4 55:10	61:16 102:22	76:6,8 82:10
suffered 53:6	56:17	111:11	91:8,15 109:3,
suggested 57:3	talking 20:24	testimony 9:22	24 111:4,12
suggesting	78:11 79:3	91:9 94:25	today's 14:7
101:2	talks 19:4	theoretically	told 51:18
summary 26:17	20:17	21:11 29:11	60:5,20 100:3
46:14 63:24	tangible 18:22	thing 64:20	top 20:18 28:18
64:21	19:5 20:10	78:21 99:14	47:5
superseded 9:23	28:7 42:24	things 41:8	totaled 49:12,
supporting 56:5	43:14	42:8 43:11	13
supposed 24:17	tax 43:22 49:15	49:12 53:4	totals 23:5
75:15 80:23	taxes 43:18,19,	60:2 78:17	Traci 36:14,22
supposedly 6:1	21	79:21 101:9	84:12,14,16,
47:11	technically	104:18,19	20,22
surrogate 27:9	39:15	110:23 111:3	traded 50:12,18
survive 65:9	Ted 5:6 18:12	thinking 56:18	trading 91:25
survived 28:9	28:23 29:6	thought 49:1	93:22
42:23	31:5,8,24 32:6	50:19 53:20	transmittal
surviving 44:17	33:18 43:25	55:8 59:23	77:18
survivor 18:10,	44:2,4 45:7	60:2,11 81:5,9	transmitting
11,14 20:9	51:12 66:12,14	95:9	26:15
21:8,16 28:8	75:8,10 98:13	tightly 110:25	travel 37:11
30:12 33:18	Ted's 32:7	til 109:17	treated 102:5
sustain 69:3	77:25	110:12	tree 19:13 32:5
80:6 94:8	telephone 72:18	time 8:5,18	trial 5:10 6:22
110:3	telling 91:2	10:17 12:1	8:2,4 104:16,
sustained 69:9	110:25	13:14 19:12	17
91:22 92:17	ten 57:8 58:16	22:7 25:11,20	trials 7:20
93:24 94:22	59:22 60:10	26:2 32:15	Tripp 75:22
96:7 97:18	77:15 80:18	36:14,25 40:20	76:4
98:17 104:5,11	tendency 53:10	41:1 44:13,19	
105:10 110:15	term 43:8	46:15 49:1,19,	
		23 52:7 53:6	

true 21:13 26:18 71:16 76:24 110:13	Typically 30:12 U ultimately 57:6 65:20	values 53:7,8 verbal 12:23 14:1 vice 6:25 View 75:25 virtually 31:3 visit 41:1 volition 73:1 W wait 80:5 waiting 46:22, 23 waiver 61:1 62:13,15 103:12 107:1, 7,10,18,19,23 108:21 109:14 waivers 46:23 47:1 60:21 62:20 105:13 107:4,12,21,25 108:2,5,7,23 109:3,5,7,17 110:7,10 Walker 40:11 86:7,10,12 wanted 10:10 13:6 17:24 21:23,25 31:21,23 32:23 37:10 55:24 56:1 57:7,22 59:20,22 60:1 waste 8:6 10:16 wasting 44:13 watches 101:10 ways 57:4 104:15 wealth 60:10 Weiss 5:10 well-being 101:11 When's 96:17 wife 5:18 32:7 wife's 59:21 wills 16:23,25 17:5,6 27:6,9 28:4 30:11	wished 25:3 wishes 97:12,15 withdraw 38:11, 15 withdrawning 93:11 withdrawn 100:13 withdrew 91:19 witnesses 36:10 70:16 84:12 wives 100:5 word 53:22 words 27:6 work 7:18 22:2 36:19 91:12 worked 66:12 working 12:2 110:23 works 94:6 world 53:3 worth 22:5,6, 15,23 25:15 51:18,19,21,25 52:25 53:5,11 write 21:14 wrong 92:22 wrote 23:10 49:15 Y Yates 76:11 95:24 96:10 98:13,20 year 43:17 56:6 years 47:17 55:12,14,16,17
trust 6:3 9:1, 3,18,21,25 10:5 20:19,22 27:7 28:2,13 29:10,16,18,22 30:2,3 31:13, 23 33:3 35:11, 19,23,25 36:5 37:2,19,20 38:2,24 40:17, 18 43:3 48:24 51:1 57:13 61:12,22,24 64:16,23 65:8 69:12 71:23 73:11 74:15 75:1,4,9,12 78:24 80:18 84:8 85:2 86:2 87:3 89:6,9,12 90:6 95:23 97:8,24 98:1, 2,7,8,11 99:8 101:15 110:18, 20 111:19 trustee 5:7 6:3,12 29:20 31:9,19,20,22 43:5 75:4,9 78:24 111:18, 24 trustees 75:1 trusts 16:24 20:7 27:7 29:24 32:13,15 64:25 80:16 98:10 truthfulness 95:1 turn 14:14 19:9,11 24:13 34:19 35:21,22 68:4,5 70:12 82:17 turning 8:1 typewritten 68:13 69:16 typical 18:13 32:24	 underline 67:2, 3 underlying 63:3 underneath 50:4 51:23 understand 24:21 77:11 88:9,13,18 89:21 90:1,5 understanding 83:18,23 85:3 understood 83:14 85:8,13 86:18,23 87:3 unduly 84:1 85:17 87:8 89:1 90:10 unequal 20:22 unlike 68:10 69:12 untimely 7:25 unusual 44:16 V vague 77:9 Vaguely 76:2 valid 8:22 9:11,15 10:1,5 35:25 37:15,21 71:19 77:2 79:23 80:1,3,5 101:2 110:18, 20 validated 9:20 validity 41:19 79:1,12 82:10 109:25 111:10		

1 IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 CASE No. 502014CP003698XXXXNB

4 TED BERNSTEIN,

5 Plaintiff,

6 - vs -

7 DONALD R. TESCHER, ELIOT IVAN BERNSTEIN,
8 LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, et al.,

9 Defendants.

10 TRIAL BEFORE THE HONORABLE
11 JOHN L. PHILLIPS
12 VOLUME 2 PAGES 117 - 260

13 Tuesday, December 15, 2015
14 North County Courthouse
15 Palm Beach Gardens, Florida 33410
16 9:43 a.m. - 4:48 p.m.

17 Reported By:
18 Shirley D. King, RPR, FPR
19 Notary Public, State of Florida
20 West Palm Beach Office Job #1358198- VOL 2

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1 - - -
2 I N D E X
3 - - -
4

5 WITNESS: DIRECT CROSS REDIRECT RECROSS
6 BY MR. BERNSTEIN: 120
7 BY MR. ROSE: 188
8 BY MR. BERNSTEIN: 194
9 TED BERNSTEIN
10 BY MR. BERNSTEIN: 206
11 BY MR. ROSE: 213
12 BY MR. BERNSTEIN: 217

13 - - -
14 E X H I B I T S
15 - - -
16

17 NUMBER	DESCRIPTION	PAGE
DEFENDANT'S EX. 2	LETTER	161
DEFENDANT'S EX. 3	PETITION FOR DISCHARGE	198

21 NUMBER	DESCRIPTION	PAGE
PLAINTIFF'S EX. 6	FIRST AMENDMENT TO SHIRLEY BERNSTEIN'S TRUST	187

1 | PROCEEDINGS

— — —

3 (Proceedings continued from Volume 1.)

6 Is there any further cross-examination?

7 MR. BERNSTEIN: Yes.

8 THE COURT: Okay.

9 | CROSS (ROBERT SPALLINA) (Cont'd)

10 BY MR. BERNSTEIN:

11 Q. Mr. Spallina, just to clarify --

12 MR. ROSE: Your Honor, can he just stand at
13 the podium?

14 THE COURT: Okay. Well, use the podium. Your
15 microphone will help explain your questions. But
16 you can walk up there. If you need to show the
17 witness a document or something, that's fine.

18 MR. BERNSTEIN: Okay.

19 BY MR. BERNSTEIN:

20 Q. Did you -- are you a member of the Florida
21 Bar?

22 A. Yes, I am.

23 Q. Currently?

24 A. Yes, I am.

25 Q. Okay. You said before you surrendered your

1 license.

2 A. I said I withdrew from my firm. It wasn't
3 that I was not practicing.

4 Q. Okay. In the chain of custody of these
5 documents, you stated that there were three copies made?

6 A. Yes.

7 Q. Do you have those three original trust copies
8 here?

9 A. I do not.

10 MR. BERNSTEIN: Does anybody?

11 THE COURT: Do you have any other questions of
12 the witness?

13 MR. BERNSTEIN: Yeah. I wanted to ask him
14 some questions on the original documents.

15 THE COURT: Okay. Keep going.

16 BY MR. BERNSTEIN:

17 Q. Okay. So the original documents aren't in the
18 court?

19 A. I don't have them.

20 Q. Your firm is not in possession of any of the
21 original documents?

22 A. I'm not sure. I'm not at the firm anymore.

23 Q. When you left the firm, were there documents
24 still at the firm?

25 A. Yes, there were.

1 Q. Were you ordered by the court to turn those
2 documents over to the curator, Benjamin Brown?

3 A. I don't recall.

4 MR. ROSE: Objection. Can he clarify the
5 question, which documents? Because I believe the
6 curator was for the estate, and the original will
7 was already in file, and the curator would have no
8 interest in the trust --

9 THE COURT: Which documents? When you say
10 "those documents," which ones are you referring to?

11 MR. BERNSTEIN: Any of the trusts and estate
12 documents.

13 THE COURT: Okay. That's been clarified.
14 You can answer, if you can.

15 THE WITNESS: I believe that he was given -- I
16 believe all the documents were copied by
17 Mr. Pollock's office, and that he was given some
18 type of zip drive with everything. I'm not sure,
19 though. I couldn't --

20 BY MR. BERNSTEIN:

21 Q. Did the zip drive contain the original
22 documents?

23 A. Did not. I believe the original documents
24 came back to our office. Having said that, we would
25 only have -- when we made and had the client execute

1 three documents, two originals of those documents would
2 remain with the client, and then we would keep one
3 original in our file, except -- including, most of the
4 time, the original will, which we put in our safe
5 deposit box. So we would have one original of every
6 document that they had executed, including the original
7 will, and they would keep two originals of everything,
8 except for the will, which we would give them conformed
9 copies of, because there was only one original will.

10 Q. Okay. I asked a specific question. Did your
11 firm, after the court order of Martin Colin, retain
12 documents, original documents?

13 MR. ROSE: Objection. Sorry. I should have
14 let him finish.

15 MR. BERNSTEIN: -- original documents?

16 THE WITNESS: I believe --

17 MR. ROSE: Relevance and misstates the --
18 there's no such order.

19 THE COURT: Well, the question is, Did your
20 firm retain the original documents?

21 Is that the question?

22 MR. BERNSTEIN: Yes, sir.

23 THE COURT: Overruled.

24 Answer, please.

25 THE WITNESS: I believe we had original

1 documents.

2 BY MR. BERNSTEIN:

3 Q. After the date you were court ordered to
4 produce them to the curator?

5 MR. ROSE: Object -- that's the part I object
6 to.

7 THE COURT: Sustained.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. To your knowledge -- so, to your knowledge,
11 the documents can't all be here since they may be at
12 your firm today?

13 A. I don't practice at the firm anymore, so I'm
14 not sure where the documents are.

15 Q. Okay. And you said you made copies of all the
16 documents that you turned over to the curator? Did you
17 turn over any original documents as ordered by the
18 court?

19 MR. ROSE: Objection. Same objection.

20 There's no court order requiring an original
21 document be turned over.

22 THE COURT: What order are you referring to?

23 MR. BERNSTEIN: Judge Colin ordered when they
24 resigned due to the fraudulent alteration of the
25 documents that they turn over --

1 THE COURT: I just said, what order are you
2 referring to?

3 MR. BERNSTEIN: It's an order Judge Colin
4 ordered.

5 THE COURT: All right. Well, produce that
6 order so I can see it, because Judge Colton's [sic]
7 been retired for six or seven years.

8 MR. BERNSTEIN: Okay. I don't have it with
9 me, but...

10 THE COURT: Well, Judge Colton's a retired
11 judge. He may have served in some other capacity,
12 but he doesn't enter orders, unless he's sitting as
13 a replacement judge. And that's why I'll need to
14 see the order you're talking about, so I'll know if
15 he's doing that. Okay. Thanks. Next question.

16 BY MR. BERNSTEIN:

17 Q. Okay. Has anyone, to the best of your
18 knowledge, seen the originals while you were in custody
19 of them?

20 A. Yes.

21 Q. Okay. Who?

22 A. I believe Ken Pollock's firm was -- Ken
23 Pollock's firm was the firm that took the documents for
24 purposes of copying them.

25 Q. Did anybody ask you, refer copies to inspect

1 the documents?

2 A. Other than Ken Pollock's office, I don't
3 recall.

4 Q. Did I ask you?

5 A. Perhaps you did.

6 MR. BERNSTEIN: Okay. I'd like to go through
7 some of the documents with him real quick. But I
8 don't have my wife to hand me the documents, so
9 it's going to take me incredibly long. These are
10 just copies I have. Can I approach him?

11 THE COURT: All approaches are okay.

12 MR. BERNSTEIN: Okay.

13 BY MR. BERNSTEIN:

14 Q. Are these the documents that you drafted,
15 Shirley's will and Shirley's trust agreement?

16 MR. ROSE: Your Honor, could I see what he's
17 handing the witness before he hands it to them?

18 THE COURT: Say again.

19 MR. ROSE: I don't know what he's handing the
20 witness.

21 THE COURT: All right. You'll need to show
22 the other side the documents that you're handing to
23 the witness so that they're looking at the same
24 thing you're talking about.

25 MR. ROSE: These are not accurate. These are

1 multiple things stapled together. I'd object to
2 the exhibit -- or the use of it.

3 THE COURT: Ma'am, if you come back up past
4 that bar one more time, you'll be in contempt of
5 court. I don't want you to be in contempt of
6 court. Do you understand my instruction?

7 MRS. BERNSTEIN: Yes.

8 THE COURT: Thank you.

9 MR. ROSE: I don't know if that's filed with
10 the court and I don't know that these are genuine.
11 And the second document has attached to it --

12 THE COURT: Well, you don't need to tell me
13 what the papers are. The thing that the person
14 who's asking the questions has to do is show you
15 the documents that he's going to show the witness.

16 MR. ROSE: Okay.

17 THE COURT: Then I intend to move forward. I
18 expect he'll show the witness the documents and
19 then he'll probably ask a question.

20 Am I right?

21 MR. BERNSTEIN: Do you want to see those?

22 THE COURT: Nope.

23 So then if there's an objection to the
24 documents coming in, if at some time they're
25 proffered as an exhibit, then I'll take the

1 objection.

2 Have you seen the documents that are in his
3 hand that are going to be shown to the witness?

4 MR. ROSE: Oh, yes, sir. I'm sorry.

5 THE COURT: Okay. That's fine.

6 Proceed.

7 BY MR. BERNSTEIN:

8 Q. Okay. Can you look at the initials on the
9 pages of that document and describe them -- describe
10 what they look like?

11 A. The initials?

12 Q. Yes.

13 A. On each page, there's an SB --

14 Q. Okay.

15 A. -- for your mother's initials.

16 Q. And it's clearly SB?

17 A. Is it clearly SB?

18 Q. Yeah. Looks like SB?

19 A. Yes, it's clearly SB.

20 Q. Okay. And on this will signed on the same
21 date by my mother in your presence, is that my mom's
22 initials? And does it look like an SB? Do they even
23 look similar?

24 A. Well, your mother was asked to sign these
25 documents.

1 Q. Okay.

2 A. When we execute a will, unlike the bottom of
3 the trust agreement where we initial the trust pages, on
4 the bottom of the will, she's supposed to sign her
5 signature. And which she has done at the bottom of each
6 page, is sign her signature consistent with the
7 signature page that she signed.

8 Q. So what you're saying is, she signed this
9 document, that she initialed this document?

10 A. Right. We only ask that for purposes of the
11 trust that they initial each page. For purposes of the
12 will, that they sign each page.

13 So this is the signature that she has -- this
14 is her signature on the bottom of this document.

15 Q. Well, there's no line saying that's her
16 signature, correct? There would be --

17 A. But that was our practice.

18 Q. Okay.

19 A. That was our practice, to have --

20 Q. Okay. You testified to my dad's state of mind
21 that he was fine.

22 Si was usual when you saw him from May through
23 his death; is that correct?

24 A. Are you speaking about 2012?

25 Q. Yes.

1 A. Correct.

2 Q. Are you aware of any medical problems my
3 father was having at that time?

4 A. No, I'm not.

5 Q. Are you aware of any stress he was under?

6 A. No, I was not.

7 Q. Mr. Rose had you read into or -- read into the
8 record a letter that I wrote with my waiver, saying,
9 anything -- I haven't seen the dispositive documents,
10 but I'll do anything, 'cause my dad is under stress, to
11 relieve him of his stress.

12 Do you know what stress I was referring to?

13 A. I don't.

14 Q. Were you in the May meeting with my father,
15 May 10, 2012?

16 A. I was -- are you talking about on the
17 telephone call?

18 Q. Correct.

19 A. I wasn't together with him.

20 Q. Okay. Were you together with anybody on that
21 call?

22 A. No. I was on -- in my -- my office phone.

23 Q. Okay. And at that meeting, did Si state that
24 he was having this meeting to end disputes among certain
25 parties and himself?

1 A. I don't recall.

2 Q. Were there any disputes you were aware of?

3 A. The only thing that he ever brought to my
4 attention was the letter that Pam had sent him.

5 Q. And what did Pam's letter state, basically?

6 A. I can't remember it. I mean, it was the
7 letter that he showed me in February of 2012. But the
8 general gist of that letter was that she was unhappy
9 about not being part of their estates.

10 Q. Just her or her and her children?

11 A. She may have spoke to her children.

12 Q. Was there anybody else who was left out of the
13 wills and trusts?

14 A. That was causing him stress?

15 Q. No. Just anybody at this point that was left
16 out, other than Pam.

17 A. Yes. Ted.

18 Q. And are you aware of anything Ted and Pam were
19 doing to force upon Si changes?

20 A. Not to my knowledge, other than the letter
21 that Pam had sent to him just expressing her
22 dissatisfaction.

23 Q. You said you talked to her attorney?

24 A. I talked to her attorney.

25 Q. And you told her attorney, while Si was

1 living, that she had been cut out of the estates and
2 trusts with her brother Ted?

3 A. I don't recall the conversation with the
4 attorney, but, ultimately, Si gave me authorization to
5 send documents to the attorney. So we may have had a
6 conversation about it.

7 Q. So you're stating that Si told you to -- he
8 authorized you to tell his daughter that she had been
9 cut out of the estates and trusts?

10 A. He authorized me to send documents to the
11 attorney.

12 Q. Did you send those documents to the attorney?

13 A. I believe we did, yes.

14 Q. Okay. Was Ted and his lineal descendants
15 disinherited?

16 A. They were, under the original documents.

17 Q. Well, under Shirley's document that's
18 currently theirs, Ted considered predeceased for all
19 purposes of disposition according to the language in the
20 document you drafted?

21 A. To the extent that assets passed to him under
22 the trust.

23 Q. Well, the document says, for all purposes of
24 disposition, Ted Bernstein is considered predeceased,
25 correct?

1 A. You'll have to state the question again.

2 Q. Does the document you drafted say that Ted
3 Bernstein is both considered predeceased under the
4 beneficiary definition with his lineal descendants and
5 considered predeceased for all purposes of dispositions
6 of the trust?

7 MR. ROSE: Objection. Best evidence. The
8 document's in evidence.

9 THE COURT: Sustained.

10 MR. BERNSTEIN: I'll have him read it.

11 THE COURT: Well, I mean, I can read it. It's
12 in evidence. So when it comes time, just point me
13 to the part that you want me to read, and I'll read
14 it. But I don't need to have the witness read it
15 to me. That's of no benefit.

16 MR. ROSE: Your Honor, and for the record,
17 those issues are part of the other counts and
18 aren't being tried today.

19 MR. BERNSTEIN: Page 7, Your Honor, of the
20 Shirley trust.

21 THE COURT: What exhibit number is that?

22 MR. BERNSTEIN: You want me to enter it as my
23 exhibit?

24 THE WITNESS: Plaintiff's Exhibit 2, Your
25 Honor.

1 THE COURT: All right. Let me go to page 7 of
2 Plaintiff's 2.

3 MR. BERNSTEIN: Can I enter this one into the
4 record?

5 THE COURT: Is it the same as the one I
6 already have?

7 MR. BERNSTEIN: According to Alan, it's not.

8 THE COURT: According to who?

9 MR. BERNSTEIN: Mr. Rose.

10 THE COURT: All right. Well, if it comes time
11 for you to put any exhibits in on your case, if
12 that's not a duplicate of an exhibit that's already
13 in, you're welcome to put it into evidence. But
14 this is not the time when you put evidence in.

15 This is the time when you're cross-examining the
16 plaintiff's witness.

17 MR. BERNSTEIN: Okay.

18 THE COURT: So on Page 7 of Plaintiff's 2, you
19 can go on with your questioning.

20 BY MR. BERNSTEIN:

21 Q. Are you there and are we on the same page?
22 Yes?

23 A. Yes, I am.

24 Q. Okay. In the definition of -- under E1, do
25 you see where it starts "notwithstanding the foregoing"?

1 A. Yes.

2 Q. Okay. Can you read that?

3 A. "Notwithstanding the foregoing, as I have
4 adequately provided for them during my lifetime, for
5 purposes of the dispositions made under this trust to my
6 children, Ted S. Bernstein and Pamela B. Simon and their
7 respective lineal descendants shall be deemed to have
8 predeceased the survivor of my spouse and me, provided,
9 however, if my children Eliot Bernstein, Jill Iantoni
10 and" --

11 Q. Okay, that's -- you can stop there.

12 Would you consider making distributions a
13 disposition under the trust?

14 A. It would depend on other factors.

15 Q. What factors?

16 MR. ROSE: Objection. Relevancy.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. Is a validity hearing a disposition of the
20 trust?

21 MR. ROSE: Objection. Calls for a legal
22 conclusion.

23 THE COURT: Sustained.

24 MR. BERNSTEIN: Well, he drafted the document,
25 so I'm trying to get what his meaning was when he

1 put it in. And it's relevant to the hearing today.

2 THE COURT: I ruled it's not relevant.

3 MR. BERNSTEIN: Oh, you did rule that?

4 THE COURT: Do you have another question of
5 the witness? Or we're moving on.

6 MR. BERNSTEIN: Okay.

7 BY MR. BERNSTEIN:

8 Q. So for purposes of disposition, Ted, Pam and
9 her lineal descendants are considered predeceased,
10 correct?

11 MR. ROSE: Objection. Relevancy, cumulative
12 and best evidence.

13 THE COURT: Sustained.

14 The document says what it says.

15 MR. BERNSTEIN: Okay.

16 THE COURT: When you ask a witness if it says
17 what it says, I don't pay any attention to his
18 answer, because I'm reading what it says.

19 MR. BERNSTEIN: Okay.

20 BY MR. BERNSTEIN:

21 Q. Did you produce a fraudulent copy of the
22 Shirley trust agreement?

23 A. No, I did not.

24 Q. So when you sent to Christine Yates this trust
25 agreement with the attached amendment that you've

1 already admitted you fraudulently altered, was that
2 producing a not valid copy of the trust that was
3 distributed to a party?

4 A. We've already talked about the amendment was
5 not a valid amendment.

6 Q. No, I'm asking, did you create a not valid
7 trust of my mother's and distribute it to Christine
8 Yates, my children's attorney?

9 MR. ROSE: Objection. Cumulative. He's
10 covered this.

11 MR. BERNSTEIN: Well, it has to go to the
12 validity, Your Honor, because --

13 THE COURT: The question I'm figuring out is,
14 have we already covered this?

15 MR. BERNSTEIN: We touched on a piece of it.

16 The more important part --

17 THE COURT: Okay. Then I'll let you reask
18 your question to cover something that we've not
19 already covered.

20 MR. BERNSTEIN: Okay. And we covered that
21 the --

22 THE COURT: You don't have to remind me.

23 MR. BERNSTEIN: Oh, okay.

24 THE COURT: Listen, see, this -- look at this.
25 I take notes. I write stuff down. Now, a lot of

1 times, if you see me not writing and I'm doodling,
2 that means you're not scoring any points.

3 MR. BERNSTEIN: You've got to show me --

4 THE COURT: The point is, I should be writing
5 notes. So that means you're not doing any good.

6 MR. BERNSTEIN: Gotcha.

7 THE COURT: So, please, the reason I write it
8 is so we don't have to repeat things.

9 BY MR. BERNSTEIN:

10 Q. Okay. You've already stated that you created
11 a fraudulent amendment.

12 Did you attach it to a Shirley trust document?

13 A. No. We included the amendment with the
14 documents that we transmitted to her.

15 Q. So it was included as part of the Shirley
16 trust document as an amendment, correct?

17 A. It was included as an amendment.

18 Q. To the Shirley trust document.

19 Thereby, you created a fraudulent copy, a not
20 valid copy of the Shirley trust, correct?

21 MR. ROSE: Objection. Argumentative.

22 Cumulative.

23 THE COURT: Overruled.

24 You can answer. Did that create a fraudulent
25 version of the trust?

1 THE WITNESS: It could have, yes, Your Honor.

2 BY MR. BERNSTEIN:

3 Q. Can you explain why it couldn't have?

4 A. Because Si ultimately exercised his power of
5 appointment, which was broader than the definitional
6 provision in the document.

7 Q. That's not my question. I'll just say it was
8 asked and not answered.

9 Okay. So there are not validly -- not valid
10 Shirley trust agreements in circulation, correct?

11 A. That's not true.

12 Q. Well, the Shirley trust agreement you said
13 sent to Christine Yates you've just stated was invalidly
14 produced.

15 A. To Christine Yates.

16 Q. Yeah, okay. So I said "in circulation."

17 Is Christine Yates out of circulation?

18 A. I don't know what Christine Yates did with the
19 documents.

20 Q. Well, I got a copy, so they're even more in
21 circulation.

22 So my point being, you sent from your law firm
23 fraudulent -- a non-valid copy of the document --

24 A. Which document?

25 Q. -- the Shirley trust and her amendment to

1 Christine Yates, right?

2 MR. ROSE: Objection. Cumulative.

3 THE COURT: Sustained.

4 MR. BERNSTEIN: Okay. We'll move on from
5 that.

6 BY MR. BERNSTEIN:

7 Q. Would you know about when you did that
8 fraudulent alteration of the document?

9 A. January 2013.

10 Q. And you were a fiduciary -- or you were
11 counsel to the alleged fiduciary, Ted Bernstein, of the
12 Shirley Bernstein trust, correct?

13 A. Yes, we were.

14 Q. And you were counsel to Ted Bernstein as the
15 alleged personal representative of Shirley's estate?

16 A. Yes, we were.

17 Q. And as Ted's counsel in the Shirley trust, can
18 you describe what the not valid trust agreement that was
19 sent to Ms. Yates did to alter the beneficiaries of the
20 document?

21 MR. ROSE: Objection. Cumulative.

22 THE COURT: Overruled.

23 What alterations did that make to the
24 beneficiaries?

25 THE WITNESS: It didn't make any alterations

1 to the beneficiaries. The document's not a valid
2 document and so it couldn't have made any changes
3 to the estate planning.

4 BY MR. BERNSTEIN:

5 Q. Okay. But what did it intend to do?

6 MR. BERNSTEIN: Sorry. Excuse me, Your Honor.
7 What did you say?

8 THE COURT: Next question.

9 BY MR. BERNSTEIN:

10 Q. Okay. What did it intend to do?

11 A. I answered that question earlier.

12 THE COURT: I can't let the witness object to
13 questions. That won't work.

14 THE WITNESS: I'm sorry, Your Honor. Earlier
15 you asked me the question, and I responded to you
16 that it was to carry out your father's intent and
17 the agreement that you all had made prior to his
18 death, on that telephone call, and to have a
19 document that would provide, perhaps, clarity to a
20 vague misinterpretation of your mother's document.

21 BY MR. BERNSTEIN:

22 Q. So instead of going to the court, you just
23 frauded a document to an attorney, who's representing
24 minor children in this case -- produce a fraudulent copy
25 of the trust document, making us have total trouble

1 understanding what's real and not, especially with your
2 firm's history of fraudulent and forged documents
3 submitted to the court in this case.

4 THE COURT: Okay. Thanks. You're just
5 ranting. Ranting is not allowed.

6 MR. BERNSTEIN: Sorry.

7 THE COURT: If you'd like to ask a question,
8 I'll let you do that. If I have to call you on
9 this too many more times, I'm going to assume that
10 you're done questioning the witness.

11 MR. BERNSTEIN: Okay.

12 BY MR. BERNSTEIN:

13 Q. When did you first meet my parents?

14 A. 2007.

15 Q. And how did you meet them?

16 A. I met them through someone that made a
17 referral to them to our office.

18 Q. You didn't know Ted Bernstein prior to meeting
19 Si?

20 A. I don't recall who we met first. I'm not
21 sure.

22 Q. What firm were you with at the time?

23 A. Tescher, Gutter, Chaves, Joseph, Rubin and
24 Ruffin and Forman.

25 Q. And how long were you with them?

1 A. Five-plus years.

2 Q. And where were you before that?

3 A. I was in school.

4 Q. Okay. Did you work at Sony Digital ever?

5 A. I did.

6 Q. You did. And when was that, before school or
7 after?

8 A. That was from 1994 to '96.

9 Q. So after school?

10 A. After college.

11 Q. Okay. So that was -- you just forgot about
12 that one in your history.

13 Is there any other parts of your biography I'm
14 missing?

15 MR. ROSE: Objection. Argumentative.

16 THE COURT: Sustained.

17 BY MR. BERNSTEIN:

18 Q. Can you repeat, since I'm -- there was a
19 little clarification error there. Your history, you
20 started --

21 THE COURT: That's not necessary to repeat the
22 history. Do you have a new question?

23 MR. BERNSTEIN: Well, I'm trying to get the
24 history.

25 THE COURT: I don't want him to repeat what

1 he's already said. That moves the case backwards.

2 I want to go forward. You're cavitating.

3 MR. BERNSTEIN: Okay.

4 BY MR. BERNSTEIN:

5 Q. Did the altered trust document sent to
6 Christine Yates attempt to convince Yates and others she
7 sent that document to that Ted and Pam's lineal
8 descendants were actually inside the document?

9 A. Say the question again.

10 Q. Well, we read the section where they're
11 considered predeceased, Ted and Pam and their lineal
12 descendants.

13 When you altered that amendment that you said
14 you were just doing Si's wishes postmortem by altering a
15 document, my question is, did you put language in there
16 that would have made Ted and Pam's lineal descendants
17 now beneficiaries of Shirley's trust?

18 MR. ROSE: Objection. I think it's
19 cumulative. We've covered this.

20 THE COURT: Sustained.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Can the beneficiary of Shirley's trust be Ted,
24 Pam or their lineal descendants?

25 A. If the assets of her trust were to pass under

1 the trust, no --

2 Q. Okay.

3 A. -- under the trust.

4 Q. So in the trust language of the Shirley trust
5 document, Ted's lineal descendants and Pam's lineal
6 descendants can get no dispositions, distributions,
7 whatever you want to call it?

8 A. You have to ask the question in a different
9 way, because I answered the question. I said, if it
10 passes under the trust, that they would not inherent.
11 If.

12 Q. Okay. When Shirley died, was her trust
13 irrevocable at that point?

14 A. It was.

15 Q. Who were the beneficiaries?

16 A. Simon Bernstein.

17 Q. And who were the beneficiaries -- well, Simon
18 Bernstein wasn't a beneficiary. He was a trustee.

19 A. No, he became the beneficiary of her trust
20 when she died. He was the sole beneficiary of her trust
21 when she died.

22 Q. Okay. And then who would it go to when he
23 died?

24 MR. ROSE: Objection. Cumulative.

25 THE COURT: Sustained.

1 BY MR. BERNSTEIN:

2 Q. Okay. When Simon died, who would the benefits
3 of Shirley's trust go to?

4 MR. ROSE: Objection. Cumulative.

5 THE COURT: Are you asking him to tell you
6 what would happen if the mother died first, then
7 the father died second, and we have the trust
8 documents and the wills that are in place so far
9 that have been testified to at the trial?

10 MR. BERNSTEIN: Correct.

11 THE COURT: I already know all that stuff.

12 MR. BERNSTEIN: Well --

13 THE COURT: So what is the new question you
14 want to ask that's not cumulative?

15 MR. BERNSTEIN: Okay. Well, I'm trying to get
16 to a very significant point there.

17 THE COURT: Get there. Just go there and see
18 what happens.

19 MR. BERNSTEIN: I just have to learn to ask
20 these questions a little more like a lawyer.

21 THE COURT: Yes.

22 MR. BERNSTEIN: So I have to rethink how to
23 ask that.

24 BY MR. BERNSTEIN:

25 Q. Do you recall talking to Detective Ryan

1 Miller?

2 MR. ROSE: Objection. Relevance.

3 THE COURT: Sustained.

4 BY MR. BERNSTEIN:

5 Q. Can you tell me all the roles you had in these
6 estates and trusts, and your partner, Don Tescher?

7 A. We were the attorneys to your parents. Upon
8 your dad's death, we became counsel to his estate and
9 served as co-PRs and co-trustees under his documents.

10 Q. Any other roles?

11 A. Served as counsel for -- we served as counsel
12 for Ted as fiduciary under your mother's documents.

13 Q. And who served as your counsel as trustee
14 PR -- co-trustee, co-PR?

15 A. Mark Manceri.

16 Q. Mark Manceri submitted that he was your
17 attorney?

18 A. I believe so, yes.

19 Q. Did you take a retainer out with him?

20 MR. ROSE: Objection. Relevance.

21 THE WITNESS: I'm sorry.

22 THE COURT: What's the relevance of the
23 retainer question?

24 THE WITNESS: I'm sorry. I take that back.

25 Mark Manceri was not counsel to us with respect to

1 the estate, except on a very specific matter.

2 THE COURT: The question that was objected to
3 was, did you take out a retainer? What's the
4 relevance of that?

5 MR. BERNSTEIN: Well, I'm trying to figure out
6 if he was properly representing before the court
7 these documents, and to his credibility, meaning
8 his --

9 THE COURT: I'll sustain the objection.

10 MR. BERNSTEIN: Okay.

11 BY MR. BERNSTEIN:

12 Q. And a question about the court. How long
13 before you notified the court as a personal
14 representative fiduciary that you had produced a
15 fraudulent trust of Shirley's?

16 A. To whom? I don't know that we ever
17 represented the document to the court, and I don't know
18 that anyone ever came to the court and said that we did.

19 Q. Well, I did in a petition I filed and served
20 on you --

21 MR. ROSE: Objection.

22 BY MR. BERNSTEIN:

23 Q. -- of January -- excuse me -- petition that I
24 served on you exposing a fraud of what happened with
25 Christine Yates after you admitted that to the police.

1 MR. ROSE: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MR. BERNSTEIN:

4 Q. Okay. How many times have you spoken with
5 Alan Rose in the last three months?

6 A. Twice.

7 Q. Did you prepare for this hearing in any way
8 with Alan Rose?

9 A. I did.

10 Q. Okay. Was that the two times you spoke to
11 him?

12 A. Yes.

13 Q. Do you see any other of the parties that would
14 be necessary to validate these trust documents in the
15 court today?

16 MR. ROSE: Objection. Cumulative.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. And you gave testimony to the total net worth
20 of Simon today, when you were asked by Mr. Rose; is that
21 correct?

22 A. Yes.

23 Q. How long did you serve as the co-trustee and
24 co-personal representative?

25 A. Of your father's estate? Since the date of

1 his death.

2 Q. And his trust?

3 A. Same.

4 Q. Okay. Did you produce an accounting to
5 support those claims you made today?

6 MR. ROSE: Objection. Relevancy.

7 THE COURT: Sustained.

8 MR. BERNSTEIN: Well, can I argue that or --

9 THE COURT: No.

10 MR. BERNSTEIN: Not even close. Does that
11 mean I have to ask it a different way?

12 THE COURT: Well, I can't answer questions.

13 I'm not allowed to give anybody legal advice.

14 MR. BERNSTEIN: Okay. That was procedural, I
15 thought. But okay.

16 THE COURT: Well, that's legal advice.

17 Procedure is a legal issue.

18 BY MR. BERNSTEIN:

19 Q. As a fiduciary of the estate of Simon and the
20 trust of Simon, did your law firm produce a accounting?

21 MR. ROSE: Objection. Relevance.

22 MR. BERNSTEIN: Well, it's relevant to, if
23 he's a fiduciary, his conduct. I mean, there's --

24 THE COURT: Here's the way I handle
25 objections --

1 MR. BERNSTEIN: Okay.

2 THE COURT: -- somebody asks a question, and
3 somebody in the courtroom says objection, and then
4 I have them state the legal objection and stop.

5 The other side doesn't say anything, unless I say,
6 Is there any argument one side or the other?

7 Because usually I can figure this stuff out without
8 having to waste time with arguments.

9 I didn't ask for any argument, right? Okay.

10 Sustained. Next question.

11 BY MR. BERNSTEIN:

12 Q. Mr. Rose asked you about Shirley's Bentley.

13 Are you aware -- you became aware of Shirley's
14 Bentley, correct?

15 A. Yes.

16 Q. When you became aware of Shirley's Bentley,
17 did you put in an amended inventory to account for it?

18 THE COURT: What's this going to help me
19 decide on the validity of the wills or trusts?

20 MR. BERNSTEIN: I'm just responding to the
21 statements that were brought up.

22 THE COURT: I wish you would have objected to
23 the relevancy then, but you didn't.

24 MR. BERNSTEIN: I did.

25 THE COURT: I don't think so.

1 MR. BERNSTEIN: No?

2 THE COURT: I'm a car guy, so I pay attention
3 if somebody's asking questions about Bentleys just
4 because it's interesting.

5 MR. BERNSTEIN: Well, it's so important, Your
6 Honor, because --

7 THE COURT: No, it's not. Right now what is
8 tied is, are the wills and trusts bound?

9 MR. BERNSTEIN: We have to question his
10 competency.

11 THE COURT: And so what's in the estate or
12 what's in the trust is not of any interest to me
13 right now. So if that Bentley should have been in
14 the estate or should not have been in the estate,
15 it should have been accounted for, not accounted
16 for, I'm not going to figure out today. But I want
17 to get all the evidence I possibly can to see
18 whether these wills and trusts that are in front of
19 me are valid or not valid. And I'm hoping that
20 you'll ask some questions that'll help me figure
21 that out.

22 MR. BERNSTEIN: Are those originals that you
23 have?

24 THE COURT: See, I'm not the witness. I'm the
25 judge. So I'm not sworn in and I have no knowledge

1 of the facts of this case, other than what the
2 witnesses tell me.

3 MR. BERNSTEIN: I'm winding down. I'll check
4 my list.

5 THE COURT: All right.

6 BY MR. BERNSTEIN:

7 Q. Are you familiar with a document the Bernstein
8 Family Realty LLC agreement?

9 A. Yes, I am.

10 Q. Did you draft that document?

11 A. Yes, I did.

12 Q. Was it part of Simon's estate planning?

13 A. It was part of his estate planning -- well,
14 yes --

15 Q. And what was --

16 A. -- in a roundabout way.

17 Q. What was it designed to do?

18 A. It was designed to hold title to the home that
19 you and your family live in.

20 Q. Oh, okay. And so it was -- who's the owners
21 of that?

22 A. The three kids -- your three kids, Josh,
23 Daniel -- your three kids' trusts that your father
24 created -- and Jake -- that he created in -- I believe
25 he created those trusts in 2006.

1 Q. And the prior testimony was, there were no
2 special documents under Simon's estate plan for my
3 family; is that correct?

4 A. Right. None that we prepared. Those were not
5 documents that we prepared.

6 Q. Okay. I think he asked you if you knew of
7 any.

8 So you knew of these, correct?

9 A. You're making me recall them. Yes.

10 Q. Oh, okay. Because you answered pretty
11 affirmatively no before, that you weren't aware of any
12 special --

13 THE COURT: Do you have any questions for the
14 witness?

15 MR. BERNSTEIN: Okay. I get it.

16 BY MR. BERNSTEIN:

17 Q. You referenced an insurance policy.

18 MR. BERNSTEIN: Can I -- well, I can't ask him
19 anything.

20 BY MR. BERNSTEIN:

21 Q. You referenced an insurance policy earlier,
22 life insurance policy, that you said you never saw; is
23 that correct?

24 A. Yes.

25 Q. And was that part of the estate plans?

1 A. We never did any planning with that. That was
2 an insurance policy that your father had taken out
3 30 years before. He had created a trust in 1995 for
4 that. That was not a part of any of the planning that
5 we did for him.

6 Q. Did you file a death benefit claim on behalf
7 of that policy?

8 MR. ROSE: Objection. Relevancy.

9 THE COURT: Sustained.

10 BY MR. BERNSTEIN:

11 Q. Is Christine Yates, who you sent the
12 fraudulently altered Shirley trust document that's not
13 valid, a layman?

14 MR. ROSE: Objection. Argumentative.

15 MR. BERNSTEIN: Excuse me.

16 BY MR. BERNSTEIN:

17 Q. Is she an attorney at law?

18 THE COURT: Now you're asking a different
19 question.

20 MR. BERNSTEIN: Okay.

21 THE COURT: Thanks.

22 BY MR. BERNSTEIN:

23 Q. Is she a layman, as you described prior?

24 A. She's an attorney.

25 Q. Okay. So you were sending that document that

1 you said you altered to make a layman understand the
2 language in the trust better?

3 MR. ROSE: Objection. Cumulative.

4 THE COURT: Let me have you finish your
5 questioning.

6 BY MR. BERNSTEIN:

7 Q. But you sent it to Christine Yates, an
8 attorney, who's not a layman?

9 A. We did.

10 Q. Okay. So it could be that you sent that
11 document to an attorney to commit a fraud upon her
12 clients, my children, minor children, correct?

13 A. The intent was not to commit a fraud.

14 Q. Okay.

15 A. Again, the intent was to carry out your dad's
16 wishes.

17 Q. By fraudulently altering documents?

18 MR. ROSE: Objection. Argumentative.

19 THE COURT: Sustained.

20 If you ask one more argumentative question, I
21 will stop you from asking the other things, because
22 I'll figure that you're done. Is that clear?

23 MR. BERNSTEIN: Yes.

24 THE COURT: I'm done warning you. I think
25 that's just too much to have to keep saying over

1 and over again.

2 BY MR. BERNSTEIN:

3 Q. When Shirley died, were her wishes upheld?

4 A. Your dad was the sole survivor of her
5 estate -- he was the sole beneficiary of her estate and
6 her trust.

7 Q. So her wishes of her trusts when Simon died
8 were to make who the beneficiaries?

9 MR. ROSE: Objection. Cumulative.

10 THE COURT: Sustained.

11 BY MR. BERNSTEIN:

12 Q. Who did Shirley make -- are you familiar with
13 the Eliot Bernstein Family Trust?

14 A. I am.

15 Q. And is that trust under the Shirley trust?

16 A. No, it's not.

17 Q. It's a separate trust?

18 A. It is.

19 Q. Is it mentioned in the Shirley trust?

20 A. It may be.

21 Q. As what?

22 A. As a receptacle for Shirley's estate.

23 Q. Her trust?

24 A. A potential receptacle for Shirley's trust.

25 Q. So there were three, the Eliot Bernstein

1 Family Trust, Lisa Friedstein and Jill Iantoni Family
2 Trust, that are mentioned as receptacles. I would
3 assume that's the word, beneficiary --

4 MR. ROSE: Objection.

5 BY MR. BERNSTEIN:

6 Q. -- of the Shirley trust, correct?

7 MR. ROSE: Objection. Cumulative.

8 THE COURT: Sustained.

9 BY MR. BERNSTEIN:

10 Q. Okay. On Simon's medical state eight weeks
11 before he died, when these documents of the Simon trust
12 are alleged by you to have been signed, are you aware of
13 any conditions of Simon's at that time medically?

14 A. I was not.

15 Q. Were you aware of any medicines he was on?

16 A. I was not.

17 Q. Were you aware he was seeing a psychiatrist?

18 A. I was not.

19 Q. Were you aware that he was going for a brain
20 scan?

21 A. I was not.

22 Q. Were you aware that he was brought in to
23 multiple doctors during that time for brain problems;
24 that they ended up doing a brain biopsy at Delray
25 Medical right around that time that he's said to sign

1 these documents?

2 A. He did not make us aware of any medical issues
3 that he had.

4 Q. Okay. Did you ask him at the time you were
5 signing those amended documents if he was under any
6 medical stress?

7 A. No, I did not.

8 Q. Okay.

9 A. He --

10 MR. BERNSTEIN: Can I ask him to read that?

11 BY MR. BERNSTEIN:

12 Q. Can you look at that document and --

13 MR. BERNSTEIN: Judge, would you like a look
14 at this?

15 THE COURT: I don't look at anything that's
16 not an exhibit.

17 MR. BERNSTEIN: I'm exhibiting it to him.

18 THE COURT: Okay. Well, that's fine, but I
19 want you to go ahead and ask your question. I
20 don't look at things that aren't exhibits in
21 evidence --

22 MR. BERNSTEIN: Okay.

23 THE COURT: -- unless I have to mark them.

24 But no, I don't have a curiosity to look at pieces
25 of paper.

1 MR. BERNSTEIN: Should I exhibit it as
2 evidence -- can I exhibit it as --

3 THE COURT: If it comes into evidence, I'll
4 look at it.

5 MR. BERNSTEIN: Okay. Can I submit it as
6 evidence?

7 THE COURT: Well, have you asked any questions
8 to establish what it is?

9 BY MR. BERNSTEIN:

10 Q. Is this a letter from your law firm -- prior
11 law firm?

12 A. I did not prepare this letter --

13 Q. Okay.

14 A. -- but it appears to be, yes.

15 Q. Prepared by?

16 A. Donald Tescher.

17 MR. BERNSTEIN: Okay. Now can I submit it?

18 THE COURT: So you're offering it as an
19 exhibit --

20 MR. BERNSTEIN: Please.

21 THE COURT: -- as Defendant's 2.

22 Is there any objection?

23 MR. ROSE: No objection.

24 THE COURT: All right. I'll take a look at
25 it. And that'll be in evidence as Defendant's 2.

1 Thank you.

2 (Defendant's Exhibit No. 2 was received into
3 evidence.)

4 BY MR. BERNSTEIN:

5 Q. Can you just read into the record
6 paragraph 2 --

7 THE COURT: Well, I'm reading it. The
8 document is in the record.

9 MR. BERNSTEIN: Oh, okay.

10 THE COURT: I'm reading paragraph 2 even as we
11 speak, so I don't need the witness to read it for
12 me. But if you want to ask him a question, you can
13 go ahead with that.

14 BY MR. BERNSTEIN:

15 Q. Okay. That letter states that Si's power of
16 appointment for Simon could not be used in favor of Pam,
17 Ted and their respective children; is that correct?

18 A. Yes. Don appears to have written that.

19 Q. Did you get a copy of this letter?

20 A. I don't recall getting a copy of it, but
21 doesn't mean that I didn't.

22 Q. But you are partners in that firm?

23 A. Yes, we were partners in that firm.

24 Q. Now, that -- this document --

25 MR. ROSE: Your Honor, can I just -- I don't

1 want to go out of order, but this is only relevant
2 if the documents are valid. And if he's -- the
3 whole point is the documents are valid. And he
4 wants to argue the second part, of what they mean,
5 then we should not have wasted a whole day arguing
6 over the validity of these five documents.

7 THE COURT: Well, waste of time is what I do
8 for a living sometimes. Saying we shouldn't be
9 here doesn't help me decide anything.

10 I thought I was supposed to decide the
11 validity of the five documents that have been
12 pointed out; some of them might be valid and some
13 of them might be invalid. And I'm struggling to
14 decide what's relevant or not relevant based upon
15 the possibility that one of them might be invalid
16 or one of them might not. And so I'm letting in a
17 little bit more stuff than I normally think I
18 would.

19 MR. ROSE: I'm concerned we're arguing the
20 second -- the second part of this trial is going to
21 be to determine what the documents mean and what
22 Simon's power of attorney could or couldn't do.
23 And this document goes to trial two and not trial
24 one, although I didn't object to its admissibility.

25 THE COURT: Well, since it's in evidence,

1 we'll leave it there and see what happens next.

2 Do you have any other questions of the
3 witness?

4 MR. BERNSTEIN: Yeah.

5 BY MR. BERNSTEIN:

6 Q. It says that the document that you
7 fraudulently altered creating the invalid copy of the
8 Shirley trust had some kind of paragraph 2 that was
9 missing from the original document --

10 MR. ROSE: Objection. Argumentative.

11 BY MR. BERNSTEIN:

12 Q. -- from my understanding.

13 THE COURT: You may finish your question. And
14 make sure it's a question and not an argument.

15 Because you know what happens if this is an
16 argument.

17 MR. BERNSTEIN: I'm not arguing. I'm just
18 asking --

19 THE COURT: I want you to ask your question.

20 BY MR. BERNSTEIN:

21 Q. It says here that there was a blank spot that
22 you -- a Paragraph No. 2 which modified the definitional
23 language by deleting words.

24 According to this document, the power of
25 appointment by Simon could not alter the Shirley trust

1 agreement, correct?

2 A. Don seems to be suggesting that in the second
3 paragraph. I don't necessarily believe that that's the
4 case.

5 Q. Did you review this document with Don?

6 MR. ROSE: Objection. Cumulative.

7 THE COURT: The question is, Did you go over
8 this document with Don?

9 MR. BERNSTEIN: Correct.

10 THE COURT: Overruled.

11 You can answer.

12 THE WITNESS: No.

13 BY MR. BERNSTEIN:

14 Q. So he's -- Don, in this letter, is describing
15 your actions, correct?

16 A. Yes.

17 Q. Okay. Did you write a letter to anybody
18 describing your actions?

19 A. I did not.

20 Q. You did not.

21 And what have you done to correct the damages
22 caused by that to my family?

23 MR. ROSE: Objection. Relevance.

24 THE COURT: Sustained.

25 MR. BERNSTEIN: Okay.

1 BY MR. BERNSTEIN:

2 Q. And are you aware of an autopsy that was done
3 on my father the day -- or ordered the day he died?

4 MR. ROSE: Objection. Relevance.

5 THE COURT: Sustained.

6 BY MR. BERNSTEIN:

7 Q. Are you aware -- well, are you aware of a
8 heavy metal poison test that was done by the Palm Beach
9 County coroner?

10 MR. ROSE: Objection. Relevance.

11 THE COURT: Sustained.

12 MR. BERNSTEIN: Well, it's --

13 THE COURT: Next question.

14 MR. BERNSTEIN: I'm trying to figure that out.

15 Your Honor, is -- I can't ask you that question.

16 BY MR. BERNSTEIN:

17 Q. Competency. Based on everything you know
18 about Simon, when he signed those documents, he was
19 competent?

20 A. To my knowledge, he was of sound mind and
21 body.

22 Q. Now, are you a medical expert?

23 A. I'm not.

24 Q. Are you aware of any other fraudulent activity
25 that took place in anything in the estate and trusts of

1 Simon Bernstein by yourself or your employees?

2 A. Are you referring back to the closing of your
3 mother's estate?

4 Q. I'm referring to any other --

5 A. -- we've talked about.

6 Q. So can you list those and then just say that's
7 all that you're aware of?

8 MR. ROSE: Objection. Cumulative.

9 THE COURT: Sustained.

10 BY MR. BERNSTEIN:

11 Q. Other than the fraud that you've admitted to
12 in the documents of Shirley, the Moran forged and
13 fraudulent waivers, the April 9th waiver that you and Si
14 signed stating he had all the waivers when he couldn't
15 have, are there any other frauds that you're aware of
16 that took place with these estate and trust documents?

17 A. Not to my knowledge.

18 Q. When you were first interviewed by the Palm
19 Beach County Sheriff with Kimberly Moran, did you notify
20 them at that first interview that you had fraudulently
21 altered a document?

22 MR. ROSE: Objection. Relevance.

23 THE COURT: Sustained.

24 BY MR. BERNSTEIN:

25 Q. When did you notify the sheriff that you

1 fraudulently altered a document?

2 MR. ROSE: Objection. Relevance.

3 THE COURT: Sustained.

4 BY MR. BERNSTEIN:

5 Q. You have these exhibits. This will says
6 "conformed copy" on Exhibit 1 of their exhibits; is that
7 correct?

8 A. Yes, it does.

9 Q. Does a conformed copy have to have the clerk
10 of the court's signature on it?

11 A. Conformed copy would not be sent to the clerk
12 of the courts.

13 Q. Conformed copy -- okay.

14 Is that your signature on the document? This
15 is Exhibit 2, Shirley trust agreement, of the
16 plaintiff's exhibit book, 2, page 27.

17 A. Yes, it appears to be.

18 Q. It appears to be?

19 A. Yes.

20 Q. All right. And is that Traci Kratish's
21 signature?

22 A. She was there. I can't speak to her
23 signature.

24 Q. Did you witness her sign it?

25 A. I did.

1 Q. Okay. Is that my mom's signature on page 28?

2 A. Yes, it is.

3 Q. On this first amendment to Shirley's trust --

4 MR. BERNSTEIN: Exhibit 3, Your Honor, page 1
5 of 3, I guess. It's the first page in that
6 exhibit.

7 BY MR. BERNSTEIN:

8 Q. Is that document -- do you recall that
9 document?

10 A. Yes.

11 Q. Okay. And you recall the day it's signed and
12 notarized, allegedly?

13 A. November 18th, 2008.

14 Q. On the front page of that document, what day
15 is the document dated?

16 A. It's not dated.

17 Q. Is that typical and customary in your office?

18 A. Sometimes clients forget to put the date at
19 the top.

20 Q. You forget?

21 A. I said, sometimes clients forget to put the
22 date at the top.

23 Q. Well, did you check the document before making
24 it a part of a will and trust?

25 A. It was notarized as a self-proving document.

1 Q. Are you aware that Kimberly Moran's
2 notarization of the Simon trust has been found by the
3 Governor Rick Scott's notary public division to be
4 deficient?

5 MR. ROSE: Objection. Hearsay.

6 THE COURT: Sustained.

7 BY MR. BERNSTEIN:

8 Q. Are you aware of Kimberly Moran of your office
9 being contacted by the governor's office in relation to
10 these wills and trusts?

11 MR. ROSE: Objection. Hearsay.

12 THE COURT: Sustained.

13 What do I care if he's aware of that or not?
14 How does that help me decide the validity of these
15 documents?

16 MR. BERNSTEIN: Well, the governor's already
17 made a claim that --

18 THE COURT: But you're asking the witness if
19 he's aware of. Are you aware the sky is blue right
20 now? It doesn't matter to me if he's aware of it
21 or not. Are you aware Rick Scott has started an
22 investigation of a moon landing? It doesn't matter
23 to me if he knows that or not. You asked him are
24 you aware of somebody from Rick Scott's office
25 doing something. It doesn't matter to me if he's

1 aware of that or not. I've got to figure out the
2 validity of these documents, so I need to know
3 facts about that, please. Any other questions of
4 the witness on that?

5 MR. BERNSTEIN: Yes.

6 BY MR. BERNSTEIN:

7 Q. Is that my father's signature?

8 A. I'm not an expert on your father's signature.
9 But if it's on his will, at the bottom of his will, that
10 must have been a copy that was obtained from the clerk
11 of the courts, because that will was filed, and we would
12 have conformed copies in our file, which would not have
13 his signature at the bottom. Apparently, it is.

14 Q. But it does say on the document that the
15 original will's in your safe, correct?

16 A. For your mother's document, it showed that.

17 Q. Oh, for my father's -- where are the originals
18 of my father's?

19 A. Your father's original will was deposited in
20 the court. As was your mother's.

21 Q. How many copies of it were there that were
22 original?

23 A. Only one original. I think Mr. Rose had
24 stated on the record that he requested a copy from the
25 clerk of the court of your father's original will, to

1 make a copy of it.

2 Q. Certified?

3 A. I'm not sure if he said it was certified or
4 not.

5 Q. Is that your signature on my father's will?

6 MR. BERNSTEIN: This is Exhibit 4, Your Honor,
7 Page 7.

8 THE WITNESS: Yes, it is.

9 BY MR. BERNSTEIN:

10 Q. Okay. Is that my father's signature?

11 A. Appears to be.

12 Q. Whose signature is that?

13 A. That's my signature.

14 Q. Oh, okay. So the only two witnesses you see
15 on this document are you and Kimberly Moran; is that
16 correct?

17 A. On that page.

18 Q. And both you and Kimberly Moran have had
19 misconduct in these cases?

20 MR. ROSE: Objection. Relevance.

21 THE COURT: Overruled. But it's cumulative.

22 MR. ROSE: It's cumulative.

23 THE COURT: How many times do I need to know
24 this?

25 MR. BERNSTEIN: What does that mean exactly,

1 cumulative? I don't get that. I'm sorry.

2 THE COURT: Let's say you hit me over the head
3 with a two-by-four. That's one time. If you do it
4 twice, that's cumulative. Cumulative's not
5 allowed.

6 MR. BERNSTEIN: That's an objection, is that
7 I've asked it --

8 THE COURT: Yes.

9 MR. BERNSTEIN: -- and it was answered? Is
10 that what it's kind of saying?

11 THE COURT: Yes, asked and answered. That's
12 another way of saying it.

13 MR. BERNSTEIN: Now I got it.

14 THE COURT: Asked and answered is a similar
15 way to say it.

16 MR. BERNSTEIN: Okay. Sorry.

17 BY MR. BERNSTEIN:

18 Q. Is that my father's signature, to the best of
19 your knowledge?

20 A. Appears to be, yes.

21 Q. And is that your signature?

22 A. Yes, it is.

23 Q. And here, did Kimberly Moran properly notarize
24 this document?

25 A. Kimberly did not notarize the document.

1 Q. Or Lindsay Baxley, did she check one -- either
2 the person was personally known or produced
3 identification?

4 A. No. This is what Mr. Rose had gone over
5 earlier.

6 Q. No, those, I believe, are in other documents
7 we'll get to.

8 So this notarization, as far as you can tell,
9 is incomplete?

10 MR. ROSE: Objection. Are we on Exhibit 2?

11 MR. BERNSTEIN: No.

12 THE COURT: We're on Exhibit 4, as far as I
13 recall.

14 MR. BERNSTEIN: He does not miss a thing.

15 Your Honor, page 8.

16 THE WITNESS: This is Si's documents.

17 MR. ROSE: Got it.

18 BY MR. BERNSTEIN:

19 Q. Okay. So on Simon's trust, weeks before he
20 dies, the notarization's improper?

21 A. This was the same document we spoke about
22 before. Yes, she did not circle "known to me,"
23 although...

24 Q. So she didn't know you or Simon?

25 A. No, she knew all of us. She just neglected to

1 circle "known to me."

2 Q. And that's one of the three functions of a
3 notary, to the best of your knowledge, to determine the
4 person is in the presence that day by some form of I
5 either know you or you gave me a license; is that
6 correct?

7 A. Yes.

8 Q. So your firm -- have you done anything since
9 knowing this document's improperly notarized to correct
10 it with the courts?

11 MR. ROSE: Objection. It misstates facts. He
12 didn't say it was improperly notarized.

13 THE COURT: Just state the objection, please.

14 MR. ROSE: Well, calls for a legal conclusion.

15 THE COURT: Sustained.

16 MR. MORRISSEY: Another objection. It
17 misstates the law.

18 THE COURT: Sustained.

19 BY MR. BERNSTEIN:

20 Q. Is that Lindsay -- oh, you can't answer that.
21 So, to the best of your ability, regarding
22 your signature, Kimberly or Lindsay Baxley has failed to
23 state that you either were known to her or produced
24 identification?

25 MR. ROSE: Objection. Cumulative.

1 THE COURT: Sustained.

2 MR. BERNSTEIN: Okay. We'll go on to
3 document 5.

4 BY MR. BERNSTEIN:

5 Q. Is that my father's initials, to the best of
6 your knowledge?

7 A. Appears to be, yes.

8 Q. Do these initials look similar to you, this
9 one on page 2, next to this one on page 3, next to that
10 thing on page 4?

11 A. Initials typically don't look perfect page to
12 page, and they don't necessarily look similar page to
13 page. I have seen clients execute a lot of documents,
14 and by the time they get to, you know, the second and
15 third document, their signatures and their initials do
16 not necessarily look --

17 Q. Look at page 13, for example. I mean, this is
18 almost -- if we go through page by page, tell me if you
19 see any that are even similar. On page -- let's start
20 back at the beginning, if that'll help you.

21 That? Do those look similar to you as you're
22 flipping through those?

23 A. Yeah, they have a lot of the same -- similar
24 ending marks. Your father's ending mark was that line.
25 I mean, it's on every single solitary page.

1 Q. Okay. So your testimony today is those are my
2 father's initials?

3 A. That they were.

4 Q. Okay.

5 A. I was there when he was...

6 Q. And you've looked at all of these, page 19,
7 page 20? Those look similar to what you're saying -- or
8 why don't you just look at them. If you go through them
9 all, they all look different. But okay.

10 A. They all look different, and they all look
11 consistent at the same time.

12 Q. Okay. Is that -- on page 24, is that my
13 father's signature?

14 A. Appears to be.

15 Q. Is that your signature?

16 A. Yes, it is.

17 Q. Okay. Now, this is another trust document
18 that Lindsay Baxley did that's supposed to be notarized,
19 a will and trust, I believe, and the amended and
20 restated.

21 Can you tell that Simon Bernstein was present
22 or produced -- or present that day by the notarization?

23 A. She again failed to mark that he was
24 personally known, but she worked for him.

25 Q. So these dispositive documents are improperly

1 notarized?

2 MR. ROSE: Objection. Cumulative. Legal
3 conclusion.

4 THE COURT: Sustained.

5 BY MR. BERNSTEIN:

6 Q. Okay. And then let's go to the first
7 amendment to Shirley Bernstein's trust. Is this a
8 document prepared --

9 MR. BERNSTEIN: Your Honor, that would be 6.

10 THE COURT: All right.

11 BY MR. BERNSTEIN:

12 Q. Is that a document prepared by your law firm?

13 A. Yes, it is.

14 Q. And do you see where it's, "Now therefore by
15 executing this instrument I hereby amend the trust
16 agreement as following"? And what is it -- what are the
17 numbering sequences there?

18 A. It says, I hereby delete a paragraph of
19 article --

20 Q. What number is that?

21 A. Paragraph B -- it's number 1.

22 Q. Okay. And what's Number 2?

23 MR. ROSE: Objection. Best evidence. It's in
24 evidence. And it's cumulative.

25 THE COURT: Two is in evidence, as is

1 paragraph one and paragraph three. And I've
2 read --

3 MR. BERNSTEIN: Oh, no. But Number 1, Your
4 Honor, take a look real quick. Number 1; there's
5 no Number 2.

6 THE COURT: The objection came on your next
7 question, and that was dealing with paragraph 2,
8 which says it's already in evidence. And it is.

9 MR. BERNSTEIN: No, no, not paragraph 2. Look
10 at down below. Under the "now therefore," there's
11 a Number 1, and I was asking him what Number 2
12 reads.

13 THE COURT: I know you were.

14 MR. BERNSTEIN: And there is no Number 2.

15 THE COURT: You've asked me to look at
16 Exhibit No. 6, right? Plaintiff's Exhibit 6 has,
17 under the therefore clause, a one, a two and a
18 three. Are you asking me to look at a different
19 document?

20 MR. BERNSTEIN: Can I approach?

21 THE COURT: Sure. All right. So that's a
22 different Number 6 than I have. So let's see your
23 Number 6.

24 MR. BERNSTEIN: What do I do on that?

25 THE COURT: That's not my decision.

1 MR. BERNSTEIN: That's his book, not my book,
2 just so you know.

3 THE COURT: Well, that Tab 6 is different than
4 my Tab 6. So there you go.

5 MR. BERNSTEIN: Okay. Well, which -- what do
6 I go off there?

7 THE COURT: I have no --

8 MR. BERNSTEIN: Can I submit that into
9 evidence?

10 THE COURT: I have no preference.

11 MR. BERNSTEIN: Okay. I'd like to submit
12 this, because I'm not sure if the other one is in
13 evidence wrong.

14 THE COURT: All right. Any objection?

15 MR. ROSE: Could I just see the book? Would
16 you mind?

17 THE COURT: Here, I'll show you my book. You
18 can look at that book and see what's going on.

19 And this will be a good time for us to take a
20 short break, and let you all straighten it out. So
21 we'll be back in session in 15 minutes. And then
22 we'll go to the bitter end. Each of you has about
23 60 minutes remaining.

24 MR. BERNSTEIN: Your Honor, when you say
25 "60 minutes remaining," we haven't got through all

1 the witnesses yet.

2 THE COURT: Well, we will have by the end of
3 60 minutes on each side.

4 This trial is over at five o'clock. I told
5 you when we started each of you has half of the
6 time; please use it wisely; use it as you wish.
7 I've tried to encourage both sides to be efficient.
8 When your time is gone, that's the end of the trial
9 for you.

10 MR. BERNSTEIN: Well, the case manager --

11 THE COURT: When their trial is gone --

12 MR. BERNSTEIN: At the case management, they
13 said it would take a day. I argued and said to you
14 it would take days. I mean, they've got
15 10 witnesses. I need to have all the people who
16 witnessed these documents here.

17 THE COURT: Remember when I said a moment ago
18 we're in recess? I was serious. Thanks. We'll go
19 back in session 15 minutes from now.

20 (A break was taken.)

21 THE COURT: We're ready to resume. Are there
22 any further questions for the witness on cross?

23 MR. BERNSTEIN: Okay. We were just working
24 out that 1, 2, 3, Exhibit No. 6, so that we get the
25 record straight.

1 THE COURT: Okay.

2 MR. BERNSTEIN: Shall I get a copy of yours,
3 you get a copy of mine? Or how do you want to do
4 that?

5 MR. ROSE: Your Honor, I tried to work it out.

6 THE COURT: Listen, I don't have any
7 preference as to how we do anything. You all tell
8 me how you've worked it out, and if I agree with
9 it, I'll accept it.

10 MR. ROSE: The copy that's been marked for the
11 witness, the copy in my book and the copy in your
12 book are all identical. I don't know what's in his
13 book, and he wouldn't show me his book on the
14 break.

15 THE COURT: Okay.

16 MR. ROSE: But I'm fine. It's a three-page
17 document. And if he wants to put it in evidence,
18 even though it's not operative, I have no
19 objection.

20 THE COURT: Okay. So are you putting
21 something into evidence?

22 MR. BERNSTEIN: Yeah. The one that I --

23 THE COURT: Have you showed it to the other
24 side yet? You can't put secret documents into
25 evidence, only after they've been seen by everyone.

1 Let's at least show it to the other side so they
2 know the document that's being proffered as an
3 exhibit. If they still have no objection, I'll
4 receive it as Defendant's 3.

5 MR. ROSE: This is in evidence already as
6 Exhibit No. -- as Plaintiff's No. 3.

7 MR. BERNSTEIN: So what's 6? So now I don't
8 even have the right 6 document.

9 MR. ROSE: The 6 that the witness has is three
10 pages. It's the same 6 that's in your book and
11 it's in my book. It's three consecutive pages of
12 the production from Tescher & Spallina law firm.
13 It has the inoperative first amendment as page 1,
14 then it has the operative first amendment as
15 page 2, and the signature page as page 3. It's the
16 same document in everybody's book. That's all I
17 can tell you.

18 THE COURT: Okay.

19 MR. BERNSTEIN: Your Honor, in my book, 3 and
20 6 are the identical documents --

21 THE COURT: Okay.

22 MR. BERNSTEIN: -- so I would need --

23 THE COURT: Are there any other questions of
24 the witness?

25 MR. BERNSTEIN: Well, I was going to ask him

1 questions on this document.

2 THE COURT: All right. Well, then, let's go.

3 MR. BERNSTEIN: Okay. I need a -- I don't
4 have the 6 that everybody else is referring to. My
5 sinks is the same as --

6 THE COURT: There you go. Take whatever you
7 need.

8 MR. BERNSTEIN: Okay. Thank you. I think we
9 missed 6. It's just short on 6.

10 THE COURT: All right. Then here's my Tab 6.

11 MR. BERNSTEIN: Thank you, sir.

12 THE COURT: The idea is to keep moving.

13 MR. BERNSTEIN: Okay. I'll move on. I'm
14 almost done here.

15 BY MR. BERNSTEIN:

16 Q. Okay. So on Exhibit 3, can you list the
17 numbers there?

18 MR. ROSE: Objection. Best evidence.

19 Cumulative.

20 THE COURT: Sustained.

21 You need to refer to which page. That's a
22 multi-page document, and both pages have numbered
23 paragraphs on them.

24 MR. BERNSTEIN: Page 1 of 2.

1 BY MR. BERNSTEIN:

2 Q. The Roman Numeral -- or the numerals, can you
3 give the sequence of those numbers?

4 A. One and three. It's skipping two.

5 Q. And this is a document you allege to be part
6 of the Shirley trust that you're claiming is valid?

7 A. That's the amendment that Shirley executed in
8 November of 2008.

9 Q. And would there be a reason why your law firm
10 numbers one, three?

11 MR. ROSE: Objection. Cumulative.

12 THE COURT: Overruled.

13 You can answer.

14 THE WITNESS: Human error.

15 BY MR. BERNSTEIN:

16 Q. Okay. But it is an error in the document that
17 you're claiming is valid Shirley trust?

18 A. It's a numbering error.

19 Q. In the document, you're claiming this is a
20 valid amendment, correct?

21 A. Correct.

22 Q. Okay. And then in number 6 from the judge,
23 what's the numbering sequence?

24 A. One, two, three.

25 Q. Okay. So you added in a number two?

1 A. Yes.

2 Q. Okay. How did you go about doing that?

3 A. There was a paragraph two inserted between one
4 and three.

5 Q. Well, the paragraph that's inserted between
6 one and three wouldn't fit there.

7 So what did you do?

8 A. The document was opened up and a paragraph was
9 inserted.

10 Q. Okay. So you increased the spacing on the
11 document, correct, by adding a number three, correct?

12 A. Adding number two, yes.

13 Q. By adding number two, correct.

14 Okay. So you actually had to alter the
15 chronology as it was placed on the document? You didn't
16 just put a number two there in between one and three?
17 You actually went and expanded the document with words
18 that were inserted by you fraudulently, right?

19 MR. ROSE: Objection. Argumentative.

20 Cumulative.

21 THE COURT: Sustained.

22 MR. BERNSTEIN: Okay.

23 MR. ROSE: Your Honor, the witness does have
24 the exhibits in front of him. If Mr. Bernstein
25 could be at the podium.

1 MR. BERNSTEIN: I don't know if he has all the
2 exhibits.

3 THE COURT: Well, do you have the exhibit that
4 I gave you from the Court's?

5 MR. BERNSTEIN: Oh, jeez.

6 THE COURT: Because I'd like to have it back
7 so that that doesn't get lost.

8 MR. BERNSTEIN: Okay. You gave me the one
9 with one, two, three.

10 Can I get a copy of this from the clerk?

11 THE BAILIFF: There is no clerk.

12 THE COURT: Can I have the document back,
13 please? He's not a clerk.

14 MR. BERNSTEIN: Marshall, sheriff, officer,
15 sir. Sorry about that.

16 THE COURT: He does not make copies.

17 MR. BERNSTEIN: Okay.

18 THE COURT: Thanks. Any other questions of
19 the witness? Your time is rapidly disappearing.

20 MR. BERNSTEIN: Just going through that.

21 THE COURT: And I think you said earlier you
22 have no objection to Plaintiff's 6 being received
23 as an exhibit?

24 MR. ROSE: Correct.

25 THE COURT: Okay.

1 MR. ROSE: Thank you.

2 THE COURT: Then it's in evidence as

3 Plaintiff's 6. I'm making it Plaintiff's 6, rather
4 than Defendant's 3, because it's already marked and
5 it's been referred to by that number.

6 (Plaintiff's Exhibit No. 6 was received into
7 evidence.)

8 BY MR. BERNSTEIN:

9 Q. Are these your notes?

10 A. No, they're not. Those are Don's.

11 Q. Do you know the date on that note?

12 A. 3/12/08.

13 Q. Did you take any notes in the meeting?

14 A. Those are my notes there.

15 Q. These are? Oh, so this is a compilation of
16 Don's and your notes?

17 A. Those are my notes, yes.

18 Q. And those were taken on that day?

19 A. Correct.

20 Q. Whose notes are those?

21 A. I just saw those for the first time today. I
22 believe they're your father's notes.

23 Q. How would you know those are my father's
24 notes?

25 A. Mr. Rose introduced that document earlier.

1 Q. Document 12, did it come from your offices?

2 A. I don't know where it came from.

3 Q. Did you Bates stamp this document as part of
4 your documents?

5 A. I don't recall ever seeing that document.

6 Q. And it doesn't have your Bates stamp from your
7 production, right?

8 A. Correct.

9 Q. You were supposed to turn over all your
10 records, correct?

11 MR. ROSE: Objection. He's testified it
12 wasn't in his --

13 THE COURT: What's the objection to the
14 question?

15 MR. ROSE: Cumulative.

16 THE COURT: Sustained.

17 MR. BERNSTEIN: All right. Your Honor, I'm
18 done.

19 THE COURT: All right. Thank you.

20 Is there any redirect?

21 MR. ROSE: Brief, Your Honor.

22 REDIRECT (ROBERT SPALLINA)

23 BY MR. ROSE:

24 Q. Assuming the documents are valid, they'll have
25 to be a later trial to determine the effect of Simon's

1 exercise of his power of appointment?

2 A. Yes.

3 Q. It doesn't have any direct bearing on whether
4 these five documents are valid?

5 A. No.

6 Q. And I take it you don't necessarily agree with
7 Mr. Tescher's view as expressed in his letter of
8 January 14th, 2014?

9 A. Again, I'm seeing that here. Surprised to see
10 that.

11 Q. The original documents, the wills, you
12 retained at all times of Shirley and Simon in your firm?

13 A. Prior to their death, yes.

14 Q. And that's consistent practice for a trust and
15 estate lawyer, to keep it in your will vault or in your
16 safe deposit box?

17 A. Yes. I would say most attorneys do that just
18 because there's only one original of the will, and very
19 often documents can get lost if clients take documents
20 home. So, typically, they're kept in a safe deposit box
21 or a safe or something like that, and left with the
22 attorney.

23 Q. I want to make sure I understand and the Court
24 understands what happened with the waiver forms.

25 While Simon was alive, he signed a petition

1 for discharge; is that correct?

2 A. Correct. April of '08.

3 Q. And --

4 MR. BERNSTEIN: What exhibit? Excuse me.

5 What number are we looking at?

6 MR. ROSE: None -- well, actually, it's in my
7 book. If you want to follow along, it's Tab 28.

8 But it's not in evidence.

9 BY MR. ROSE:

10 Q. And Simon also then filed a waiver of
11 accounting himself?

12 A. Correct.

13 Q. And is it necessary for Simon, even though
14 he's the personal representative, to sign a waiver of
15 accounting because he's a beneficiary?

16 A. I mean, we do it as a matter of course.

17 Q. And the signature of Simon Bernstein on
18 April 9th, that's genuinely his signature?

19 A. Can I see?

20 Q. Exhibit 28 is a petition that was filed with
21 the court. I'm going to just show you the exhibits.
22 Exhibit A says "Petition for discharge full waiver."

23 Is this a document you would have prepared for
24 Simon Bernstein to sign?

25 A. Yeah, our firm would prepare that.

1 Q. Okay. And it's a three-page document.

2 Is that Simon Bernstein's signature --

3 A. Yes, it is.

4 Q. -- April 9th, 2012?

5 A. Yes, he signed the document.

6 Q. And he was alive when he signed the document?

7 A. Yes, he was.

8 Q. Okay. Then he had to sign a waiver of
9 accounting, which he signed on the same day?

10 A. Correct.

11 Q. And you have a document waiver of accounting
12 on the next page signed by Eliot Bernstein on May 15th?

13 A. Correct.

14 Q. And there's no doubt that's Eliot's signature
15 because he's the one who emailed you the document,
16 correct?

17 A. And sent us the original by mail.

18 Q. Right. And we already have an exhibit which
19 is his email that sent you his waiver form?

20 A. Correct.

21 Q. And the waiver forms of Ted, Pam, Lisa and
22 Jill are all valid, signed by them on the date that they
23 indicated they signed it?

24 A. To the best of my knowledge, yes.

25 Q. So then these got submitted to the court.

1 Is there anything wrong with submitting waiver
2 forms to the court signed by Simon while he's alive
3 after he had passed away?

4 A. Maybe we should have made a motion to, you
5 know, have a successor PR appointed and file the
6 documents through the successor PR.

7 Q. Were you trying to just save expenses because
8 there was nothing in the estate?

9 A. Correct.

10 Q. And if Judge Colin had not rejected -- or his
11 assistant had not rejected the documents, and the estate
12 was closed, it would have been closed based on
13 legitimate, properly signed documents of Simon and his
14 five children?

15 A. Correct.

16 Q. So then they get kicked back to your law firm,
17 and you could file a motion and undertake some expense,
18 instead --

19 MR. BERNSTEIN: Object. This has been asked
20 and answered.

21 THE COURT: Sustained.

22 BY MR. ROSE:

23 Q. Now, does the fact that -- well, strike that.

24 At the time that Simon signed his 2012 will
25 and 2012 trust, had there been ever anyone question a

1 signature or a notarization of any document that had
2 been prepared by your law firm?

3 A. No, there was not.

4 Q. You didn't see anything or observe anything or
5 any behavior of Simon Bernstein during the course of any
6 meeting you had with him that would call into question
7 his competence or his ability to properly execute a
8 testamentary document?

9 A. We did not.

10 MR. ROSE: Nothing further, Your Honor.

11 THE COURT: All right. Thanks.

12 Thank you, sir. You can step down.

13 MR. ROSE: At this time, we would rest our
14 case.

15 THE COURT: Okay. Thank you.

16 Any evidence from the defendant's side?

17 MR. BERNSTEIN: Well, I'd like -- can I call
18 back Spallina?

19 THE COURT: If you want to call him as a
20 witness on your behalf, sure.

21 MR. BERNSTEIN: Yeah, sure.

22 THE COURT: All right. Mr. Spallina, you're
23 still under oath, and you're being called as a
24 defense witness now.

25 DIRECT EXAMINATION

1 BY MR. BERNSTEIN:

2 Q. Mr. Spallina, when Simon died on
3 September 12th -- or September 13th -- sorry -- 2012,
4 and you were responsible as his attorney to appoint Ted
5 as the successor, correct, you were in charge of his
6 wills and trusts?

7 THE COURT: You just asked three questions in
8 a row.

9 MR. BERNSTEIN: Oh, sorry.

10 THE COURT: Which question would you like the
11 witness to answer?

12 BY MR. BERNSTEIN:

13 Q. Okay. When Simon died, was Shirley's estate
14 closed?

15 A. No, it was not.

16 Q. Okay. Did you appoint a successor to Simon
17 who was the personal representative of Shirley on the
18 day he died?

19 A. I don't understand the question.

20 Q. Well, on the day Simon died, there was a
21 successor to him in the will, correct?

22 A. That's correct. Ted.

23 Q. Okay. Did you appoint Ted?

24 A. I did not appoint Ted. Si did.

25 Q. Si appointed Ted?

1 A. Si appointed Ted as a successor trustee under
2 the document -- I mean, Shirley appointed Ted as the
3 successor trustee to Si under the document.

4 Q. So Simon didn't appoint Ted?

5 A. Simon did not appoint Ted.

6 Q. Okay.

7 A. He was the named successor under your mother's
8 document.

9 Q. Okay. So when Simon died -- just so I get all
10 this clear, when Simon died, your law firm knew Ted was
11 the successor, correct?

12 A. That's correct.

13 Q. According to your story. Okay.

14 A. Under Shirley's documents, you're talking
15 about.

16 Q. Under the alleged Shirley document.

17 Okay. But yet did Simon then -- after he
18 died, did he not close the estate of Shirley while he
19 was dead?

20 MR. ROSE: Objection. Argumentative. It's
21 cumulative.

22 THE COURT: Sustained.

23 MR. ROSE: And I believe this whole line of
24 questioning's been covered ad nauseam in the first
25 cross-examination.

1 THE COURT: Well, it's important not to ask
2 the same thing over and over again. You have
3 finite time to work with.

4 MR. BERNSTEIN: Okay.

5 BY MR. BERNSTEIN:

6 Q. The estate of Shirley was closed in January,
7 correct, of 2013?

8 A. I don't recall, but it sounds -- it has to be
9 sometime after November.

10 Q. Okay. So it was closed by Simon, who was dead
11 at that time, correct?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: Sustained.

14 BY MR. BERNSTEIN:

15 Q. Did Ted Bernstein close the Estate of Shirley
16 Bernstein as the successor personal representative?

17 A. No.

18 Q. Who closed the Estate of Shirley Bernstein?

19 A. The documents were filed with the court based
20 on the original petition that your father signed.

21 Q. Did you close the estate?

22 MR. ROSE: Objection. Relevance.

23 THE COURT: What's the relevance?

24 MR. BERNSTEIN: Well, I'm trying to figure out
25 who closed my mom's estate.

1 THE COURT: What's the relevance I've got to
2 figure out?

3 MR. BERNSTEIN: Okay. The documents, they
4 were bringing up these waivers. There's relevance
5 to this.

6 THE COURT: Well, I'll sustain the objection.

7 MR. BERNSTEIN: Okay.

8 BY MR. BERNSTEIN:

9 Q. On this petition for discharge that Mr. Rose
10 brought up on his cross -- and I can't remember where I
11 just pulled that -- I'm going to take a look. That
12 would be 28.

13 MR. BERNSTEIN: Can I admit this into
14 evidence, Your Honor, since I believe Mr. Rose
15 stated it wasn't?

16 THE COURT: You're just picking up a piece of
17 paper and walking up to me and saying, can I admit
18 this into evidence?

19 MR. BERNSTEIN: Well, they didn't admit it.

20 THE COURT: Is there a foundation laid for its
21 admissibility?

22 MR. BERNSTEIN: Yes.

23 THE COURT: Do I know what it is so that I can
24 make a ruling?

25 MR. BERNSTEIN: Oh. It's a petition for

1 discharge.

2 THE COURT: Did anybody testify to that, or
3 are you just --

4 MR. BERNSTEIN: Yeah, he just did.

5 THE COURT: If you have a piece of paper you
6 want to have me consider as an exhibit, the other
7 side has to have seen it and the witness has to
8 have seen it so I'll know what it is.

9 MR. BERNSTEIN: Okay. They were just talking
10 about it.

11 MR. ROSE: Your Honor, just to speed things
12 along, we have no objection to this document coming
13 into evidence. It is part of our Exhibit 28. The
14 whole 28 could come in evidence. That's fine with
15 me. Then it would all be in evidence. Or however
16 you wish to do it.

17 THE COURT: I'm letting this party take charge
18 of his own case.

19 Are you asking that to be received as an
20 exhibit? There's no objection. So that'll be
21 Defendant's 3. Hand that up, and I'll mark it.

22 MR. BERNSTEIN: Thank you.

23 (Defendant's Exhibit No. 3 was received into
24 evidence.)

1 THE COURT: So are you done with it?

2 MR. BERNSTEIN: No. Can I use it still?

3 THE COURT: Anything that's supposed to be an
4 exhibit in evidence has to come back to me.

5 MR. BERNSTEIN: Gotcha.

6 BY MR. BERNSTEIN:

7 Q. Okay. On this document, it's a petition for a
8 discharge, a "full waiver," it says.

9 Was this document sent back to your firm as
10 not notarized by Judge Colin's office?

11 A. I'm not sure. I didn't get the documents
12 back.

13 Q. Is it notarized?

14 A. No, it's not.

15 Q. Did you sign as the notary?

16 MR. ROSE: Objection. Cumulative.

17 THE COURT: Overruled.

18 The question was, is it notarized? The answer
19 was no. Then you asked if -- somebody else, if
20 they'd sign, and then the witness if he signed as a
21 notary.

22 THE WITNESS: I signed it as the attorney for
23 the estate.

24 BY MR. BERNSTEIN:

25 Q. Okay. On April 9th with Simon Bernstein?

1 A. Yeah, it appears that way.

2 Q. Could it be another way?

3 A. It didn't -- this document did not require
4 that I witness Si's signature. So I believe that that
5 document was sent to Si, and he signed it, sent it back,
6 we signed it and filed it.

7 Q. So you sent it to Si, he signed it, then sent
8 it back, and you signed it all on April 9th?

9 A. It doesn't -- it's what day he signed it
10 that's relevant. He signed it on April 9th.

11 Q. And what day did you sign it?

12 A. I could have signed it April 11th.

13 Q. Well, where does it say April 11th?

14 A. My signature doesn't require a date. His
15 does.

16 Q. Why?

17 A. Just doesn't.

18 Q. Well, the date that the document says this
19 document's being signed on April 9th.

20 A. I did not sign that exhibit.

21 Q. Next question. On September 13, 2013, the
22 year after my father died, in Judge Martin Colin's
23 court, when he discovered this document, did he threaten
24 to read you your Miranda Rights, stating he had enough
25 evidence to read you Mirandas?

1 MR. ROSE: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MR. BERNSTEIN:

4 Q. Did you deposit this document, this April 9th
5 full discharge, with the court?

6 A. Did I personally do it?

7 Q. Did your law firm?

8 A. No, the law firm did, yes.

9 Q. Okay. And on whose behalf?

10 MR. ROSE: Objection. Cumulative.

11 THE COURT: Sustained.

12 MR. ROSE: And relevance.

13 THE COURT: Sustained.

14 BY MR. BERNSTEIN:

15 Q. Simon was dead when this document was
16 deposited with the court, correct?

17 MR. ROSE: Objection. Cumulative. Relevance.

18 THE COURT: I've got that he is dead written
19 down here several times. It's clear in my mind.
20 You're not moving in a positive direction.

21 MR. BERNSTEIN: I understand that part.

22 THE COURT: All right. New question, please.

23 MR. BERNSTEIN: Okay.

24 BY MR. BERNSTEIN:

25 Q. Is this document sworn to and attested by my

1 father? Is it a sworn statement? Does it say "under
2 penalties of perjury"?

3 A. It does.

4 Q. Okay. So under penalties of perjury, on
5 April 9th, my father and you signed a document, it
6 appears, that states that Simon has fully administered
7 the estate.

8 Was that done?

9 A. Yes, it was.

10 Q. He had settled the estate, made dispositions
11 of all claims of Shirley's estate?

12 A. He was the only beneficiary of the estate.

13 The creditor period had passed.

14 Q. He was the only beneficiary of the will?

15 A. He was the only beneficiary of the will if
16 he -- that's if he survived your mother.

17 Q. Did you say earlier that the five children
18 were tangible personal property devisees or
19 beneficiaries under the will?

20 A. I did not. I said your father was the sole
21 beneficiary of your mother's estate by virtue of
22 surviving her.

23 Q. I thought you mentioned -- can I take a look
24 at the will?

25 Okay. On Simon's will, which is Exhibit 4

1 here --

2 A. This is your mother's will we're talking
3 about.

4 Q. Well, hold on. Well, you did state there were
5 mirror documents, correct, at one point? That's okay.
6 I'll proceed. That part seems to be in error.

7 Does the document say, "I, Shirley Bernstein,
8 of Palm Beach County, Florida hereby revoke all of my
9 prior wills and codicils and make this will my spouse's
10 assignment. My children are Ted, Pam -- Pamela Simon,
11 Eliot Bernstein, Jill Iantoni and Lisa Friedstein"?

12 MR. ROSE: Objection. Best evidence and
13 cumulative.

14 THE COURT: Sustained.

15 MR. BERNSTEIN: Okay.

16 BY MR. BERNSTEIN:

17 Q. Was there a separate written memorandum
18 prepared for this will?

19 A. No, there was not.

20 Q. And if Simon didn't survive, the property
21 would be going to the children, correct?

22 MR. ROSE: Objection.

23 THE WITNESS: Correct.

24 MR. ROSE: Best evidence and cumulative.

25 THE COURT: Sustained.

1 MR. BERNSTEIN: What was -- I missed that.

2 Can I not ask him that question I just asked?

3 THE COURT: I sustained the objection. You
4 can ask a new question of him.

5 MR. BERNSTEIN: Okay.

6 BY MR. BERNSTEIN:

7 Q. Is there any chance that the children could be
8 beneficiaries of anything under this will?

9 A. Not at the time of your mother's death. Your
10 father survived.

11 Q. So at the time of her death, you're saying
12 that -- if they both died together, would the
13 children --

14 MR. ROSE: Objection. Relevancy.

15 BY MR. BERNSTEIN:

16 Q. -- be beneficiaries?

17 THE COURT: Sustained.

18 MR. BERNSTEIN: Okay. I'm done with him.

19 MR. ROSE: No questions.

20 THE COURT: Okay. Thank you. You can step
21 down now.

22 Next witness, please.

23 MR. BERNSTEIN: My next witness, are you
24 saying?

25 THE COURT: If you have another witness, now's

1 the time to call him or her.

2 MR. BERNSTEIN: Okay. Ted Bernstein -- well,
3 one second.

4 Is Kimberly Moran, your witness, here? Is
5 Kimberly Moran, an exhibited witness, here,
6 Mr. Rose?

7 THE COURT: Listen, it's your case. I've
8 asked if you have any other witnesses. Do you have
9 any other witnesses?

10 MR. BERNSTEIN: No, I don't. I was going to
11 call some of their witnesses, but they're not here.

12 THE COURT: Okay. So you aren't going to call
13 anybody?

14 MR. BERNSTEIN: Yes, I'm going to call Ted
15 Bernstein.

16 THE COURT: Well, that's a witness, right?

17 MR. BERNSTEIN: Yeah, yeah. I just was
18 looking for the other ones on the witness list. I
19 didn't know if they were sitting outside.

20 Thereupon,

21 (TED BERNSTEIN)

22 having been first duly sworn or affirmed, was examined
23 and testified as follows:

24 THE WITNESS: I do.

25 DIRECT EXAMINATION

1 BY MR. BERNSTEIN:

2 Q. Ted --

3 THE COURT: You've got to ask the witness his
4 name. The record needs to reflect who's
5 testifying.

6 MR. ROSE: And could I just ask that he stay
7 at the podium?

8 THE COURT: Okay. You need to stay near the
9 microphone so that I can hear and the court
10 reporter can accurately hear you. And then if you
11 need to go up to the witness stand for some reason,
12 you're allowed to do that.

13 BY MR. BERNSTEIN:

14 Q. State your name for the record.

15 A. Ted Bernstein.

16 Q. Is that your full formal name?

17 A. That is.

18 Q. Do you go by Theodore Stuart Bernstein ever?

19 A. I do not.

20 Q. Okay. Is that your name on your birth
21 certificate?

22 A. Which one?

23 Q. Theodore Stuart Bernstein?

24 A. It is not.

25 Q. Okay. Ted, you were made aware of Robert

1 Spallina's fraudulent alteration of a trust document of
2 your mother's when?

3 A. I believe that was in the early 2013 or '14.

4 Q. Okay. And when you found out, you were the
5 fiduciary of Shirley's trust, allegedly?

6 A. I'm not sure I understand the question.

7 Q. When you found out that there was a fraudulent
8 altercation [sic] of a trust document, were you the
9 fiduciary in charge of Shirley's trust?

10 A. I was trustee, yes. I am trustee, yes.

11 Q. And your attorneys, Tescher and Spallina, and
12 their law firm are the one who committed that fraud,
13 correct, who altered that document?

14 A. That's what's been admitted to by them,
15 correct.

16 Q. Okay. So you became aware that your counsel
17 that you retained as trustee had committed a fraud,
18 correct?

19 A. Correct.

20 Q. What did you do immediately after that?

21 A. The same day that I found out, I contacted
22 counsel. I met with counsel on that very day. I met
23 with counsel the next day. I met with counsel the day
24 after that.

25 Q. Which counsel?

1 A. Alan Rose.

2 Q. Oh. Okay. So he was -- so Tescher and
3 Spallina were your counsel as trustee, but Alan Rose
4 became that day?

5 A. I'm not sure when, but I consulted him
6 immediately. You asked me when.

7 MR. ROSE: Can I caution the witness that it's
8 fine to say who he consulted with. I think the
9 advice was the attorney-client privilege I would
10 instruct him on.

11 THE COURT: All right. The attorney-client
12 privilege is available, and your client is on the
13 stand. Counsel's reminding him that it exists.

14 Are there any other questions? What is the
15 time period that you're asking about here?

16 MR. BERNSTEIN: Right after he discovered that
17 there had been a fraudulent, invalid will created.

18 THE COURT: Right. And you're asking him what
19 he did afterwards?

20 MR. BERNSTEIN: Right afterwards.

21 THE COURT: Okay. Have your mother and father
22 both passed away at the time you're asking him
23 that?

24 MR. BERNSTEIN: Correct.

25 THE COURT: So the validity of the documents

1 that I've got to figure out won't have anything to
2 do with the questions you're asking him now about
3 his actions as trustee, will they?

4 MR. BERNSTEIN: Yes.

5 THE COURT: Tell me how.

6 MR. BERNSTEIN: Okay. Because, Your Honor,
7 when he found out that there was fraud by his
8 attorneys that he retained, the question is, what
9 did they do with those documents? Did he come to
10 the court to correct --

11 THE COURT: The question you're asking him is
12 what did he do.

13 MR. BERNSTEIN: Yeah.

14 THE COURT: Well, that doesn't tell me
15 anything about what the attorneys did. So I'll
16 sustain my own objection. I want to keep you on
17 track here. You're running out of time, and I want
18 you to stay focused on what I've got to figure out.
19 You've got a lot more on your mind than I do. I
20 explained that to you earlier. Do you have any
21 other questions on the issues that I've got to
22 resolve at this point?

23 MR. BERNSTEIN: Yeah.

24 BY MR. BERNSTEIN:

25 Q. Have you seen the original will and trust of

1 your mother's?

2 A. Can you define original for me?

3 Q. The original.

4 A. The one that's filed in the court?

5 Q. Original will or the trust.

6 A. I've seen copies of the trusts.

7 Q. Have you done anything to have any of the
8 documents authenticated since learning that your
9 attorneys had committed fraud in altering dispositive
10 documents that you were in custody of?

11 MR. ROSE: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: I have not.

14 BY MR. BERNSTEIN:

15 Q. So you as the trustee have taken no steps to
16 validate these documents; is that correct?

17 A. Correct.

18 Q. Why is that?

19 A. I'm not an expert on the validity of
20 documents.

21 Q. Did you contract a forensic analyst?

22 A. I'm retained by counsel, and I've got counsel
23 retained for all of this. So I'm not an expert on the
24 validity of the documents.

25 Q. You're the fiduciary. You're the trustee.

1 You're the guy in charge. You're the guy who hires your
2 counsel. You tell them what to do.

3 So you found out that your former attorneys
4 committed fraud. And my question is simple. Did you do
5 anything, Ted Bernstein, to validate these documents,
6 the originals?

7 THE COURT: That's already been answered in
8 the negative. I wrote it down. Let's keep going.

9 MR. BERNSTEIN: Okay.

10 BY MR. BERNSTEIN:

11 Q. As you sit here today, if the documents in
12 your mother's -- in the estates aren't validated and
13 certain documents are thrown out if the judge rules them
14 not valid, will you or your family gain or lose any
15 benefit in any scenario?

16 A. Can you repeat that for me, please? I'm not
17 sure I'm understanding.

18 Q. If the judge invalidates some of the documents
19 here today, will you personally lose money, interest in
20 the estates and trusts as the trustee, your family, you?

21 A. I will not.

22 Q. Your family?

23 A. My -- my children will.

24 Q. So that's your family?

25 A. Yes.

1 Q. Okay. So do you find that as a fiduciary to
2 be a conflict?

3 MR. ROSE: Objection.

4 THE WITNESS: No.

5 MR. ROSE: I think it calls for a legal
6 conclusion.

7 THE COURT: Sustained.

8 BY MR. BERNSTEIN:

9 Q. Well, would it matter to you one way or the
10 other how these documents are validated?

11 A. What would matter to me would be to follow the
12 documents that are deemed to be valid and follow the
13 court orders that suggest and deem that they are valid.
14 That would be what I would be charged to do.

15 Q. So you can sit here today and tell me that the
16 validity of these documents, even though your family
17 will lose 40 percent, has no effect on you?

18 A. It has no effect on me.

19 Q. Okay. And you don't find that to be adverse
20 to certain beneficiaries as the trustee?

21 MR. ROSE: Objection. Calls for a legal
22 conclusion.

23 THE COURT: Well, what difference does it make
24 to me? I mean, what he thinks about his role is
25 just not relevant to me.

1 MR. BERNSTEIN: Well, Your Honor --

2 THE COURT: So the next question, please.

3 That's not relevant.

4 BY MR. BERNSTEIN:

5 Q. So in no way have you tried to authenticate
6 these documents as the trustee?

7 THE COURT: He has already said that. That's
8 the third time you've asked it, at least. And I've
9 written it down. It's on my papers.

10 MR. BERNSTEIN: Okay. I'll let it go. I'll
11 let him go today.

12 THE COURT: Okay. You have no further
13 questions of the witness.

14 Is there any cross?

15 MR. ROSE: Briefly.

16 CROSS (TED BERNSTEIN)

17 BY MR. ROSE:

18 Q. You did a few things to authenticate the
19 documents, didn't you? You filed a lawsuit?

20 A. Yes.

21 Q. In fact, we're here today because you filed a
22 lawsuit to ask this judge to determine if these five
23 documents are valid, correct?

24 A. That's correct.

25 Q. And you fired Mr. Tescher and Spallina on the

1 spot?

2 A. Correct.

3 Q. Called the bar association?

4 A. The next business day.

5 Q. You consulted with counsel, and we retained
6 additional probate counsel over the weekend?

7 A. We did.

8 Q. So as far as authenticating the documents, you
9 personally believe these are genuine and valid
10 documents, right?

11 A. I do.

12 Q. And you, in fact, were in your office the day
13 your father signed them?

14 A. That's correct.

15 Q. And witnessed Mr. Spallina and the notary
16 coming to the office to sign the documents?

17 A. Yes, that's right.

18 Q. And you had been on a conference call with
19 your father, your brother and your three sisters where
20 your father told you exactly what he was going to do?

21 A. That is also correct.

22 Q. And the documents that we're looking at today
23 do exactly what your father told everybody, including
24 your brother, Eliot, he was going to do on the
25 conference call in May of 2012?

1 A. Yes, that is correct also.

2 Q. Now, I think you were asked a good question.

3 Do you care one way or the other how these
4 documents are decided by the Court?

5 A. Absolutely not.

6 Q. Did you care when your father or mother made a
7 document that did not specifically leave any money to
8 you?

9 A. I did not.

10 Q. Now, did you care for anybody other than
11 yourself?

12 A. I cared for the -- for the sake of my
13 children.

14 Q. And why did you care for the sake of your
15 children?

16 A. My parents had a very good relationship with
17 my children, and I did not want my children to
18 misinterpret what the intentions of their grandparents
19 were and would have been. And for that reason, I felt
20 that it would have been difficult for my children.

21 Q. Did you ever have access to the original will
22 of your father or mother that were in the Tescher &
23 Spallina vaults?

24 A. I have no access, no.

25 Q. Did you ever have access to the original

1 copies of the trusts that Mr. Spallina testified were
2 sitting in their firm's file cabinets or vaults?

3 A. I did not.

4 Q. Now, did you find in your father's possessions
5 the duplicate originals of the trusts of him and your
6 mother that we've talked about?

7 A. I did.

8 Q. And do you have any reason to believe that
9 they aren't valid, genuine and signed by your father on
10 the day that he -- your father and your mother on the
11 days that it says they signed them?

12 A. None whatsoever.

13 Q. You need to get a ruling on whether these five
14 documents are valid in order for you to do your job as
15 the trustee, correct?

16 A. Yes, that is correct.

17 Q. Whichever way the Court rules, will you follow
18 the final judgment of the Court and exactly consistent
19 with what the documents say, and follow the advice of
20 your counsel in living up to the documents as the Court
21 construes them?

22 A. Always. A hundred percent.

23 MR. ROSE: Nothing further, sir.

24 THE COURT: All right. Thank you.

25 Is there any redirect?

1 REDIRECT (TED BERNSTEIN)

2 BY MR. BERNSTEIN:

3 Q. You just stated that you came to the court and
4 validated the documents in this hearing today; is that
5 correct?

6 MR. ROSE: Objection. It mis --

7 BY MR. BERNSTEIN:

8 Q. You filed a motion to validate the documents
9 today?

10 THE COURT: Wait. You've got to let me rule
11 on the objection.

12 MR. BERNSTEIN: Oh, sorry. I don't hear any
13 objection.

14 THE COURT: I'll sustain the objection.

15 BY MR. BERNSTEIN:

16 Q. Okay. Since -- did you file a motion that
17 we're here for today for validity?

18 A. Explain motion.

19 Q. A motion with the court for a validity hearing
20 that we're here at right now.

21 A. Do you mean the lawsuit?

22 Q. Well, yeah.

23 A. Yes, we did file a lawsuit, yes.

24 Q. Okay. Do you know when you filed that?

25 A. No. I don't know, Eliot. I don't know when I

1 filed it. I don't have it committed to memory.

2 Q. Do you have an idea?

3 MR. ROSE: Objection. I think the court file
4 will reflect when the case was filed.

5 THE COURT: Overruled.

6 The question was answered, I don't know. Next
7 question.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. Prior to filing this lawsuit, Mr. Rose said
11 you couldn't do anything because you didn't know if the
12 documents were valid.

13 My question is, did you do anything from the
14 time you found out the documents might not be valid and
15 needed a validity hearing to today at this validity
16 hearing?

17 MR. ROSE: Objection. Relevance.

18 THE COURT: What's the relevance?

19 MR. BERNSTEIN: Well, he knew about these
20 documents being fraudulent for X months.

21 THE COURT: What will that help me decide on
22 the validity of the five documents?

23 MR. BERNSTEIN: Why, Your Honor, they didn't
24 come to the court knowing that they needed a
25 validity hearing, and instead disposed and

1 disbursed of assets while they've known all this
2 time --

3 THE COURT: I'll sustain the objection.

4 I'm not called to rule upon that stuff. I'm
5 called to rule upon the validity of these five
6 paper documents. That's what I'm going to figure
7 out at the end of the day.

8 BY MR. BERNSTEIN:

9 Q. Mr. Rose asked you if you found documents and
10 they all looked valid to you, and you responded yes.

11 Are you an expert?

12 A. I am not.

13 Q. Can you describe what you did to make that
14 analysis?

15 A. They looked like they were their signatures on
16 the documents. I had no reason whatsoever to think
17 those weren't the documents that were their planning
18 documents. I had no reason at all to think that.

19 Q. Even after your hired attorneys that were
20 representing you admitted fraud, you didn't think there
21 was any reason to validate the documents?

22 MR. ROSE: Objection. Argumentative.

23 THE COURT: Sustained.

24 BY MR. BERNSTEIN:

25 Q. Did you find any reason to validate these

1 documents forensically?

2 A. I think I answered that by saying that we
3 filed a lawsuit.

4 Q. No, I'm asking you to have a
5 forensic -- you're the trustee. And as a beneficiary --
6 to protect the beneficiaries, do you think you should
7 validate these documents with a handwriting expert due
8 to the fact that we have multiple instances of fraud by
9 your counsel who were acting on your behalf?

10 MR. ROSE: Objection. Cumulative and
11 argument.

12 THE COURT: The question is, does he think
13 something. I've already told you when you ask a
14 question do you think, I stop listening. It's not
15 relevant what the witness thinks.

16 So I'll sustain the objection.

17 BY MR. BERNSTEIN:

18 Q. As a trustee, would you find it to be your
19 fiduciary duty upon learning of document forgeries and
20 frauds by your counsel to have the dispositive documents
21 you're operating under validated by a professional
22 handwriting expert, forensic expert, et cetera?

23 MR. ROSE: Objection. Cumulative.

24 THE COURT: Sustained.

25

1 BY MR. BERNSTEIN:

2 Q. Do you think these documents should be
3 validated -- you're the trustee.

4 Do you think these documents should be
5 validated by a professional firm forensically?

6 MR. ROSE: Objection. Cumulative.

7 THE COURT: It's not relevant. You just asked
8 him if he thinks he should have had them validated.

9 I don't care what he thinks. In making my
10 decisions today, what he thinks he should have done
11 or not done isn't relevant. I'm looking for facts.

12 So I really wish you would address your questions
13 to facts.

14 BY MR. BERNSTEIN:

15 Q. So, to the best of your knowledge, have these
16 documents been forensically analyzed by any expert?

17 MR. ROSE: Objection. Cumulative.

18 THE COURT: No, they are not. I already know
19 that. I wrote it down. He's already said they've
20 not been.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Ted, when your father signed, allegedly, his
24 2012 documents in July, were you aware of any medical
25 problems with your father?

1 A. I don't think so.

2 Q. Were you aware that I took him for a biopsy of
3 his brain?

4 A. I'm not aware of that, no.

5 Q. Were you aware of the headaches he was
6 suffering that caused him to go for a biopsy of his
7 brain?

8 A. I don't believe he had a biopsy of his brain.
9 But if he did, then I'm not aware of it.

10 Q. Oh, okay. Were you aware of headaches your
11 father was suffering?

12 A. I recall he was having some headaches.

13 Q. Were you aware that he was seeing a
14 psychiatrist?

15 A. Yes.

16 Q. Were you aware of the reasons he was seeing a
17 psychiatrist?

18 A. Absolutely not.

19 Q. Were you ever in the psychiatrist's office
20 with him?

21 A. Yes.

22 Q. For what reason?

23 A. I wanted to have a conversation with him.

24 Q. About?

25 A. About some personal issues that I wanted to

1 discuss with him.

2 Q. Personal issues such as?

3 MR. ROSE: Can I get clarification? Are you
4 talking about you wanted to -- he may have a
5 privilege.

6 You were discussing Simon's issues or your own
7 personal issues?

8 THE WITNESS: They were both intertwined
9 together.

10 MR. ROSE: I think it's subject to a
11 privilege.

12 THE COURT: All right. Well, you've been
13 warned by your attorney you've got a
14 psychologist-client privilege, so use it as you
15 will.

16 MR. BERNSTEIN: He's not a client of the
17 psychiatrist, I don't think.

18 THE COURT: I beg to differ with you.

19 MR. BERNSTEIN: Oh, he is?

20 THE COURT: Because the answer just clarified
21 that he was in part seeking to be a client. Did
22 you listen to his clarification of his answer?

23 MR. BERNSTEIN: No.

24 THE COURT: Well, I did very closely.

25 MR. BERNSTEIN: What was it?

1 THE COURT: Next question, please.

2 MR. BERNSTEIN: Okay. I'll just see it on the
3 transcript.

4 BY MR. BERNSTEIN:

5 Q. Were you aware of any medical conditions,
6 depression, anything like that your father was
7 experiencing prior to his death?

8 A. I never found our father to suffer from any
9 kind of depression or anything like that during his
10 lifetime.

11 Q. So after your mother died, he wasn't
12 depressed?

13 A. No.

14 MR. ROSE: Could I again ask Mr. Bernstein to
15 step to the podium and not be so close to my
16 client?

17 THE COURT: If you speak into the microphone,
18 it'll be even more easy to hear your questions.

19 Thank you.

20 BY MR. BERNSTEIN:

21 Q. So, according to you, your father's state of
22 mind was perfectly fine after his wife died of -- a
23 number of years --

24 A. I didn't say that.

25 Q. Okay. He wasn't depressed?

1 A. That's what I said.

2 Q. Were you aware of any medications he was on?

3 A. I was, yes.

4 Q. Such as?

5 A. From time to time, he would take something for
6 your heart when you would have angina pains. But that
7 he was doing for 30 years, for a good 30 years, that I
8 knew dad was taking, whatever that medicine is when you
9 have some chest pain.

10 Q. Did you have any problems with your father
11 prior to his death?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: The question is, did you have any
14 problems with your dad before he died?

15 I'll sustain the objection.

16 BY MR. BERNSTEIN:

17 Q. Are you aware of any problems between you and
18 your father that were causing him stress?

19 MR. ROSE: Objection. Relevance.

20 THE COURT: Sustained.

21 BY MR. BERNSTEIN:

22 Q. Were you aware that your father was changing
23 his documents allegedly due to stress caused by certain
24 of his children?

25 A. No.

1 Q. Were you on a May 10th phone call?

2 A. Yes.

3 Q. In that phone call, did your father --

4 MR. ROSE: Objection. It's beyond the
5 scope -- well --

6 MR. BERNSTEIN: It has to do with the changes
7 of the documents and the state of mind.

8 THE COURT: Do you have a question you want to
9 ask? He's withdrawn whatever he was saying, so you
10 can finish your question.

11 BY MR. BERNSTEIN:

12 Q. Okay. So on May 10th, at that meeting, your
13 father stated that he was having trouble with certain of
14 his children, and this would solve those problems.

15 Are you aware of that?

16 A. No, I don't -- not from the way you're
17 characterizing that phone call.

18 Q. Well, how do you characterize that?

19 A. He wanted to have a conversation with his five
20 children about some changes he was making to his
21 documents.

22 Q. And you had never talked to him about the
23 changes, that your family was disinherited?

24 A. No.

25 Q. Prior to that call?

1 A. No.

2 Q. When did you learn that you were disinherited?

3 A. I think when I first saw documents with --
4 maybe after dad -- once dad passed away.

5 Q. Were you aware of the contact with your sister
6 Pam regarding her anger at your father for cutting both
7 of you out of the will?

8 A. I'm aware of that.

9 Q. So that was before your father passed?

10 A. Excuse me. Can you ask -- say the end of that
11 sentence again.

12 MR. BERNSTEIN: Can you read that back?

13 (A portion of the record was read by the
14 reporter.)

15 THE WITNESS: I'm sorry. You asked me a
16 question, and I had answered too quickly. What was
17 the end of the question prior to that?

18 (A portion of the record was read by the
19 reporter.)

20 THE WITNESS: I'm aware that she was angry
21 with him about how -- that he -- she was not in his
22 documents.

23 BY MR. BERNSTEIN:

24 Q. You didn't learn right there that you weren't
25 in the documents?

1 A. I can't remember if it was then or if it was
2 when dad died.

3 Q. Well, this is very important so can you think
4 back to that time.

5 While your father was alive, did I invite you
6 to a Passover holiday at my home?

7 MR. ROSE: Objection. Relevance.

8 THE WITNESS: I don't recall.

9 MR. BERNSTEIN: Okay.

10 THE COURT: What's the relevance?

11 MR. BERNSTEIN: Well, it's relevance to the
12 state of mind my dad was in while --

13 THE COURT: Well, you're asking did this guy
14 get invited to your home. You didn't ask about
15 your dad, so I'll sustain the objection.

16 BY MR. BERNSTEIN:

17 Q. Okay. Did you get invited to a Passover
18 dinner at my home that your father was attending?

19 A. I don't recall the circumstances of
20 what -- whatever it is you're referring to.

21 Q. Do you recall saying you wouldn't come to the
22 Passover dinner?

23 MR. ROSE: Objection. Relevance.

24 THE COURT: Sustained.

1 BY MR. BERNSTEIN:

2 Q. Do you recall writing me a email that stated
3 that your family was dead for all intensive [sic]
4 purposes?

5 MR. ROSE: Objection. Relevance.

6 THE COURT: What's the relevance to the
7 validity of these documents?

8 MR. BERNSTEIN: If Si was in the right state
9 of mind or if he was being, you know, forced at a
10 gun to make these changes by children who had --

11 THE COURT: Your question asked this witness
12 if he wrote you a letter that said his family was
13 dead for all intents and purposes. What's that got
14 to do with the validity of these documents?

15 MR. BERNSTEIN: Well, it establishes Simon's
16 state of mind.

17 THE COURT: Okay. I'll sustain the objection.

18 MR. BERNSTEIN: Okay. All right. Well, then,
19 I'm all done then.

20 THE COURT: All right.

21 Is there any cross?

22 MR. ROSE: I already crossed.

23 THE COURT: Oh, that's true. So you're all
24 set. You're done. Thank you.

25 Next witness, please.

1 MR. BERNSTEIN: Alan Rose.

2 MR. ROSE: I object. Improper.

3 THE COURT: You've got 11 minutes yet.

4 MR. BERNSTEIN: Well, he's a witness to the
5 chain of custody in these documents.

6 THE COURT: Well, you can call anybody you
7 want. I just wanted you to know how much time you
8 had left.

9 MR. BERNSTEIN: Oh, okay.

10 MR. ROSE: He wants to call me, and I object
11 to being called as a witness.

12 THE COURT: Okay.

13 MR. ROSE: I don't think that's proper.

14 THE COURT: I don't think that's proper to
15 call an attorney from the other side as your
16 witness. So I accept the objection. Anybody else?

17 MR. BERNSTEIN: Your Honor, I would agree with
18 that normally --

19 THE COURT: Well, thanks.

20 MR. BERNSTEIN: -- but there's a small
21 problem. The chain of custody we're trying to
22 follow in these documents for other reasons, other
23 criminal reasons, is Mr. Rose has pertinent
24 information to; meaning, he claims to have
25 discovered some of these documents and taken them

1 off the property.

2 THE COURT: I thought you said you wanted a
3 chain of custody?

4 MR. BERNSTEIN: Right. Meaning --

5 THE COURT: Well, the chain of custody to me
6 means the chain of custody after the time they were
7 executed.

8 MR. BERNSTEIN: Right.

9 THE COURT: All right. He wasn't around when
10 they were executed.

11 MR. BERNSTEIN: No, but he found documents
12 that are being inserted into this court case as
13 originals, second originals that he found
14 personally, and wrote a letter stating, I just
15 happened to find these documents in Simon's home --

16 THE COURT: Well, I'm going to sustain the
17 objection to you calling him as a surprise witness.
18 He's a representative of your own. Do you have any
19 other witnesses?

20 MR. BERNSTEIN: No. I'm good.

21 THE COURT: Okay. So you rest?

22 MR. BERNSTEIN: I rest.

23 THE COURT: Okay. Is there any rebuttal
24 evidence from the plaintiff's side?

25 MR. ROSE: No, sir.

1 THE COURT: Okay. So the evidence is closed.
2 We'll have time for brief closing arguments. And
3 I'll take those now. Let me hear first from the
4 plaintiff's side.

5 MR. ROSE: I'm sorry. Did you say it was time
6 for me to speak?

7 THE COURT: Yes. I'm taking closing arguments
8 now.

9 MR. ROSE: Okay. Thank you. May it please
10 the Court.

11 We're here on a very narrow issue. And
12 we -- you know, I apologize to the extent I put on
13 a little bit of background. We've had an extensive
14 litigation before Judge Colin. This is our first
15 time here. And if any of my background bored you,
16 I apologize.

17 There are five documents that are at issue,
18 which we talked about before we started; the 2008
19 will and trust of Shirley Bernstein, as well as the
20 amendment that she signed, and then the 2012 will
21 and trust of Simon Bernstein.

22 So the uncontroverted evidence that you've
23 heard was from Robert Spallina, who is an attesting
24 witness to the documents and he was a draftsman of
25 the documents.

1 I don't believe it's directly relevant to your
2 inquiry, but you certainly heard evidence that what
3 Simon Bernstein intended and what he communicated
4 were his wishes; the exercise of a power of
5 appointment through a will, the changing of the
6 beneficiaries of his trust document by way of an
7 amended and restated 2012 document, to give his
8 money -- leave his wealth to his ten grandchildren.
9 The final documents as drafted and signed are
10 consistent with what.

11 But what we're here to decide is, are these
12 documents valid and enforceable? And there are
13 self-proving affidavits attached to the documents.
14 And by themselves, if you find the self-proving
15 affidavits to be valid, then the wills themselves
16 are valid and enforceable.

17 Now, the only question that's been raised as
18 to the self-proving affidavit is an issue with
19 notarization. And we have two cases to cite to the
20 Court on the notarization issue. One is from the
21 Florida Supreme Court called The House of Lyons,
22 and one is from a sister court in the State of
23 North Carolina.

24 THE COURT: Just a second.

25 Sir, would you just have a seat. You're

1 making me nervous.

2 MR. BERNSTEIN: Sure.

3 THE COURT: Thanks.

4 MR. BERNSTEIN: Just aching.

5 THE COURT: Well, I understand. But just have
6 a seat. That'll be better. Thanks.

7 And I'm sorry for the interruption.

8 MR. ROSE: No, that's all right.

9 If I may I approach with the two cases we
10 would rely on.

11 THE COURT: All right.

12 MR. ROSE: The House of Lyons. The second is
13 a case from Georgia. The House of Lyons case is
14 from the Florida Supreme Court. It deals in a
15 slightly different context, but it deals with
16 notarization. And so what you have here is, we've
17 put on evidence. The documents that are in
18 evidence, that these documents were signed
19 properly. The witnesses were in the presence of
20 each other, and the testator and the notary
21 notarized them.

22 Shirley's documents from 2008, there's no
23 question that all the boxes were checked. There is
24 a question that's been raised with regard to
25 Simon's 2012 will and his 2012 trust; that the

1 notary -- rather than the law firm employee
2 notarizing them, these were notarized by Simon's --
3 the testimony is by an employee of Simon's company,
4 not a legal expert. And if on the face of the two
5 documents -- and for the record, these would be
6 Exhibits 4, which is Simon's will, and Exhibit 5,
7 which is Simon's trust.

8 On Exhibit 4, there's no box to check. The
9 whole information is written out. And I don't
10 believe there's any requirement that someone
11 circled the word -- if you just read it as an
12 English sentence, the notary confirmed that it was
13 sworn to and ascribed before me the witness is
14 Robert L. Spallina, who is personally known to me
15 or who has produced no identification.

16 So I think the natural inference from that
17 sentence is that person was known to him, Kimberly
18 Moran, who was personally known to me, and Simon
19 Bernstein, who was personally known to me. So on
20 its face, I think it -- the only inference you
21 could draw from this is that the person knew them.

22 Now, we've established from testimony that she
23 in fact knew the three of them, and we've
24 established by way of Exhibit 16, which was signed
25 on the same day and notarized by the same person.

1 And Exhibit 16, unlike Exhibit 4, which doesn't
2 have a little check mark, Exhibit 16 has a check
3 mark, and the notary properly checks personally
4 known to the people that she was notarizing.

5 So I believe -- and the In Re Lyon case stands
6 for substantial compliance with a notary is
7 sufficient. And the North Carolina case is
8 actually more directly on point. The Florida
9 Supreme Court case, Lyons -- and we've highlighted
10 it for the Court, but it says, clerical errors will
11 not be permitted to defeat acknowledges --
12 acknowledgments when they, considered either alone
13 or in connection with the instrument acknowledged
14 and viewed in light of the statute controlling
15 them, fairly show a substantial compliance with the
16 statute.

17 The North Carolina case is a will case, In Re
18 Will of Durham. And there it's exactly our case.
19 The notary affidavit was silent as to whether the
20 person was personally known or not. And the Court
21 held the caveat was self-proving. The fact that
22 the notary's affidavit is silent as to whether
23 decedent was personally known to the notary or
24 produced satisfactory evidence of his identity does
25 not show a lack of compliance with the notary

1 statute, given the issues of personal knowledge or
2 satisfactory evidence are simply not addressed in
3 that affidavit.

4 So we have a Florida case and we have the
5 North Carolina case, which I think is -- it's
6 obviously not binding, but it is sort of
7 persuasive. If they're self-proved, we would win
8 without any further inquiry. The reason we had a
9 trial and the reason we had to file a complaint was
10 everything in this case -- you've slogged through
11 the mud with us for a day, but we've been slogging
12 through the mud for -- basically, I got directly
13 involved in January of 2014, after the Tescher
14 Spallina firm -- after the issues with the firm
15 came to light. So we've been slogging through
16 this.

17 But we did file a complaint. We went the next
18 step. So the next step says to you, assume the
19 notaries are invalid, which they aren't invalid;
20 but if they were, all we need to establish these
21 documents is the testimony of any attesting
22 witness. So we put on the testimony of an
23 attesting witness, Mr. Spallina. He testified to
24 the preparation of the documents. And I do think
25 it's relevant and it will give the Court comfort in

1 making findings of fact that there was an extensive
2 set of meetings between Mr. Spallina and his
3 clients when they did the documents.

4 I mean, we documented for the first set of
5 documents, you know, four meetings, a letter with
6 some drafts, then a meeting to sign the documents,
7 some phone calls and some amending the documents.
8 And in 2012, we've documented at least one meeting
9 with notes involving Simon; telephone conferences
10 between Simon and his client; eventually, when a
11 decision was made, a conference call of all the
12 children; drafts of the documents sent; the
13 document being executed.

14 And so I think if you look at the evidence,
15 the totality of the evidence, there's nothing to
16 suggest that these five documents do not reflect
17 the true intent of Simon and Shirley Bernstein.
18 There's nothing to suggest that they weren't
19 prepared by the law firm; that they weren't signed
20 by the people that purport to sign them; that
21 undisputed testimony from an attesting witness was
22 that all three people were present, and it was
23 signed by the testator and the two witnesses in the
24 presence of each other.

25 So under either scenario, you get the document

1 admitted. In fact, the documents are in evidence.
2 They've been admitted to probate. But the
3 testimony under 732.502, 503, the testimony of the
4 drafting attorney, who attested -- who was an
5 attesting witness, is sufficient for these
6 documents.

7 There's absolutely no evidence put on the
8 Court that Simon Bernstein lacked mental capacity.
9 In fact, the evidence is directly to the contrary.
10 Every witness testified that he was mentally sharp;
11 making intelligent decisions; having a conference
12 call with his children to explain his wishes. And
13 there's simply no evidence in the record to
14 determine that he lacked testamentary capacity.

15 So if I have Mr. Bernstein, Simon Bernstein,
16 with testamentary capacity signing documents in the
17 presence of two subscribing witnesses, the 2012
18 documents should be upheld. I don't know if
19 there's a question at all even about Shirley
20 Bernstein's 2008 document, but the testimony is
21 undisputed that the documents were consistent with
22 her wishes. You saw a draft letter that explained
23 to her exactly what was happening. She signed the
24 documents. The self-proving affidavits for the
25 Shirley documents are all checked perfectly. And

1 even if they weren't, we have an attesting witness
2 here.

3 And, frankly, I think Eliot Bernstein likes
4 these documents. And all he wants to do is argue
5 what they mean and how much money you get from
6 them. And we didn't really need to spend a day
7 arguing this, but we have and we're here. And we
8 believe that the evidence conclusively demonstrates
9 that these documents are valid.

10 Now, you've heard some nonsense and some
11 shenanigans. There were a couple of problems in
12 the case; one with the notarization of documents.
13 And it's sort of a sad and tortured story, but
14 it's -- it was clearly wrong for someone to send
15 documents into Judge Colin's courtroom that had
16 been altered. The correct documents were submitted
17 and the estate should have been closed.

18 And when the documents were returned, someone
19 should have gone and filed a motion with Judge
20 Colin to accept the un-notarized documents, since
21 there was no dispute they were signed. And we
22 wouldn't be here. But for whatever reason, that
23 happened. And it's unfortunate that happened, but
24 there's no evidence that Ted Bernstein, either of
25 his sisters, or Eliot Bernstein, or any of the

1 grandchildren played any role in the fabrication of
2 that document -- the false notarization.

3 The fabricated amendment to Shirley's trust
4 document is a very disturbing fact, and we took
5 immediate action to correct it. No one's purported
6 to validate that document. We filed an action to
7 have the Court construe the documents, tell us
8 which are valid, tell us what they mean. And
9 that's where we should be focusing our time on.
10 And this is, in my view, step one toward that.

11 But if you look at the evidence we've
12 presented, if you -- I understand you've got to
13 deal with the witnesses that you're handed. And I
14 think Mr. Spallina's testimony, notwithstanding the
15 two issues that we addressed, was persuasive, it
16 was unrebutted.

17 And we would ask that you uphold the five
18 documents and determine, as we have pled, that the
19 five testamentary documents that are in evidence, I
20 believe, as 1, 2, 3, 4, and 5 be upheld and
21 determined to be the valid and final testamentary
22 documents of Simon and Shirley Bernstein. To the
23 extent there's any question the document that has
24 been admitted to be not genuine be determined to be
25 an inoperative and ungenuine document, we would ask

1 that you enter judgment for us on Count II and
2 reserve jurisdiction to deal with the rest of the
3 issues as swiftly as we can.

4 THE COURT: All right. Thank you.

5 Any closing argument from the other side?

6 Okay.

7 I keep forgetting that you've got a right to
8 be heard, so please forgive me.

9 MR. MORRISSEY: Judge, if I may approach, I
10 have some case law and statutes that I may refer
11 to. And I'll try to be brief and not cumulative.

12 MR. BERNSTEIN: Could I get the other case law
13 that was submitted? Do you have a copy of that?

14 MR. ROSE: Sure.

15 MR. MORRISSEY: Judge, the relevant statute
16 with respect to the execution of wills is 732.502.
17 It says that every will must be in writing and
18 executed as follows. And I'll just recite from the
19 relevant parts, that is to say relevant with
20 respect to our case.

21 The testator must sign at the end of the will
22 and it must be in the presence of at least two
23 attesting witnesses. And if we drop down to
24 Subsection C, the attesting witnesses must sign the
25 will in the presence of the testator and in the

1 presence of each other.

2 Judge, that was established and uncontroverted
3 in connection with Mr. Spallina's testimony. So
4 732.502 was complied with.

5 Now, I think that we -- there was kind of a
6 distraction with respect to the self-proving
7 affidavits at the end. As Your Honor's aware, a
8 self-proving affidavit is of no consequence in
9 connection with the execution of a will. Execution
10 of a will as dealt with in 732.502 merely requires
11 execution at the end by the testator or the
12 testatrix, and then two witnesses who go ahead and
13 attest as to the testator's signature.

14 Now, the self-proving affidavit at the end is
15 in addition to. So the fact that there may or may
16 not have been a proper notarization is of no
17 consequence in connection with a determination of
18 the validity of any of these documents. So that's
19 number one.

20 Number two, I've also provided Your Honor with
21 another -- a statutory section, 733.107, and it's
22 titled "The Burden of Proof in Contest." And it
23 says there, in Subsection 1, "In all proceedings
24 contesting the validity of a will, the burden shall
25 be upon the proponent of the will to establish,

1 prima facie, its formal execution and attestation."

2 I would submit to the Court that that was done
3 today. We had Mr. Spallina's testimony, which was
4 uncontroverted, that indicated that 732.502 was
5 complied with. The statute goes on to state, "A
6 self-proving affidavit executed in accordance with
7 733.502 or an oath of an attesting witness executed
8 as required under the statutes is admissible and
9 establishes, prima facie, the formal execution and
10 attestation of the will."

11 So, once again, I would submit to the Court
12 that there were self-proving affidavits with
13 respect to all of these testamentary documents.
14 They were proper in form, and therefore comply or
15 comport with the second sentence of the statute.
16 But even if not, we had Mr. Spallina testify today
17 so as to comply with this second sentence of
18 Subsection 1.

19 So if we drop down to the third sentence of
20 this Subsection 1, it says that, "Thereafter, the
21 contestant shall have the burden of establishing
22 the grounds on which probate of the will is opposed
23 or revocation is sought."

24 That was not done today by Mr. Eliot
25 Bernstein. He did not present any evidence or meet

1 any burden to overturn these valid wills.

2 Judge, there is the competency argument. The
3 testamentary competency, I'm now going to quote
4 from *In Re Wilmott's Estate*, 66 So.2d 465. "A
5 testamentary competency means the ability to
6 understand generally the nature and extent of one's
7 property, the relationship of those who would be
8 the natural objects of the testator's bounty, and
9 the practical effect of the will."

10 The only testimony, I elicited that from
11 Mr. Spallina. His is the only testimony that we
12 have in this regard. And it's uncontested that
13 both of these decedents met those very specific
14 criteria which -- with respect to each and every
15 one of the five documents that are submitted for
16 your Court's validation today.

17 There's also case law, *In Re Estate of Weihe*,
18 W-E-I-H-E. That's 268 So.2d 446. That's a Fourth
19 DCA case that says, "Competency is generally
20 presumed and the burden of proving incompetency is
21 on the contestant." So even if we didn't have
22 Mr. Spallina's testimony today, which I elicited,
23 competency on the part of both Shirley and Si
24 Bernstein would be presumed. And it would be the
25 contestant, Mr. Eliot Bernstein, who would have to

1 come up with the -- or would have the burden of
2 showing that they were incompetent. He presented
3 no evidence today in that regard or in that
4 respect.

5 Lastly, there's the In Re Carnegie's estate,
6 153 Florida 7. It's a 1943 case. That says that
7 testamentary capacity refers to competency at the
8 time that the will was executed, so on that date.

9 The only testimony we have with respect to any
10 issues of competency on the date -- on the specific
11 dates that these testamentary documents were signed
12 was from Mr. Spallina. And on all such dates and
13 times, Mr. Spallina testified that these requisites
14 with respect to competency -- or testamentary
15 competency were met.

16 Finally, Judge, undue influence, that would be
17 a reason for invalidating a will. Mr. Bernstein,
18 once again, did not present any evidence to go
19 ahead and suggest that these wills or trusts
20 documents should be overturned on the grounds of
21 undue influence. And in that regard, I provided
22 Your Honor with the Estate of Carpenter, 253 So.2d
23 697. To prove undue influence, one must
24 demonstrate that a beneficiary had a confidential
25 relationship with the decedent and actively

1 procured the will or trust.

2 Mr. Eliot Bernstein did not even suggest today
3 that any of the beneficiaries actively procured the
4 document. Why? Beneficiaries are essentially --
5 are ultimately the ten grandchildren.

6 Mr. Bernstein, Eliot Bernstein, did not suggest
7 today that any one of the ten grandchildren, who
8 are ultimately beneficiaries, were active in
9 procuring any of the five documents, nor did
10 Mr. Bernstein submit to the Court any evidence of
11 confidential relationship by anyone in connection
12 with the various criteria to raise the presumption
13 of undue influence, nor did Eliot Bernstein raise
14 the presumption by satisfying any or enough of the
15 criteria under the Carpenter case to go ahead and
16 raise the presumption that anyone, any substantial
17 beneficiary, had committed undue influence with
18 respect to any of these documents.

19 For those various, multifarious reasons,
20 Judge, I would submit to the Court that these
21 documents are valid and should be held as such.

22 THE COURT: All right. Thank you.

23 Any closing from the defendant's side?

24 MR. BERNSTEIN: Oh, yeah.

25 THE COURT: You've got eight minutes

1 remaining.

2 MR. BERNSTEIN: Okay. Your Honor, we're
3 really here today because of a complex fraud on the
4 court and on beneficiaries like myself and my
5 children. The only witness they procured to
6 validate these documents has consented to the SEC
7 and felony charges recently with his partner for
8 insider trading. He came up on the stand and
9 admitted that he committed fraud, and that his law
10 firm forged documents and frauded documents, and
11 then submitted them not only to the court, but
12 beneficiaries' attorneys as part of a very complex
13 fraud to not only change beneficiaries, but to
14 seize dominion and control of the estates through
15 these very contestable documents.

16 They've been shown by the governor's office to
17 not be properly notarized. The two people who are
18 going -- well, one is --

19 MR. ROSE: I don't want to object to --

20 MR. BERNSTEIN: -- has no --

21 MR. ROSE: Can I object? He's so far talking
22 about things that aren't in evidence.

23 THE COURT: Sustained.

24 You can only argue those things that were
25 received in evidence.

1 MR. ROSE: And I realize Your Honor has a good
2 memory of the evidence --

3 MR. BERNSTEIN: I put in evidence that
4 Mr. Spallina was SEC --

5 THE COURT: No, I sustained objections to
6 those questions.

7 MR. BERNSTEIN: Oh, okay.

8 THE COURT: You can only argue those things
9 that came into evidence.

10 MR. BERNSTEIN: Okay. They didn't bring in
11 any of the necessary parties to validate these
12 documents, other than Mr. Spallina, who admitted to
13 the Court today that he fraudulently altered the
14 trust document. Can I now say that?

15 THE COURT: It's not good for you to ask me
16 questions. I've got to rule on objections, and I'm
17 trying to give you some guidance so that you don't
18 screw up. But I can't answer your legal questions.

19 MR. BERNSTEIN: Okay. So the only witness has
20 admitted in this very case that his law firm
21 submitted forged and fraudulent documents to the
22 Court already in this case; that he himself did
23 those frauds. And we're relying on his sole
24 testimony.

25 None of the other people who signed these

1 documents are here today to validate or even
2 confirm his statements. So it's a highly
3 uncredible [sic] witness to the documents,
4 especially when Mr. Spallina drafted, signed as a
5 witness, gained interest in the documents himself
6 personally as a trustee, and seems to clearly have
7 then taken it upon himself to mislead beneficiaries
8 as to the actual documents.

9 I have asked for production of these
10 documents. Today there were no originals produced
11 to this Court for you to examine.

12 And more importantly, there's a few last
13 things I wanted to state to the Court. My children
14 are not represented here today as beneficiaries.
15 They were supposed to be represented by a trustee
16 of a trust that does not exist in our possession.
17 So they were -- I was sued as a trustee of a trust
18 I've never been given to represent my children, who
19 are alleged beneficiaries by these guys. And the
20 estate's done nothing to provide counsel to three
21 minor children, and left them here today without
22 counsel, and me as a trustee of a trust that
23 doesn't exist, as far as we know. I've never
24 signed it. They haven't submitted it to the Court,
25 to anybody.

1 I want to bring up Rule 1.20, pretrial
2 procedure, case management conference process
3 provides, "The matter to be considered shall be
4 specified in the order of notice setting the
5 conference."

6 So I just want to say that we had a status
7 conference in Simon Bernstein's estate, and only
8 Simon Bernstein's estate, and that this trial was
9 scheduled in Simon's status conference, which
10 violates that very rule. So this trial, in my
11 view, was conducted improperly.

12 Like I said, if you look at the hearing
13 transcript of that day, you'll see that Mr. Rose
14 misleads the Court to think that all these cases
15 were noticed up that day. But Mr. O'Connell, the
16 PR, had only noticed it up for Simon's estate. So
17 what I'm doing here at a trial in Shirley's trust
18 violates Rule 1.20.

19 There are some other things that are violated
20 and not -- I believe we didn't get to discuss
21 the -- at the case management, the fact that, you
22 know -- and I did try to get this out -- that we
23 would need a lot more time for a competency
24 hearing, for a removal of Ted process, which should
25 have come first before doing this and letting them

1 argue, where it's been alleged that there's some
2 serious problems with Ted Bernstein's
3 representation, including the fact that the PR of
4 the estate of Simon has filed with this Court
5 notice that he's not a valid trustee.

6 MR. ROSE: Objection. Outside -- not in
7 evidence.

8 THE COURT: Okay. If you're not going to
9 argue the facts that are in evidence in this trial,
10 then I'm going to ask you to stop.

11 MR. BERNSTEIN: Okay. Well, I'll keep going
12 on my -- see, that's what's confusing. What trial?
13 We had a case management. I was prepared for a
14 Simon, where I have Simon trust construction, all
15 those things ready, and I didn't come with any
16 notes about Shirley. And I've tried to notice the
17 Court that under 1.200, this trial was scheduled
18 improperly in the estate of Simon, and should have
19 been reheard or rescheduled or something.

20 But that seems not to matter. It doesn't
21 matter that we follow the rules. I follow the
22 rules, but it seems that the other side doesn't
23 follow any of the rules; doesn't submit documents
24 properly to courts; commits frauds on courts; and
25 then wants you to believe the validity of these

1 documents based on a felony statement to the Court,
2 who's under a consent with the SEC.

3 THE COURT: You've got two minutes remaining.

4 MR. BERNSTEIN: There were outstanding
5 discovery requests. I was denied all these
6 documents. I was denied the trust that I'm sued
7 under representing my children. So I can't get any
8 of those documents. We would have brought all that
9 up at a real status conference had it been a real
10 status conference and not a corralling or, as you
11 called it, a wrangling of octopuses.

12 THE COURT: That's vivid imagery. Isn't it?
13 I pride myself on that one.

14 MR. BERNSTEIN: Oh, yeah. Well, I was
15 wrangled, technically, into the wrong case here
16 today, in a status conference that you should have
17 corrected upon learning about this. And Mr. Rose
18 has been aware of his mistake in misleading the
19 Court that all these cases were noticed up, when
20 they weren't. And he didn't come to the Court to
21 correct it. Kind of like they didn't come to the
22 Court to correct the validity of these documents
23 before acting under them, knowing they needed to be
24 not only challenged on validity, but on
25 construction of terms, which will come next, which

1 is going to just go right back into the same circle
2 of fraud.

3 So their star witness is a felon. Their star
4 witness has committed fraud upon this Court in this
5 case. That's who they're relying on, and hoping
6 you bank on his words to validate documents.

7 I, Your Honor, am asking that you don't
8 validate the documents; that we move forward to
9 have the documents properly forensically analyzed.
10 They were the subject of ongoing criminal
11 investigations, which are just getting kicked off.
12 In fact, I got 7200 documents from Mr. Spallina,
13 where almost, I think, 7200 are fraud.

14 THE COURT: Your time is more than elapsed. I
15 was letting you finish up as a courtesy, but you're
16 getting off into things that aren't in evidence --

17 MR. BERNSTEIN: Okay. Well, I don't think the
18 trial was conducted fairly. I think that my due
19 process rights have been denied under the law.

20 THE COURT: Your time is more than up. Thank
21 you.

22 MR. BERNSTEIN: Okay.

23 THE COURT: Is there any rebuttal?

24 MR. BERNSTEIN: And I still would like to move
25 for your disqualification, on the record.

1 THE COURT: On the record doesn't count.

2 You've got to put it in writing.

3 MR. BERNSTEIN: Are you sure? I thought I saw
4 in the rules --

5 THE COURT: I'll tell you what. You proceed
6 under your understanding of the law and the rules.
7 That's fine.

8 MR. BERNSTEIN: Okay.

9 THE COURT: Before I take this --

10 MR. BERNSTEIN: I rest.

11 THE COURT: -- before I take this rebuttal
12 argument, I'll let you put your request for recusal
13 in writing. We'll be out of session five minutes.

14 Is that something you want me to read?

15 MR. ROSE: I just want to make my final --

16 THE COURT: I just want to make sure that
17 there's been no possibility that this gentleman
18 won't have his moment to shine.

19 So go ahead and go put that in writing, sir.

20 Be back in five minutes.

21 (A break was taken.)

22 THE COURT: Did you get that written down?

23 MR. BERNSTEIN: Can I approach?

24 THE COURT: Sure. All approaches are okay.

25 MR. BERNSTEIN: Do you want to wait for

1 everybody?

2 THE COURT: Do you have something that you
3 wanted to file, a written motion to recuse?

4 MR. BERNSTEIN: Yeah. In freestyle.

5 THE COURT: All right. I'll take a look at
6 it. Thank you.

7 MR. BERNSTEIN: Can I ask a question?

8 THE COURT: I'll be in recess. I'll take a
9 look at this written motion. Thank you. It'll
10 take me just a minute. Don't anybody go away.

11 (A break was taken.)

12 THE COURT: The stack of documents handed up
13 to me by the defendant are duplicates of documents
14 that he filed, it looks like, twice with the clerk
15 on December 4th, and they've already been ruled
16 upon by me. But I am also ruling today by
17 handwritten order on the face of one of the
18 documents that the disqualification motion is
19 denied as legally insufficient; already ruled upon
20 in the order of 12/8/15, at Docket Entry No. 98;
21 identical to motions filed by defendant on
22 12/4/2015 at Docket Entries Nos. 94 and 98; done in
23 order of John Phillips, 12/15/15. And since I have
24 skills, I made copies of my handwritten order for
25 everybody.

1 Gary, if you could, just hand these out.

2 That'll take care of all that.

3 Now we can go back to talking about the case.

4 I was going to take the rebuttal argument from
5 Plaintiff's side. I'd take that now.

6 MR. ROSE: I have just the exhibits that we
7 put in evidence on the plaintiff's side, if that's
8 easier for the Court.

9 THE COURT: That would be much easier. Thank
10 you.

11 MR. ROSE: And I have a proposed final
12 judgment. And I wanted to talk about one paragraph
13 of the final judgment in particular.

14 MR. BERNSTEIN: I haven't had time to review
15 any final judgment or anything.

16 THE COURT: You're interrupting the argument.
17 Thank you.

18 MR. ROSE: So the complaint alleges -- and I
19 realize we didn't cover every issue in the entire
20 case, but we do it within the four corners of Count
21 II of the complaint. Count II of the complaint was
22 stated in paragraph 79 through 88 of the complaint.

23 And the answer that's filed in this case on
24 Count II at paragraph 80 alleges that there's been
25 a fraud on the court by Ted Bernstein, including,

1 but not limited to, proven forgery, fraudulent
2 notarizations, fraud on the court, altercation
3 [sic] of trust documents, et cetera, et cetera.

4 And in paragraph 82, the answer says that Ted
5 should be removed for his ongoing involvement in
6 fraud which is dealing with these documents.

7 Ted Bernstein is serving as a fiduciary.

8 You've heard -- that was the defense to this case.
9 That's stated in the complaint. You heard no
10 evidence that Ted Bernstein was involved in the
11 preparation or creation of any fraudulent
12 documents. In fact, the evidence from Mr. Spallina
13 was to the contrary.

14 So our final judgment in paragraph 5 asks the
15 Court to make a ruling on the issues that are pled
16 in the answer, specifically that there was no
17 evidence that Ted was involved and that the
18 evidence was to the contrary.

19 So we have no rebuttal. We believe we've
20 established our case, and we proposed a final
21 judgment for Your Honor's consideration that
22 discusses that this is an action to adjudicate five
23 documents to be the testamentary documents. Based
24 on the evidence presented, they're genuine,
25 authentic, valid and enforceable; has the requisite

1 findings. Paragraph 5, which I've explained, the
2 reason we believe it's appropriate in the final
3 judgment, given the pleadings that were made and
4 the lack of evidence on those pleadings. And we
5 didn't get into it today, but --

6 THE COURT: Well, if we didn't get into it
7 today, then it's not proper for argument.

8 MR. ROSE: Well, it's alleged in the complaint
9 and not proven, so I think it's appropriate to make
10 a finding on it. You didn't actually hear
11 testimony that was relevant to those issues about
12 Ted Bernstein. And I would ask you to consider
13 that 5 is supported by the evidence and the
14 pleadings.

15 And 6, we would like you to declare the
16 unauthorized one invalid, because it does change
17 potentially something, and we want to know what
18 we're doing going forward. And I don't think
19 anyone disputes that Exhibit 6 that's in evidence
20 was not valid. And then it just states this is
21 intended to be a final order under the rules of
22 probate code.

23 So that's our order. We would ask you to
24 enter our judgment or a judgment similar to it;
25 find in favor of the plaintiff; reserve

1 jurisdiction for numerous other matters that we
2 need to deal with as quickly as we can. But,
3 hopefully, with the guidance we get today, we'll be
4 able to do it more quickly and more efficiently.
5 So thank you.

6 THE COURT: All right. Thanks.

7 We'll be in recess. It was fun spending time
8 with you all.

9 Sir, do you have any proposed final judgment
10 you want me to consider? I've received one from
11 the plaintiff's side. Is there some from the
12 defendant's side?

13 MR. BERNSTEIN: No. I haven't received one
14 from them. And seeing theirs --

15 THE COURT: Okay. Thank you.

16 Then we'll be in recess. Thank you all very
17 much. I'll get this order out as quickly as I can.

18 (At 4:48 p.m. the trial was concluded.)

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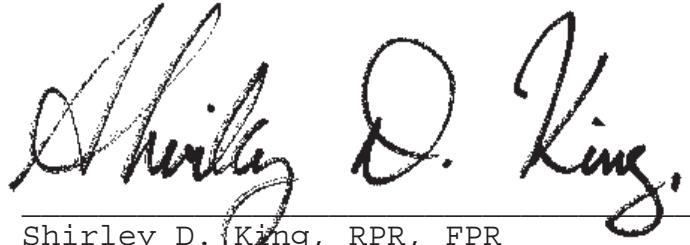
1 C E R T I F I C A T E
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COUNTY OF PALM BEACH

I, Shirley D. King, Registered Professional
Reporter, State of Florida at large, certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a true
and complete record of my stenographic notes.

Dated this 4th day of January, 2016.


Shirley D. King

15 Shirley D. King, RPR, FPR

17 Job #1358198-VOL 2
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22
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	167:15,16 173:10 175:9 177:22 178:5, 7,9,11,14 180:24 182:15 183:24 241:20	446 245:18 465 245:4 4th 256:15	
0		5	A
08 190:2		5 175:3 235:6 241:20	ability 174:21 193:7 245:5
1		503 239:3	absolutely 215:5 222:18 239:7
1 120:3 167:6 168:4 177:21 178:3,4,11 180:24 182:13 183:24 241:20 243:23 244:18, 20	20 176:7 2006 153:25 2007 142:14 2008 168:13 184:8 232:18 234:22 239:20	6	accept 181:9 230:16 240:20
1.20 251:1,18	2012 129:24 130:15 131:7 191:4 192:24, 25 194:3 214:25 221:24 232:20 233:7 234:25 238:8 239:17	6 177:9 178:16, 22,23 179:3,4 180:24 182:7, 8,9,10,20 183:4,9,10 184:22 186:22 187:3,6	access 215:21, 24,25
1.200 252:17	2013 140:9 196:7 200:21 207:3	60 179:23,25 180:3	accordance 244:6
10 130:15 180:15	2014 189:8 237:13	66 245:4	account 151:17
10th 226:1,12	24 176:12	697 246:23	accounted 152:15
11 230:3	253 246:22		accounting 150:4,20 190:11,15 191:9,11
11th 200:12,13	268 245:18		accurate 126:25
12 188:1	27 167:16		accurately 206:10
12/15/15 256:23	28 168:1 190:7, 20 197:12 198:13,14		aching 234:4
12/4/2015 256:22			acknowledged 236:13
12/8/15 256:20			acknowledges 236:11
12th 194:3			acknowledgments 236:12
13 175:17 200:21			acting 220:9 253:23
13th 194:3			action 241:5,6
14 207:3			actions 164:15, 18 209:3
14th 189:8			active 247:8
15 179:21 180:19			actively 246:25 247:3
153 246:6	3 168:4,5 175:9 180:24 182:4, 6,15,19 183:16 187:4 198:21, 23 241:20		activity 165:24
15th 191:12	3/12/08 187:12		actual 250:8
16 235:24 236:1,2	30 155:3 225:7		ad 195:24
18th 168:13			added 184:25
19 176:6			adding 185:11, 12,13
1943 246:6			addition 243:15
1994 143:8			additional 214:6
1995 155:3			address 221:12
			addressed 237:2
2			
2 133:24 134:2, 18 160:21,25 161:2,6,10 163:8,22	4 171:6 173:12 175:10 202:25 235:6,8 236:1 241:20		
	40 212:17		

241:15	228:5	apologize 232:12,16	asks 151:2
adequately 135:4	allege 184:5	Apparently 170:13	assets 132:21
administered 202:6	alleged 140:11, 15 158:12 195:16 250:19 252:1	appears 160:14 161:18 167:17, 18 171:11 172:20 175:7 176:14 200:1 202:6	144:25 219:1
admissibility 162:24 197:21	allegedly 168:12 207:5 221:23 225:23	appoint 194:4, 16,23,24 195:4,5	assignment 203:10
admissible 244:8	allowed 142:5 150:13 172:5 206:12	appointed 192:5 194:25 195:1,2	assistant 192:11
admit 197:13, 17,19	alter 140:19 163:25 185:14	appointment 139:5 161:16 163:25 189:1 233:5	association 214:3
admitted 137:1 148:25 166:11 207:14 219:20 239:1,2 241:24 248:9 249:12, 20	alteration 124:24 140:8 207:1	approach 126:10 178:20 234:9 242:9 255:23	assume 142:9 158:3 237:18
adverse 212:19	alterations 140:23,25	approaches 126:11 255:24	Assuming 188:24
advice 150:13, 16 208:9 216:19	altercation 207:8	April 166:13 190:2,18 191:4 199:25 200:8, 10,12,13,19 201:4 202:5	attach 138:12
affidavit 233:18 236:19, 22 237:3 243:8,14 244:6	altered 137:1 144:5,13 155:12 156:1 163:7 166:21 167:1 207:13 240:16 249:13	argue 150:8 162:4 240:4 248:24 249:8 252:1,9	attached 127:11 136:25 233:13
affidavits 233:13,15 239:24 243:7 244:12	altering 144:14 156:17 210:9	argued 180:13	attempt 144:6
affirmatively 154:11	amend 177:15	arguing 162:5, 19 163:17 240:7	attending 228:18
affirmed 205:22	amended 151:17 159:5 176:19 233:7	argument 151:6, 9 163:14,16 220:11 242:5 245:2 255:12	attention 131:4 136:17 152:2
agree 181:8 189:6 230:17	amending 238:7	argumentative 138:21 143:15 155:14 156:18, 20 163:10 185:19 195:20 219:22	attest 243:13
agreement 126:15 129:3 136:22,25 139:12 140:18 141:17 153:8 164:1 167:15 177:16	amendment 136:25 137:4,5 138:11,13,16, 17 139:25 144:13 168:3 177:7 182:13, 14 184:7,20 232:20 241:3	arguments 151:8 232:2,7	attestation 244:1,10
agreements 139:10	analysis 219:14	article 177:19	attested 201:25 239:4
ahead 159:19 161:13 243:12 246:19 247:15 255:19	analyst 210:21	ascribed 235:13	attesting 232:23 237:21, 23 238:21 239:5 240:1 242:23,24 244:7
Alan 134:7 149:5,8 208:1, 3 230:1	analyzed 221:16 254:9		attorney 131:23,24,25 132:4,5,11,12 137:8 141:23 147:17 155:17, 24 156:8,11 162:22 189:22 194:4 199:22 223:13 230:15 239:4
alive 189:25 191:6 192:2	anger 227:6		attorney-client 208:9,11
	angina 225:6		attorneys 147:7 189:17 207:11 209:8,15 210:9
	angry 227:20		211:3 219:19 248:12
	anymore 121:22 124:13		authenticate 213:5,18
			authenticated 210:8

authenticating 214:8	Beach 165:8 166:19 203:8	23 138:3,6,9 139:2 140:4,6, 11,12,14	17,21 194:1,9, 12 196:4,5,14, 15,16,18,24
authorization 132:4	bearing 189:3	141:4,6,9,21 142:6,11,12,18	197:3,7,8,13, 19,22,25
authorized 132:8,10	beginning 175:20	143:17,23 144:3,4,21,22	198:4,9,22
autopsy 165:2	behalf 155:6	145:16,18 146:1,10,12,	199:2,5,6,24, 25 201:3,14,
aware 130:2,5 131:2,18 151:13,16 154:11 158:12, 15,17,19,22 159:2 165:2,7, 24 166:7,15 169:1,8,13,19, 20,21,24 170:1 206:25 207:16 221:24 222:2, 4,5,9,10,13,16 224:5 225:2, 17,22 226:15 227:5,8,20 243:7 253:18	193:20 201:9 220:9	15,19,22,24 147:4 148:5, 10,11,22	21,23,24
<hr/>			
B			
back 122:24 127:3 147:24 166:2 175:20 179:21 180:19 186:6,12 192:16 193:18 199:4,9,12 200:5,8 227:12 228:4 254:1 255:20	beneficiaries 140:19,24 141:1 144:17 145:15,17 157:8 202:19 204:8,16 212:20 220:6 233:6 247:3,4, 8 248:4,13 250:7,14,19	149:3,18 150:8,10,14, 18,22 151:1, 11,20,24 152:1,5,9,22 153:3,6,7 154:15,16,18, 20 155:10,15, 16,20,22	203:7,11,15,16 204:1,5,6,15, 18,23 205:2, 10,14,15,17,21 206:1,13,15, 18,23 208:16, 20,24 209:4,6, 13,23,24
background 232:13,15	beneficiaries' 248:12	156:6,23 157:2,11,13,25	210:14 211:5, 9,10 212:8
backwards 144:1	beneficiary 133:4 144:23 145:18,19,20 157:5 158:3 190:15 202:12, 14,15,21 220:5 246:24 247:17	158:5,9 159:10,11,13, 17,22 160:1,5, 9,17,20 161:4, 9,14 163:4,5, 11,17,20	213:1,4,10,16 217:1,2,7,12, 15 218:8,9,19, 23 219:8,24
BAILIFF 186:11	benefit 133:15 155:6 211:15	164:9,13,25	220:17 221:1, 14,21,22
bank 254:6	benefits 146:2	165:1,6,12,14, 16 166:1,10,24	223:16,19,23, 25 224:2,4,14, 20 225:16,21
bar 120:21 127:4 214:3	Benjamin 122:2	167:4 168:4,7	226:6,11
based 162:14 165:17 192:12 196:19 253:1	Bentley 151:12, 14,16 152:13	169:7,16 170:5,6 171:6, 9,25 172:6,9, 13,16,17	227:12,23
basically 131:5 237:12	Bentleys 152:3	173:11,14,18 174:19 175:2,4	228:9,11,16
Bates 188:3,6	Bernstein	176:21 177:5, 9,11 178:3,9, 14,20,24	229:1,8,15,18
Baxley 173:1 174:22 176:18	120:7,10,18,19 121:10,13,16 122:11,20 123:15,22 124:2,8,9,23 125:3,8,16 126:6,12,13 127:7,21 128:7 132:24 133:3, 10,19,22 134:3,7,9,17, 20 135:6,9,18, 24 136:3,6,7, 15,19,20 137:11,15,20,	182:7,19,22,25 183:3,8,11,13, 15,24 184:1,15 185:22,24 186:1,5,8,14, 17,20 187:8	230:1,4,9,17, 20 231:4,8,11, 20,22 232:19, 21 233:3
<hr/>			
Bernstein's			
177:7 191:2			
239:20 251:7,8			
252:2			

binding 237:6		252:13 253:15	211:23 215:13, 15,17,20
biography 143:13	C	254:5	225:24 226:14, 20 229:10
biopsy 158:24 222:2,6,8	cabinets 216:2	cases 171:19	238:12 239:12
birth 206:20	call 130:17,21	233:19 234:9	248:5 250:13, 18,21 253:7
bit 162:17 232:13	141:18 142:8	251:14 253:19	children's
bitter 179:22	145:7 193:6, 17,19 205:1, 11,12,14	caused 164:22	137:8
blank 163:21	214:18,25	222:6 225:23	Christine
blue 169:19	226:1,3,17,25	causing 131:14	136:24 137:7
body 165:21	230:6,10,15	225:18	139:13,15,17, 18 140:1 144:6
book 167:16 179:1,15,17,18 181:11,12,13 182:10,11,16, 19 190:7	238:11 239:12	caution 208:7	148:25 155:11 156:7
bored 232:15	called 193:23	caveat 236:21	chronology
bottom 129:2,4, 5,14 170:9,13	214:3 219:4,5	cavitating	185:15
bound 152:8	230:11 233:21	144:2	circle 173:22
bounty 245:8	253:11	certificate	174:1 254:1
box 123:5 189:16,20 235:8	calling 231:17	206:21	circled 235:11
boxes 234:23	calls 135:21	certified	circulation
brain 158:19, 23,24 222:3,7, 8	174:14 212:5, 21 238:7	171:2,3	139:10,16,17, 21
break 179:20 180:20 181:14 255:21 256:11	capacity 125:11	challenged	circumstances
Briefly 213:15	239:8,14,16	253:24	228:19
bring 249:10 251:1	246:7	chance 204:7	cite 233:19
bringing 197:4	car 152:2	change 248:13	claim 155:6
broader 139:5	care 169:13	changing 225:22	169:17
brother 132:2 214:19,24	215:3,6,10,14	233:5	claiming 184:6, 17,19
brought 131:3 151:21 158:22 197:10 253:8	221:9	characterize	claims 150:5
Brown 122:2	cared 215:12	226:18	202:11 230:24
burden 243:22, 24 244:21 245:1,20 246:1	Carnegie's	characterizing	clarification
business 214:4	246:5	226:17	143:19 223:3, 22
	Carolina 233:23	charge 194:5	clarified
	236:7,17 237:5	198:17 207:9	122:13 223:20
	Carpenter	211:1	clarify 120:11
	246:22 247:15	charged 212:14	122:4
	carry 141:16	charges 248:7	clarity 141:19
	156:15	Chaves 142:23	clause 178:17
	case 134:11	check 153:3	clear 156:22
	141:24 142:3	168:23 173:1	195:10 201:19
	144:1 153:1	235:8 236:2	clerical 236:10
	164:4 180:10, 12 193:14	checked 234:23	clerk 167:9,11
	198:18 205:7	239:25	170:10,25
	218:4 231:12	checks 236:3	186:10,11,13
	234:13 236:5, 7,9,17,18	chest 225:9	256:14
	237:4,5,10	children	client 122:25
	240:12 242:10, 12,20 245:17, 19 246:6	131:10,11	123:2 208:12
	247:15 249:20, 22 251:2,21	135:6,9 141:24	223:16,21
		156:12 161:17	224:16 238:10
		192:14 202:17	
		203:10,21	
		204:7,13	

clients 156:12 168:18,21 175:13 189:19 238:3	14,15 251:23	consent 253:2 consented 248:6 consequence 243:8,17	216:1 256:24 copy 136:21 137:2 138:19, 20 139:20,23
close 150:10 195:18 196:15, 21 224:15	competent 165:19	considered 132:18,24	141:24 161:19, 20 163:7
closed 192:12 194:14 196:6, 10,18,25 232:1 240:17	compilation 187:15	133:3,5 136:9 144:11 236:12 251:3	167:6,9,11,13 170:10,24 171:1 181:2,3, 10,11 186:10 242:13
closely 223:24	complaint 237:9,17	consistent 129:6 176:11 189:14 216:18 233:10 239:21	copying 125:24
closing 166:2 232:2,7 242:5 247:23	complex 248:3, 12	construction 252:14 253:25	coroner 165:9
co-personal 149:24	compliance 236:6,15,25	construe 241:7	corralling 253:10
co-pr 147:14	complied 243:4 244:5	construes 216:21	correct 129:16, 23 130:1,18
co-prs 147:9	comply 244:14, 17	consulted 208:5,8 214:5	132:25 136:10 138:16,20
co-trustee 147:14 149:23	comport 244:15	Cont'd 120:9	139:10 140:12 146:10 149:21
co-trustees 147:9	concerned 162:19	contact 227:5	151:14 154:3, 8,23 156:12
codicils 203:9	conclusion 135:22 174:14 177:3 212:6,22	contacted 169:9 207:21	158:6 161:17 164:1,9,15,21
Colin 123:11 124:23 125:3 192:10 232:14 240:20	conclusively 240:8	contempt 127:4, 5	167:7 170:15 171:16 174:6,9
Colin's 199:10 200:22 240:15	conditions 158:13 224:5	Contest 243:22	184:20,21
college 143:10	conduct 150:23	contestable 248:15	185:11,13 186:24 187:19
Colton's 125:6, 10	conducted 251:11 254:18	contestant 244:21 245:21, 25	188:8,10 190:1,2,12
comfort 237:25	conference 214:18,25	contesting 243:24	191:10,13,16, 20 192:9,15
commit 156:11, 13	238:11 239:11 251:2,5,7,9 253:9,10,16	context 234:15	194:5,21,22 195:11,12
commits 252:24	conferences 238:9	continued 120:3	196:7,11 201:16 203:5, 21,23 207:13,
committed 207:12,17 210:9 211:4 218:1 247:17 248:9 254:4	confidential 246:24 247:11	contract 210:21	15,18,19 208:24 209:10
communicated 233:3	confirm 250:2	contrary 239:9	210:16,17 213:23,24
company 235:3	confirmed 235:12	control 248:14	214:2,14,21 215:1 216:15, 16 217:5
competence 193:7	conflict 212:2	controlling 236:14	240:16 241:5 253:21,22
competency 152:10 165:17 245:2,3,5,19, 23 246:7,10,	conformed 123:8 167:6,9,11,13 170:12	conversation 132:3,6 222:23 226:19	corrected 253:17
	confusing 252:12	convince 144:6	counsel 140:11, 14,17 147:8, 11,13,25
	connection 236:13 243:3, 9,17 247:11	copied 122:16	
	consecutive 182:11	copies 121:5,7 123:9 124:15 125:25 126:10 170:12,21 186:16 210:6	

207:16,22,23, 25 208:3 210:22 211:2 214:5,6 216:20 220:9,20 250:20,22 Counsel's 208:13 count 242:1 255:1 counts 133:17 County 165:9 166:19 203:8 couple 240:11 court 120:4,8, 14 121:11,15, 18 122:1,9,13 123:11,19,23 124:3,7,18,20, 22 125:1,5,10 126:11,18,21 127:3,5,6,8, 10,12,17,22 128:5 133:9, 11,21 134:1,5, 8,10,18 135:17,23 136:2,4,13,16 137:13,17,22, 24 138:4,7,23 140:3,22 141:8,12,22 142:3,4,7 143:16,21,25 144:20 145:25 146:5,11,13, 17,21 147:3,22 148:2,6,9,12, 13,17,18 149:2,15,17 150:7,9,12,16, 24 151:2,18, 22,25 152:2,7, 11,24 153:5 154:13 155:9, 18,21 156:4, 19,24 157:10 158:8 159:15, 18,23 160:3,7, 18,21,24 161:7,10 162:7,25 163:13,19	164:7,10,24 165:5,11,13 166:9,23 167:3 169:6,12,18 170:20,25 171:21,23 172:2,8,11,14 173:12 174:13, 15,18 175:1 177:4,10,25 178:6,13,15, 21,25 179:3,7, 10,14,17 180:2,11,17,21 181:1,6,15,20, 23 182:18,21, 23 183:2,6,10, 12,20 184:12 185:21 186:3, 6,12,16,18,21, 25 187:2 188:13,16,19 189:23 190:21 191:25 192:2, 21 193:11,15, 19,22 194:7,10 195:22 196:1, 13,19,23 197:1,6,16,20, 23 198:2,5,17 199:1,3,17 200:23 201:2, 5,11,13,16,18, 22 203:14,25 204:3,17,20,25 205:7,12,16 206:3,8,9 208:11,18,21, 25 209:5,10, 11,14 210:4,12 211:7 212:7, 13,23 213:2,7, 12 215:4 216:17,18,20, 24 217:3,10, 14,19 218:3,5, 18,21,24 219:3,23 220:12,24 221:7,18 223:12,18,20, 24 224:1,17 225:13,20 226:8 228:10,	13,24 229:6, 11,17,20,23 230:3,6,12,14, 19 231:2,5,9, 12,16,21,23 232:1,7,10 233:20,21,22, 24 234:3,5,11, 14 236:9,10,20 237:25 239:8 241:7 242:4 244:2,11 247:10,20,22, 25 248:4,11,23 249:5,8,13,15, 22 250:11,13, 24 251:14 252:4,8,17 253:1,3,12,19, 20,22 254:4, 14,20,23 255:1,5,9,11, 16,22,24 256:2,5,8,12 court's 167:10 186:4 245:16 courtesy 254:15 courtroom 151:3 240:15 courts 167:12 170:11 174:10 252:24 cover 137:18 covered 137:10, 14,19,20 144:19 195:24 create 137:6 138:24 created 138:10, 19 153:24,25 155:3 208:17 creating 163:7 credibility 148:7 creditor 202:13 criminal 230:23 254:10 criteria 245:14 247:12,15 cross 120:9 180:22 197:10 213:14,16	229:21 cross- examination 120:6 195:25 cross-examining 134:15 crossed 229:22 cumulative 136:11 137:9 138:22 140:2, 21 144:19 145:24 146:4, 14 149:16 156:3 157:9 158:7 164:6 166:8 171:21, 22 172:1,4 174:25 177:2, 24 183:19 184:11 185:20 188:15 195:21 199:16 201:10, 17 203:13,24 220:10,23 221:6,17 242:11 Cumulative's 172:4 curator 122:2, 6,7 124:4,16 curiosity 159:24 custody 121:4 125:18 210:10 230:5,21 231:3,5,6 customary 168:17 cut 132:1,9 cutting 227:6
---	---	---	--

D

dad 130:10 157:4 225:8,14 227:4 228:2, 12,15 dad's 129:20 147:8 156:15 damages 164:21 Daniel 153:23
--

date 124:3 128:21 149:25 168:18,22 187:11 191:22 200:14,18 246:8,10 dated 168:15,16 dates 246:11,12 daughter 132:8 day 162:5 165:3 168:11,14 174:4 176:22 180:13 187:18 191:9 194:18, 20 200:9,11 207:21,22,23 208:4 214:4,12 216:10 219:7 235:25 237:11 240:6 251:13, 15 days 180:14 216:11 DCA 245:19 dead 195:19 196:10 201:15, 18 229:3,13 deal 241:13 242:2 dealing 178:7 deals 234:14,15 dealt 243:10 death 129:23 141:18 147:8 150:1 155:6 189:13 204:9, 11 224:7 225:11 decedent 236:23 246:25 decedents 245:13 December 256:15 decide 151:19 162:9,10,14 169:14 218:21 233:11 decided 215:4 decision 178:25 238:11 decisions 221:10 239:11	deem 212:13 deemed 135:7 212:12 defeat 236:11 defendant 256:13,21 defendant's 160:21,25 161:2 182:4 187:4 193:16 198:21,23 247:23 defense 193:24 deficient 169:4 define 210:2 definition 133:4 134:24 definitional 139:5 163:22 delete 177:18 deleting 163:23 Delray 158:24 demonstrate 246:24 demonstrates 240:8 denied 253:5,6 254:19 256:19 depend 135:14 deposit 123:5 189:16,20 201:4 deposited 170:19 201:16 depressed 224:12,25 depression 224:6,9 descendants 132:14 133:4 135:7 136:9 144:8,12,16,24 145:5,6 describe 128:9 140:18 219:13 describing 164:14,18 designed 153:17,18 Detective 146:25	determination 243:17 determine 162:21 174:3 188:25 213:22 239:14 241:18 determined 241:21,24 devisees 202:18 died 145:12,20, 21,23 146:2,6, 7 157:3,7 158:11 165:3 194:2,13,18,20 195:9,10,18 200:22 204:12 224:11,22 225:14 228:2 dies 173:20 differ 223:18 difference 212:23 difficult 215:20 Digital 143:4 dinner 228:18, 22 direct 189:3 193:25 205:25 direction 201:20 directly 233:1 236:8 237:12 239:9 disappearing 186:19 disbursed 219:1 discharge 190:1,22 197:9 198:1 199:8 201:5 discovered 200:23 208:16 230:25 discovery 253:5 discuss 223:1 251:20 discussing 223:6 disinherited 132:15 226:23	227:2 disposed 218:25 disposition 132:19,24 135:13,19 136:8 dispositions 133:5 135:5 145:6 202:10 dispositive 130:9 176:25 210:9 220:20 dispute 240:21 disputes 130:24 131:2 disqualification 254:25 256:18 dissatisfaction 131:22 distraction 243:6 distribute 137:7 distributed 137:3 distributions 135:12 145:6 disturbing 241:4 division 169:3 Docket 256:20, 22 doctors 158:23 document 120:17 123:6 124:21 127:11 128:9 129:9,14 132:17,20,23 133:2 135:24 136:14 138:12, 16,18 139:6, 23,24 140:8,20 141:2,19,20, 23,25 144:5,7, 8,15 145:5 148:17 153:7, 10 155:12,25 156:11 159:12 161:8,24 162:23 163:6, 9,24 164:5,8 166:21 167:1,
--	---	---	---

14 168:8,9,14, 15,23,25 170:14,16 171:15 172:24, 25 173:21 175:3,15 176:17 177:8, 12 178:19 181:17 182:2, 8,16 183:1,22 184:5,16,19 185:8,11,15,17 186:12 187:25 188:1,3,5 190:23 191:1, 5,6,11,15 193:1,8 195:2, 3,8,16 198:12 199:7,9 200:3, 5,18,23 201:4, 15,25 202:5 203:7 207:1,8, 13 215:7 220:19 233:6,7 238:13,25 239:20 241:2, 4,6,23,25 247:4 249:14	170:2 173:6,16 175:13 176:25 180:16 181:24 182:20 188:4, 24 189:4,11,19 192:6,11,13 195:14 196:19 197:3 199:11 203:5 208:25 209:9 210:8, 10,16,20,24 211:5,11,13,18 212:10,12,16 213:6,19,23 214:8,10,16,22 215:4 216:14, 19,20 217:4,8 218:12,14,20, 22 219:6,9,16, 17,18,21 220:1,7,20 221:2,4,16,24 225:23 226:7, 21 227:3,22,25 229:7,14 230:5,22,25 231:11,15 232:17,24,25 233:9,12,13 234:17,18,22 235:5 237:21, 24 238:3,5,6, 7,12,16 239:1, 6,16,18,21,24, 25 240:4,9,12, 15,16,18,20 241:7,18,19,22 243:18 244:13 245:15 246:11, 20 247:9,18,21 248:6,10,15 249:12,21 250:1,3,5,8,10 252:23 253:1, 6,8,22 254:6, 8,9,12 256:12, 13,18	doodling 138:1 doubt 191:14 draft 153:10 239:22 drafted 126:14 132:20 133:2 135:24 233:9 250:4 drafting 239:4 drafts 238:6,12 draftsman 232:24 draw 235:21 drive 122:18,21 drop 242:23 244:19 due 124:24 220:7 225:23 254:18 duly 205:22 duplicate 134:12 216:5 duplicates 256:13 Durham 236:18 duty 220:19	Eliot's 191:14 email 191:19 229:2 emailed 191:15 employee 235:1, 3 employees 166:1 encourage 180:7 end 130:24 179:22 180:2,8 219:7 227:10, 17 242:21 243:7,11,14 ended 158:24 ending 175:24 enforceable 233:12,16 English 235:12 enter 125:12 133:22 134:3 242:1 Entries 256:22 Entry 256:20 error 143:19 184:14,16,18 203:6 errors 236:10 essentially 247:4 establish 160:8 237:20 243:25 established 235:22,24 243:2 establishes 229:15 244:9 establishing 244:21 estate 122:6,11 140:15 141:3 147:8 148:1 149:25 150:19 152:11,14 153:12,13 154:2,25 157:5,22 165:25 166:3, 16 189:15 192:8,11 194:13 195:18 196:6,15,18,
document's 133:8 141:1 174:9 200:19			E
documented 238:4,8		E1 134:24	
documents 121:5,14,17, 21,23 122:2,5, 9,10,12,16,22, 23 123:1,12, 15,20 124:1, 11,14,16,17,25 125:23 126:1, 7,8,14,22 127:15,18,24 128:2,25 130:9 132:5,10,12,16 138:14 139:19 142:2 146:8 147:9,12 148:7 149:14 154:2,5 156:17 158:11 159:1,5 162:2, 3,6,11,21 165:18 166:12, 16 169:15		earlier 141:11, 14 154:21 173:5 186:21 187:25 202:17 209:20 early 207:3 easy 224:18 effect 188:25 212:17,18 245:9 efficient 180:7 elapsed 254:14 elicited 245:10,22 Eliot 135:9 157:13,25 191:12 203:11 214:24 217:25 240:3,25 244:24 245:25 247:2,6,13	

21, 25 199:23	193:7	239:12	155:2 165:3
202:7, 10, 11, 12, 21 240:17	executed 123:6 184:7 231:7, 10	explained 209:20 239:22	196:20 200:22
245:4, 17	238:13 242:18	exposing 148:24	202:1, 5, 20
246:5, 22	244:6, 7 246:8	expressed 189:7	204:10 208:21
251:7, 8, 16	executing 177:15	expressing 131:21	214:13, 19, 20, 23 215:6, 22
252:4, 18	execution 242:16 243:9, 11 244:1, 9	extensive 232:13 238:1	216:9, 10
estate's 250:20	exercise 189:1 233:4	extent 132:21 232:12 241:23 245:6	221:23, 25
estates 131:9 132:1, 9 147:6 211:12, 20 248:14	exercised 139:4		222:11 224:6, 8
eventually 238:10	exhibit 127:2, 25 133:21, 23, 24 134:12	father's 141:16 149:25 170:7, 8, 17, 18, 19, 25	225:10, 18, 22
everybody's 182:16	159:16 160:1, 2, 19 161:2 167:6, 15, 16 168:4, 6 171:6 173:10, 12 178:16 180:24 182:3, 6 183:16 186:3, 23 187:6 190:4, 20, 22 191:18 198:6, 13, 20, 23 199:4 200:20 202:25 235:6, 8, 24 236:1, 2	father's 141:16 149:25 170:7, 8, 17, 18, 19, 25	226:3, 13
evidence 133:7, 8, 12 134:13, 14 136:12 152:17 159:21 160:2, 3, 6, 25 161:3 162:25 177:23, 24, 25 178:8 179:9, 13 181:17, 21, 25 182:5 183:18 187:2, 7 190:8 193:16 197:14, 18 198:13, 14, 15, 24 199:4 200:25 203:12, 24 231:24 232:1, 22 233:2	exhibited 205:5	father's 141:16 149:25 170:7, 8, 17, 18, 19, 25	227:6, 9 228:5, 18
234:17, 18 236:24 237:2 238:14, 15 239:1, 7, 9, 13 240:8, 24 241:11, 19 244:25 246:3, 18 247:10 248:22, 25 249:2, 3, 9 252:7, 9 254:16	exhibiting 159:17	father's 141:16 149:25 170:7, 8, 17, 18, 19, 25	
EXAMINATION 193:25 205:25	exhibits 134:11 159:20 167:5, 6 185:24 186:2 190:21 235:6	facts 153:1 170:3 174:11 221:11, 13 252:9	
examine 250:11	exist 250:16, 23	failed 174:22 176:23	
examined 205:22	exists 208:13	fairly 236:15 254:18	
excuse 141:6 148:23 155:15 190:4 227:10	expanded 185:17	false 241:2	
execute 122:25 129:2 175:13	expect 127:18	familiar 153:7 157:12	
	expense 192:17	family 153:8, 19 154:3 157:13 158:1 164:22	
	expenses 192:7	211:14, 20, 22, 24 212:16 226:23 229:3, 12	
	experiencing 224:7	father 130:3, 14 146:7 153:23	
	expert 165:22 170:8 210:19, 23 219:11 220:7, 22 221:16 235:4		
	explain 120:15 139:3 217:18		

218:1,4 220:3 240:19 241:6 252:4 256:14, 21 filings 218:10 final 216:18 233:9 241:21 255:15 Finally 246:16 find 212:1,19 216:4 219:25 220:18 231:15 233:14 findings 238:1 fine 120:17 128:5 129:21 159:18 181:16 198:14 208:8 224:22 255:7 finish 123:14 156:4 163:13 226:10 254:15 finite 196:3 fired 213:25 firm 121:2,20, 22,23,24 123:11,20 124:12,13 125:22,23 139:22 142:22 150:20 160:10, 11 161:22,23 174:8 177:12 182:12 184:9 189:12 190:25 192:16 193:2 195:10 199:9 201:7,8 207:12 221:5 235:1 237:14 238:19 248:10 249:20 firm's 142:2 216:2 fit 185:6 Five-plus 143:1 flipping 175:22 Florida 120:20 203:8 233:21 234:14 236:8 237:4 246:6 focused 209:18	focusing 241:9 follow 190:7 212:11,12 216:17,19 230:22 252:21, 23 force 131:19 forced 229:9 foregoing 134:25 135:3 forensic 210:21 220:5,22 forensically 220:1 221:5,16 254:9 forged 142:2 166:12 248:10 249:21 forgeries 220:19 forget 168:18, 20,21 forgetting 242:7 forgive 242:8 forgot 143:11 form 174:4 191:19 244:14 formal 206:16 244:1,9 Forman 142:24 forms 189:24 191:21 192:2 forward 127:17 144:2 254:8 found 169:2 207:4,7,21 209:7 211:3 218:14 219:9 224:8 231:11, 13 foundation 197:20 Fourth 245:18 frankly 240:3 fraud 148:24 156:11,13 166:11 207:12, 17 209:7 210:9 211:4 219:20 220:8 248:3,9,	13 254:2,4,13 frauded 141:23 248:10 frauds 166:15 220:20 249:23 252:24 fraudulent 124:24 136:21 138:11,19,24 139:23 140:8 141:24 142:2 148:15 165:24 166:13 207:1,7 208:17 218:20 249:21 fraudulently 137:1 155:12 156:17 163:7 166:20 167:1 185:18 249:13 freestyle 256:4 Friedstein 158:1 203:11 front 152:18 168:14 185:24 full 190:22 199:8 201:5 206:16 fully 202:6 functions 174:2	gist 131:8 give 123:8 150:13 184:3 233:7 237:25 249:17 good 138:5 179:19 215:2, 16 225:7 231:20 249:1, 15 Gotcha 138:6 199:5 Governor 169:3 governor's 169:9,16 248:16 grandchildren 233:8 241:1 247:5,7 grandparents 215:18 grounds 244:22 246:20 guess 168:5 guidance 249:17 gun 229:10 Gutter 142:23 guy 152:2 211:1 228:13 guys 250:19
G			
H			
		gain 211:14 gained 250:5 gave 132:4 149:19 174:5 186:4,8 general 131:8 generally 245:6,19 gentleman 255:17 genuine 127:10 214:9 216:9 241:24 genuinely 190:18 Georgia 234:13 get all 152:17 195:9	half 180:5 hand 126:8 128:3 198:21 handed 241:13 256:12 handing 126:17, 19,22 handle 150:24 hands 126:17 handwriting 220:7,22 handwritten 256:17,24 happen 146:6 happened 148:24 189:24 231:15 240:23

happening	230:17 243:20	increased	intents 229:13
239:23	246:22 248:2	185:10	interest 122:8
he'll 127:18,19	249:1 254:7	incredibly	152:12 211:19
head 172:2	Honor's 243:7	126:9	250:5
headaches	hoping 152:19	inference	interesting
222:5,10,12	254:5	235:16,20	152:4
hear 206:9,10	House 233:21	influence	interruption
217:12 224:18	234:12,13	246:16,21,23	234:7
232:3	Human 184:14	247:13,17	intertwined
heard 232:23	hundred 216:22	information	223:8
233:2 240:10	<hr/>	230:24 235:9	interview
242:8	I	inherent 145:10	166:20
hearing 135:19	Iantoni 135:9	initial 129:3,	interviewed
136:1 149:7	158:1 203:11	11	166:18
217:4,19	idea 183:12	initialed 129:9	introduced
218:15,16,25	218:2	initials 128:8,	187:25
251:12,24	identical	11,15,22	invalid 162:13,
Hearsay 169:5,	181:12 182:20	175:5,8,11,15	15 163:7
11	256:21	176:2	208:17 237:19
heart 225:6	identification	inoperative	invalidates
heavy 165:8	173:3 174:24	182:13 241:25	211:18
held 236:21	235:15	inquiry 233:2	invalidating
247:21	identity 236:24	237:8	246:17
highlighted	II 242:1	inserted 185:3,	invalidly
236:9	imagery 253:12	5,9,18 231:12	139:13
highly 250:2	immediately	inside 144:8	inventory
hired 219:19	207:20 208:6	insider 248:8	151:17
hires 211:1	important	inspect 125:25	investigation
history 142:2	137:16 152:5	instances 220:8	169:22
143:12,19,22,	196:1 228:3	instruct 208:10	investigations
24	importantly	instruction	254:11
hit 172:2	250:12	127:6	invite 228:5
hold 153:18	improper 173:20	instrument	invited 228:14,
203:4	230:2	177:15 236:13	17
holiday 228:6	improperly	insufficient	involved 237:13
home 153:18	174:9,12	256:19	involving 238:9
189:20 228:6,	176:25 251:11	insurance	irrevocable
14,18 231:15	252:18	154:17,21,22	145:13
Honor 120:12	included	155:2	issue 150:17
126:16 133:16,	138:13,15,17	intelligent	232:11,17
19,25 137:12	including	239:11	233:18,20
139:1 141:6,14	123:3,6 214:23	intend 127:17	issues 133:17
152:6 161:25	252:3	141:5,10	159:2 209:21
165:15 168:4	incompetency	intended 233:3	222:25 223:2,
171:6 173:15	245:20	intensive 229:3	6,7 237:1,14
177:9 178:4	incompetent	intent 141:16	241:15 242:3
179:24 181:5	246:2	156:13,15	246:10
182:19 185:23	incomplete	238:17	
188:17,21	173:9	intentions	
193:10 197:14		215:18	
198:11 209:6			
213:1 218:23			

<p style="text-align: center;">J</p> <hr/> <p>Jake 153:24</p> <p>January 140:9 148:23 189:8 196:6 237:13</p> <p>jeez 186:5</p> <p>Jill 135:9 158:1 191:22 203:11</p> <p>job 216:14</p> <p>John 256:23</p> <p>Josepher 142:23</p> <p>Josh 153:22</p> <p>judge 124:23 125:3,6,10,11, 13 152:25 159:13 184:22 192:10 199:10 200:22 211:13, 18 213:22 232:14 240:15, 19 242:9,15 243:2 245:2 246:16 247:20</p> <p>judgment 216:18 242:1</p> <p>July 221:24</p> <p>jurisdiction 242:2</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>Ken 125:22 126:2</p> <p>kicked 192:16 254:11</p> <p>kids 153:22</p> <p>kids' 153:23</p> <p>Kimberly 166:19 169:1,8 171:15,18 172:23,25 174:22 205:4,5 235:17</p> <p>kind 163:8 172:10 224:9 243:5 253:21</p> <p>knew 154:6,8 173:25 195:10</p>	<p>218:19 225:8 235:21,23</p> <p>knowing 174:9 218:24 253:23</p> <p>knowledge 124:10 125:18 131:20 152:25 165:20 166:17 172:19 174:3 175:6 191:24 221:15 237:1</p> <p>Kratish's 167:20</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>lack 236:25</p> <p>lacked 239:8,14</p> <p>laid 197:20</p> <p>landing 169:22</p> <p>language 132:19 144:15 145:4 156:2 163:23</p> <p>Lastly 246:5</p> <p>law 139:22 150:20 155:17 160:10,11 174:17 177:12 182:12 184:9 192:16 193:2 195:10 201:7,8 207:12 235:1 238:19 242:10, 12 245:17 248:9 249:20 254:19 255:6</p> <p>lawsuit 213:19, 22 217:21,23 218:10 220:3</p> <p>lawyer 146:20 189:15</p> <p>layman 155:13, 23 156:1,8</p> <p>learn 146:19 227:2,24</p> <p>learning 210:8 220:19 253:17</p> <p>leave 163:1 215:7 233:8</p> <p>left 121:23 131:12,15 189:21 230:8</p>	<p>250:21</p> <p>legal 135:21 150:13,16,17 151:4 174:14 177:2 212:5,21 235:4 249:18</p> <p>legally 256:19</p> <p>legitimate 192:13</p> <p>letter 130:8 131:4,5,7,8,20 160:10,12 161:15,19 164:14,17 189:7 229:12 231:14 238:5 239:22</p> <p>letting 162:16 198:17 251:25 254:15</p> <p>license 121:1 174:5</p> <p>life 154:22</p> <p>lifetime 135:4 224:10</p> <p>light 236:14 237:15</p> <p>likes 240:3</p> <p>Lindsay 173:1 174:20,22 176:18</p> <p>lineal 132:14 133:4 135:7 136:9 144:7, 11,16,24 145:5</p> <p>Lisa 158:1 191:21 203:11</p> <p>list 153:4 166:6 183:16 205:18</p> <p>listen 137:24 181:6 205:7 223:22</p> <p>listening 220:14</p> <p>litigation 232:14</p> <p>live 153:19</p> <p>living 132:1 162:8 216:20</p> <p>LLC 153:8</p>	<p>long 126:9 142:25 148:12 149:23</p> <p>looked 176:6 219:10,15</p> <p>lose 211:14,19 212:17</p> <p>lost 186:7 189:19</p> <p>lot 137:25 175:13,23 209:19 251:23</p> <p>Lyon 236:5</p> <p>Lyons 233:21 234:12,13 236:9</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>made 121:5 122:25 124:15 135:5 141:2,17 142:16 144:16 150:5 169:17 192:4 202:10 206:25 215:6 238:11 256:24</p> <p>mail 191:17</p> <p>make 140:23,25 156:1 157:8,12 159:2 163:14 171:1 186:16 189:23 197:24 203:9 212:23 219:13 229:10 255:15,16</p> <p>making 135:12 141:25 154:9 168:23 187:3 221:9 226:20 234:1 238:1 239:11</p> <p>management 180:12 251:2, 21 252:13</p> <p>manager 180:10</p> <p>Manceri 147:15, 16,25</p> <p>mark 147:15,16, 25 159:23 175:24 176:23 198:21 236:2,3</p>
--	--	---	--

marked 181:10 187:4	224:17	Moran 166:12,19 169:8 171:15, 18 172:23 205:4,5 235:18	16 189:6
marks 175:24	Miller 147:1	Moran's 169:1	needed 218:15, 24 253:23
Marshall 186:14	mind 129:20 165:20 179:16 201:19 209:19 224:22 226:7 228:12 229:9, 16	MORRISSEY 174:16 242:9, 15	negative 211:8
Martin 123:11 200:22	mine 181:3	mother 128:21, 24 146:6 202:16 208:21 215:6,22 216:6,10 224:11	neglected 173:25
matter 148:1 169:20,22,25 190:16 212:9, 11 251:3 252:20,21	minor 141:24 156:12 250:21	mother's 128:15 137:7 141:20 147:12 166:3 170:16,20 195:7 202:21	nervous 234:1
meaning 135:25 148:7 230:24 231:4	minute 256:10	203:2 204:9 207:2 210:1 211:12	net 149:19
means 138:2,5 231:6 245:5	minutes 179:21, 23,25 180:3,19 230:3 247:25 253:3 255:13, 20	motion 192:4,17 217:8,16,18,19 240:19 256:3, 9,18	non-valid 139:23
medical 130:2 158:10,25 159:2,6 165:22 221:24 224:5	Miranda 200:24	motions 256:21	nonsense 240:10
medically 158:13	Mirandas 200:25	move 127:17 140:4 183:13 254:8,24	North 233:23 236:7,17 237:5
medications 225:2	mirror 203:5	moves 144:1	Nos 256:22
medicine 225:8	mis 217:6	moving 136:5 183:12 201:20	notaries 237:19
medicines 158:15	misconduct 171:19	mud 237:11,12	notarization 169:2 173:8 176:22 193:1 233:19,20 234:16 240:12 241:2 243:16
meet 142:13,15 244:25	misinterpret 215:18	multi-page 183:22	notarization's 173:20
meeting 130:14, 23,24 142:18 187:13 193:6 226:12 238:6,8	misinterpretatio n 141:20	multifarious 247:19	notarize 172:23,25
meetings 238:2, 5	mislead 250:7	multiple 127:1 158:23 220:8	notarized 168:12,25 174:9,12 176:18 177:1 199:10,13,18 234:21 235:2, 25 248:17
member 120:20	misleading 253:18	<hr/>	notarizing 235:2 236:4
memorandum 203:17	misleads 251:14	notary 169:3 174:3 199:15, 21 214:15 234:20 235:1, 12 236:3,6,19, 23,25	
memory 218:1 249:2	missed 183:9 204:1	note 187:11	
mental 239:8	missing 143:14 163:9	notes 137:25	
mentally 239:10	misstates 123:17 174:11, 17	138:5 187:9, 13,14,16,17, 20,22,24 238:9 252:16	
mentioned 157:19 158:2 202:23	mistake 253:18	notice 251:4 252:5,16	
met 142:16,20 207:22,23 245:13 246:15	modified 163:22	noticed 251:15, 16 253:19	
metal 165:8	mom's 128:21 168:1 196:25		
microphone 120:15 206:9	moment 180:17 255:18		
	money 211:19 215:7 233:8 240:5		
	months 149:5 218:20		
	moon 169:22		

notified 148:13	150:6,21	officer 186:14	owners 153:20
notify 166:19, 25	151:3,4 155:8, 14 156:3,18	offices 188:1	
notwithstanding 134:25 135:3 241:14	157:9 158:4,7 160:22,23	one's 241:5 245:6	P
November 168:13 184:8 196:9	163:10 164:6, 23 165:4,10	ongoing 254:10	pages 128:9 129:3 182:10, 11 183:22
now's 204:25	166:8,22 167:2 169:5,11	operating 220:21	pain 225:9
number 133:21 177:20,21,22 178:3,4,5,11, 14,22,23 184:22,25 185:11,12,13, 16 187:5 190:5 224:23 243:19, 20	171:20 172:6 173:10 174:11, 13,16,25	operative 181:18 182:14	pains 225:6
numbered 183:22	177:2,23 178:6 179:14 181:19	opposed 244:22	Palm 165:8 166:18 203:8
numbering 177:17 184:18, 23	182:3 183:18	order 123:11,18	Pam 131:4,16, 18,21 136:8 144:11,24 161:16 191:21 203:10 227:6
numbers 183:17 184:3,10	184:11 185:19	ordered 122:1	Pam's 131:5 144:7,16 145:5
Numerical 184:2	186:22 188:11, 13 195:20	124:3,17,23	Pamela 135:6 203:10
numerals 184:2	196:12,22	125:4 165:3	paper 159:25 197:17 198:5 219:6
<hr/>			
O			
O'connell 251:15	197:6 198:12, 20 199:16	orders 125:12	papers 127:13 213:9
oath 120:5 193:23 244:7	201:1,10,17	original 121:7, 14,17,21	paragraph 161:6,10 163:8,22 164:3 177:18,21 178:1,7,9 185:3,5,8
object 124:5 127:1 141:12 162:24 192:19 230:2,10 248:19,21	203:12,22	122:6,21,23	paragraphs 183:23
objected 148:2 151:22	204:3,14	123:3,4,5,6,9, 12,15,20,25	parents 142:13 147:7 215:16
objection 122:4 123:13 124:19 127:23 128:1 133:7 135:16, 21 136:11 137:9 138:21 140:2,21 143:15 144:18 145:24 146:4 147:2,20 148:9,21 149:1,16	209:16 210:11	124:17,20	part 124:5
<hr/>			
obligations 150:25 249:5, 16	212:3,21	132:16 163:9	131:9 133:13, 17 137:16
objects 245:8	217:6,11,13,14	170:15,19,22, 23,25 189:11, 18 191:17	138:15 153:12, 13 154:25
observe 193:4	218:3,17	196:20 209:25	155:4 162:4,20
obtained 170:10	219:3,22	210:2,3,5	168:24 184:5
octopuses 253:11	220:10,16,23	215:21,25	188:3 198:13
offering 160:18	221:6,17	originals 123:1,7 125:18	201:21 203:6
office 122:17, 24 126:2	226:4 228:7, 15,23 229:5,17	152:22 170:17	223:21 245:23
130:22 142:17	230:16 231:17	211:6 216:5	248:12
168:17 169:8, 9,24 199:10	252:6	231:13 250:10	parties 130:25 149:13 249:11
214:12,16	outstanding 253:4	overruled 123:23 138:23	partner 147:6 248:7
222:19 248:16	overturn 245:1	140:22 164:10	partners 161:22,23
<hr/>			

parts 143:13 242:19	148:19,23 189:25 190:20, 22 196:20 197:9,25 199:7	possessions 216:4	pretrial 251:1
party 137:3 198:17		possibility 162:15 255:17	pretty 154:10
pass 144:25	Phillips 256:23	possibly 152:17	pride 253:13
passed 132:21 192:3 202:13 208:22 227:4,9	phone 130:22 226:1,3,17 238:7	postmortem 144:14	prima 244:1,9
passes 145:10	picking 197:16	potential 157:24	prior 141:17
Passover 228:6, 17,22	piece 137:15 197:16 198:5	power 139:4 161:15 162:22 163:24 189:1 233:4	142:18 154:1 155:23 160:10 189:13 203:9 218:10 224:7 225:11 226:25 227:17
past 127:3	pieces 159:24	PR 147:14 192:5,6 251:16 252:3	privilege 208:9,12 223:5,11,14
pay 136:17 152:2	place 146:8 165:25 166:16	practical 245:9	probate 214:6 239:2 244:22
penalties 202:2,4	plaintiff's 133:24 134:2, 16,18 167:16 178:16 182:6 186:22 187:3,6 231:24 232:4	practice 124:13 129:17,19 189:14	problem 230:21
people 180:15 236:4 238:20, 22 248:17 249:25	plan 154:2	practicing 121:3	problems 130:2 158:23 221:25 225:10,14,17 226:14 240:11 252:2
percent 212:17 216:22	planning 141:3 153:12,13 155:1,4 219:17	predeceased 132:18,24 133:3,5 135:8	procedural 150:14
perfect 175:11	plans 154:25	136:9 144:11	procedure 150:17 251:2
perfectly 224:22 239:25	played 241:1	preference 179:10 181:7	proceed 128:6 203:6 255:5
period 202:13 208:15	pled 241:18	preparation 237:24	proceedings 120:3 243:23
perjury 202:2,4	podium 120:13, 14 185:25 206:7 224:15	prepare 149:7 160:12 190:25	process 251:2, 24 254:19
permitted 236:11	point 131:15 133:12 138:4 139:22 145:13 146:16 162:3 203:5 209:22 236:8	prepared 154:4, 5 160:15 177:8,12 190:23 193:2 203:18 238:19 252:13	procured 247:1, 3 248:5
person 127:13 173:2 174:4 235:17,21,25 236:20	pointed 162:12	presence 128:21 174:4 234:19 238:24 239:17 242:22,25 243:1	procuring 247:9
personal 140:15 148:13 190:14 194:17 196:16 202:18 222:25 223:2,7 237:1	points 138:2	present 176:21, 22 238:22 244:25 246:18	produce 124:4 125:5 136:21 141:24 150:4, 20
personally 173:2 176:24 201:6 211:19 214:9 231:14 235:14,18,19 236:3,20,23 250:6	poison 165:8	presented 241:12 246:2	produced 139:14 148:14 173:2 174:23 176:22 235:15 236:24 250:10
persuasive 237:7 241:15	police 148:25	presumed 245:20,24	producing 137:2
pertinent 230:23	policy 154:17, 21,22 155:2,7	presumption 247:12,14,16	production 182:12 188:7 250:9
petition	Pollock's 122:17 125:22, 23 126:2		professional 220:21 221:5
	portion 227:13, 18		proffered
	positive 201:20		
	possession 121:20 250:16		

127:25 182:2		213:13 221:12	161:20 168:8,
Proof 243:22		224:18 249:6,	11 173:13
proper 230:13,		16,18	188:5 196:8
14 243:16		quick 126:7	222:12 228:8,
244:14		178:4	19,21 229:2
properly 148:6		quickly 227:16	receive 182:4
172:23 192:13		quote 245:3	received 161:2
193:7 234:19			186:22 187:6
236:3 248:17			198:19,23
252:24 254:9			248:25
property 202:18			recently 248:7
203:20 231:1			receptacle
245:7			157:22,24
proponent			receptacles
243:25			158:2
protect 220:6			recess 180:18
prove 246:23			256:8
provide 141:19			recite 242:18
250:20			record 130:8
provided 135:4,			133:16 134:4
8 243:20			161:5,8 170:24
246:21			180:25 206:4,
proving 245:20			14 227:13,18
provision 139:6			235:5 239:13
psychiatrist			254:25 255:1
158:17 222:14,			records 188:10
17 223:17			recusal 255:12
psychiatrist's			recuse 256:3
222:19			redirect
psychologist-			188:20,22
client 223:14			216:25 217:1
public 169:3			refer 125:25
pulled 197:11			183:21 242:10
purport 238:20			referenced
purported 241:5			154:17,21
purposes 125:24			referral 142:17
129:10,11			referred 187:5
132:19,23			referring
133:5 135:5			122:10 124:22
136:8 229:4,13			125:2 130:12
put 123:4			166:2,4 183:4
134:11,13,14			228:20
136:1 144:15			refers 246:7
151:17 168:18,			reflect 206:4
21 181:17,24			218:4 238:16
185:16 232:12			regard 234:24
234:17 237:22			245:12 246:3,
239:7 249:3			21
255:2,12,19			reheard 252:19
putting 181:20			rejected
			192:10,11

relation 169:9	represent 250:18	restated 176:20 233:7	162:19 163:10 164:6,23
relationship 215:16 245:7 246:25 247:11	representation 252:3	resume 120:4 180:21	165:4,10 166:8,22 167:2
relevance 123:17 147:2, 20,22 148:4 149:1 150:21 164:23 165:4, 10 166:22 167:2 171:20 196:12,22,23 197:1,4 201:1, 12,17 210:11 218:17,18 225:12,19 228:7,10,11,23 229:5,6	representative 140:15 148:14 149:24 190:14 194:17 196:16 231:18	retain 123:11, 20	169:5,11 170:23 171:20, 22 173:4,10,17 174:11,14,25 177:2,23
relevancy 135:16 136:11 150:6 151:23 155:8 204:14	represented 148:17 250:14, 15	retained 189:12 207:17 209:8 210:22,23 214:5	179:15 181:5, 10,16 182:5,9 183:18 184:11 185:19,23
relevant 136:1, 2 150:22 162:1,14 200:10 212:25 213:3 220:15 221:7,11 233:1 237:25 242:15, 19	representing 141:23 148:6 219:20 253:7	retainer 147:19,23 148:3	186:24 187:1, 25 188:11,15, 21,23 190:6,9 192:22 193:10, 13 195:20,23
relieve 130:11	request 255:12	rethink 146:22	196:12,22
rely 234:10	requested 170:24	retired 125:7, 10	197:9,14
relying 249:23 254:5	requests 253:5	returned 240:18	198:11 199:16
remain 123:2	require 200:3, 14	review 164:5	201:1,10,12,17
remaining 179:23,25 248:1 253:3	required 244:8	revocation 244:23	203:12,22,24
remember 131:6 180:17 197:10 228:1	requirement 235:10	revoke 203:8	204:14,19
remind 137:22	requires 243:10	Rick 169:3,21, 24	205:6 206:6
reminding 208:13	requiring 124:20	rights 200:24 254:19	208:1,3,7
removal 251:24	requisites 246:13	robert 120:9 188:22 206:25 232:23 235:14	210:11 212:3, 5,21 213:15,17
repeat 138:8 143:18,21,25 211:16	rescheduled 252:19	role 212:24 241:1	216:23 217:6 218:3,10,17
replacement 125:13	reserve 242:2	roles 147:5,10	219:9,22
reporter 206:10 227:14,19	resigned 124:24	Roman 184:2	220:10,23
	resolve 209:22	Rose 120:12 122:4 123:13, 17 124:5,19	221:6,17
	respect 147:25 242:16,20 243:6 244:13 245:14 246:4, 9,14 247:18	126:16,19,25 127:9,16 128:4 130:7 133:7,16 134:9 135:16, 21 136:11	223:3,10
	respective 135:7 161:17	137:9 138:21 140:2,21	224:14 225:12, 19 226:4
	responded 141:15 219:10	143:15 144:18 145:24 146:4	228:7,23
	responding 151:20	147:2,20 148:21 149:1, 5,8,16,20	229:5,22
	responsible 194:4	150:6,21 151:12 155:8, 14 156:3,18	230:1,2,10,13, 23 231:25
	rest 193:13 231:21,22	157:9 158:4,7	232:5,9 234:8, 12 242:14
	242:2 255:10	160:23 161:25	248:19,21
			249:1 251:13
			252:6 253:17
			255:15
			roundabout 153:16
			row 194:8
			Rubin 142:23
			Ruffin 142:24
			rule 136:3 217:10 219:4,5

249:16 251:1, 10,18	self-proving 168:25 233:13, 14,18 236:21 239:24 243:6, 8,14 244:6,12	241:22 245:23 252:16 Shirley's 126:15 132:17 140:15 144:17, 23 146:3 148:15 151:12, 13,16 157:22, 24 168:3 194:13 195:14 202:11 207:5,9 234:22 241:3 251:17	20 200:11,20 214:16 238:6, 20 242:21,24 signature 129:5,6,7,13, 14,16 167:10, 14,21,23 168:1 170:7,8,13 171:5,10,12,13 172:18,21 174:22 176:13, 15 182:15 190:17,18 191:2,14 193:1 200:4,14 243:13
S			
sad 240:13	September 194:3 200:21	short 179:20 183:9	signatures 175:15 219:15
safe 123:4 170:15 189:16, 20,21	sequence 184:3, 23	show 120:16 126:21 127:14, 15,18 138:3 179:17 181:13 182:1 190:21 236:15,25	signed 128:20 129:7,8 158:12 165:18 166:14 168:11 189:25 191:5,6,9,12, 22,23 192:2, 13,24 196:20 199:20,22 200:5,6,7,8,9, 10,12,19 202:5 214:13 216:9, 11 221:23 232:20 233:9 234:18 235:24 238:19,23 239:23 240:21 246:11 249:25 250:4,24
sake 215:12,14	sequences 177:17	showed 131:7 170:16 181:23	
satisfactory 236:24 237:2	serve 149:23	showing 246:2	
satisfying 247:14	served 125:11 147:9,11,13 148:19,24	shown 128:3 248:16	
save 192:7	session 179:21 180:19 255:13	Si 129:22 130:23 131:19, 25 132:4,7 139:4 142:19 166:13 194:24, 25 195:1,3 200:5,7 229:8 245:23	
SB 128:13,16, 17,18,19,22	set 229:24 238:2,4	Si's 144:14 161:15 173:16 200:4	
scan 158:20	setting 251:4	sic 125:6 207:8 229:3 250:3	
scenario 211:15 238:25	settled 202:10	side 126:22 151:5,6 180:3 181:24 182:1 193:16 198:7 230:15 231:24 232:4 242:5 247:23 252:22	
scheduled 251:9 252:17	sharp 239:10	sides 180:7	
school 143:3,6, 9	shenanigans 240:11	sign 128:24 129:4,6,12 158:25 167:24 190:14,24	
scope 226:5	sheriff 166:19, 25 186:14	191:8 199:15,	significant 146:16
scoring 138:2	shine 255:18		signing 159:5 239:16
Scott 169:21	Shirley 133:20 136:22 138:12, 15,18,20 139:10,12,25 140:12,17 145:4,12 155:12 157:3, 12,15,19 158:6 163:8,25 166:12 167:15 177:7 184:6,7, 17 189:12 194:17 195:2, 16,18 196:6, 15,18 203:7 232:19 238:17 239:19,25		silent 236:19, 22
Scott's 169:3, 24			similar 128:23 172:14 175:8, 12,19,21,23 176:7
screw 249:18			Simon 135:6 145:16,17 146:2 149:20 150:19,20 157:7 158:11 161:16 163:25 165:18 166:1
seat 233:25 234:6			
SEC 248:6 249:4 253:2			
secret 181:24			
section 144:10 243:21			
seeking 223:21			
seize 248:14			
self-proved 237:7			

169:2 173:24	So.2d 245:4,18 246:22	spouse 135:8 spouse's 203:9	step 193:12 204:20 224:15 237:18 241:10
176:21 189:12, 25 190:10,13, 17,24 191:2	sole 145:20 157:4,5 202:20 249:23	stack 256:12 stamp 188:3,6	steps 210:15 stop 135:11 151:4 156:21 220:14 252:10
192:2,13,24	solitary 175:25	stand 120:12 206:11 208:13 248:8	story 195:13 240:13
193:5 194:2, 13,16,20	solve 226:14	stands 236:5	straight 180:25
195:4,5,9,10, 17 196:10	somebody's 152:3	stapled 127:1	straighten 179:20
199:25 201:15	Sony 143:4	star 254:3	stress 130:5, 10,11,12 131:14 159:6 225:18,23
202:6 203:10, 20 232:21	sort 237:6 240:13	start 175:19	strike 192:23
233:3 235:18	sought 244:23	started 143:20 169:21 180:5 232:18	struggling 162:13
238:9,10,17	sound 165:20	starts 134:25	Stuart 206:18, 23
239:8,15	sounds 196:8	state 129:20 130:23 131:5 133:1 151:4 158:10 174:13, 23 203:4	stuff 137:25 146:11 151:7 162:17 219:4
241:22 251:7,8	spacing 185:10	206:14 224:21 226:7 228:12 229:8,16 233:22 244:5 250:13	subject 223:10 254:10
252:4,14,18	Spallina 120:9, 11 182:12 188:22 193:18, 22 194:2 207:11 208:3 213:25 214:15 215:23 216:1 232:23 235:14 237:14,23 238:2 244:16 245:11 246:12, 13 249:4,12 250:4 254:12	stated 121:5 138:10 139:13 170:24 197:15 217:3 226:13 229:2	submit 160:5,17 179:8,11 244:2,11 247:10,20 252:23
Simon's 153:12	Spallina's 207:1 241:14 243:3 244:3 245:22	statement 202:1 253:1	submitted 142:3 147:16 191:25 240:16 242:13 245:15 248:11 249:21 250:24
154:2 158:10, 13 162:22	speak 161:11 167:22 224:17 232:6	statements 151:21 250:2	submitting 192:1
173:19 188:25	speaking 129:24	states 161:15 202:6	subscribing 239:17
202:25 223:6	special 154:2, 12	stating 132:7 166:14 200:24 231:14	Subsection 242:24 243:23 244:18,20
229:15 231:15	specific 123:10 148:1 245:13 246:10	status 251:6,9 253:9,10,16	substantial 236:6,15 247:16
234:25 235:2, 3,6,7 251:9,16	specifically 215:7	statute 236:14, 16 237:1 242:15 244:5, 15	successor 192:5,6 194:5, 16,21 195:1,3, 7,11 196:16
simple 211:4	speed 198:11	statutes 242:10 244:8	sued 250:17 253:6
simply 237:2 239:13	spend 240:6	statutory 243:21	
single 175:25	spoke 131:11 149:10 173:21	stay 206:6,8 209:18	
sinks 183:5	spoken 149:4		
sir 123:22	spot 163:21 214:1		
128:4 183:11 186:15 193:12			
216:23 231:25			
233:25 255:19			
sister 227:5 233:22			
sisters 214:19 240:25			
sit 211:11 212:15			
sitting 125:12 205:19 216:2			
skills 256:24			
skipping 184:4			
sky 169:19			
slightly 234:15			
slogged 237:10			
slogging 237:11,15			
small 230:20			

suffer 224:8	203:14,25	terms 253:25	250:13 251:19
suffering 222:6,11	204:3,17 212:7	Tescher 142:23	252:15 254:16
sufficient 236:7 239:5	219:23 220:24	147:6 160:16	thinks 212:24
suggest 212:13 238:16,18 246:19 247:2,6	225:20 228:24	182:12 207:11	220:15 221:8, 9,10
suggesting 164:2	248:23 249:5	208:2 213:25	thought 150:15
support 150:5	swiftly 242:3	215:22 237:13	162:10 202:23
supposed 129:4 162:10 176:18 188:9 199:3 250:15	sworn 152:25	Tescher's 189:7	231:2 255:3
Supreme 233:21 234:14 236:9	201:25 202:1	test 165:8	threaten 200:23
surprise 231:17	205:22 235:13	testamentary 193:8 239:14, 16 241:19,21	three-page 181:16 191:1
Surprised 189:9	T	244:13 245:3,5	thrown 211:13
surrendered 120:25	Tab 179:3,4	246:7,11,14	tied 152:8
survive 203:20	183:10 190:7	testator 234:20	time 123:4
survived 202:16 204:10	taking 225:8	238:23 242:21, 25 243:11	127:4,24 130:3
surviving 202:22	232:7	testator's 243:13 245:8	133:12 134:10, 14,15 142:22
survivor 135:8 157:4	talked 131:23, 24 137:4 166:5	testatrix 243:12	151:8 158:13, 23,25 159:4
sustain 148:9 197:6 209:16 217:14 219:3 220:16 225:15 228:15 229:17 231:16	216:6 226:22 232:18	testified 129:20 146:9	162:7 172:3
sustained 124:7 133:9 135:17, 23 136:13	talking 125:14	188:11 205:23	175:14 176:11
140:3 143:16 144:20 145:25 147:3 149:2,17 150:7 151:10 155:9 156:19 157:10 158:8 164:24 165:5, 11 166:9,23 167:3 169:6,12 174:15,18 175:1 177:4 183:20 185:21 188:16 192:21 195:22 196:13 201:2,11,13	126:24 130:16	216:1 237:23	179:19 180:6,8
	146:25 195:14	239:10 246:13	186:19 187:21
	198:9 203:2	testify 198:2	192:24 193:13
	223:4 248:21	244:16	196:3,11
	tangible 202:18	testifying 206:5	204:9,11 205:1
	technically 253:15	testimony 149:19 154:1	208:15,22
	ted 131:17,18	176:1 235:3,22	209:17 213:8
	132:2,14,18,24	237:21,22	218:14 219:2
	133:2 135:6	238:21 239:3, 20 241:14	225:5 228:4
	136:8 140:11, 14 142:18	243:3 244:3	230:7 231:6
	144:7,11,16,23	245:10,11,22	232:2,5,15
	147:12 161:17	246:9 249:24	241:9 246:8
	191:21 194:4, 22,23,24,25	that'll 152:20	251:23 254:14, 20
	195:1,2,4,5,10	160:25 175:20	times 138:1
	196:15 203:10	198:20 234:6	142:9 149:4,10
	205:2,14,21	Theodore 206:18,23	171:23 189:12
	206:2,15,25	thing 126:24	201:19 246:13
	211:5 213:16	127:13 131:3	title 153:18
	217:1 221:23	173:14 175:10	titled 243:22
	240:24 251:24	196:2	today 124:12
	252:2	things 127:1	133:18 136:1
	Ted's 140:17	138:8 156:21	149:15,20
	145:5	159:20 198:11	150:5 152:16
	telephone	213:18 248:22, 24 249:8	176:1 187:21
	130:17 141:18		211:11,19
	238:9		212:15 213:11, 21 214:22
	ten 233:8		217:4,9,17
	247:5,7		218:15 221:10
			244:3,16,24
			245:16,22

246:3 247:2,7	158:1,2,6,11	247:5,8	212:12,13
248:3 249:13	163:8,25	un-notarized	213:23 214:9
250:1,10,14,21	166:16 167:15	240:20	216:9,14
253:16 256:16	168:3,24 169:2	uncontroverted	218:12,14
told 131:25	173:19 176:17,	232:22 243:2	219:10 233:12,
132:7 180:4	19 177:7,15	244:4 245:12	15,16 240:9
214:20,23	184:6,17	uncredible	241:8,21 245:1
220:13	189:14 192:25	250:3	247:21 252:5
top 168:19,22	207:1,5,8,9	understand	validate 149:14
tortured 240:13	209:25 210:5	127:6 156:1	210:16 211:5
total 141:25	232:19,21	189:23 194:19	217:8 219:21,
149:19	233:6 234:25	201:21 207:6	25 220:7 241:6
totality 238:15	235:7 241:3	234:5 241:12	248:6 249:11
touched 137:15	247:1 249:14	245:6	250:1 254:6,8
Traci 167:20	250:16,17,22	understanding	validated
track 209:17	251:17 252:14	142:1 163:12	211:12 212:10
trading 248:8	253:6	211:17 255:6	217:4 220:21
transcript	trustee 145:18	understands	221:3,5,8
224:3 251:13	147:13 195:1,3	189:24	validation
transmitted	207:10,17	undertake	245:16
138:14	208:3 209:3	192:17	validity 135:19
trial 146:9	210:15,25	undisputed	137:12 151:19
162:20,23	211:20 212:20	238:21 239:21	162:6,11
180:4,8,11	213:6 216:15	undue	169:14 170:2
188:25 237:9	220:5,18 221:3	246:16,	208:25 210:19,
251:8,10,17	250:6,15,17,22	21,23 247:13,	24 212:16
252:9,12,17	252:5	17	217:17,19
254:18	trusts 122:11	unfortunate	218:15,22,25
trouble 141:25	131:13 132:2,9	240:23	219:5 229:7,14
226:13	147:6 151:19	ungenuine	243:18,24
true 139:11	152:8,18	241:25	252:25 253:22,
229:23 238:17	153:23,25	unhappy 131:8	24
trust 121:7	157:7 165:25	unlike 129:2	validly 139:9
122:8 126:15	169:10 194:6	236:1	vault 189:15
129:3,11	210:6 211:20	unrebutted	vaults 215:23
132:22 133:6,	216:1,5 246:19	241:16	216:2
20 135:5,13,20	turn 122:1	upheld 157:3	version 138:25
136:22,24	124:17,25	239:18 241:20	view 189:7
137:2,7	188:9	uphold 241:17	241:10 251:11
138:12,16,18,	turned 124:16,	usual 129:22	viewed 236:14
20,25 139:10,	21	<hr/>	violated 251:19
12,25 140:12,	two-by-four	V	violates
17,18 141:25	172:3	<hr/>	251:10,18
144:5,17,23,25	type 122:18	vague 141:20	virtue 202:21
145:1,3,4,10,	typical 168:17	valid 137:2,5,6	vivid 253:12
12,19,20	typically	138:20 139:9	Volume 120:3
146:3,7 148:15	175:11 189:20	140:18 141:1	<hr/>
149:14 150:2,	<hr/>	152:19 155:13	W
20 152:12	U	162:2,3,12	<hr/>
155:3,12 156:2	<hr/>	184:6,17,20	W-e-i-h-e
157:6,13,15,	ultimately	188:24 189:4	245:18
17,19,23,24	132:4 139:4	191:22 211:14	

wait 217:10
255:25
waiver 130:8
166:13 189:24
190:10,14,22
191:8,11,19,21
192:1 199:8
waivers 166:13,
14 197:4
walk 120:16
walking 197:17
wanted 121:13
222:23,25
223:4 226:19
230:7 231:2
250:13 256:3
warned 223:13
warning 156:24
waste 151:8
162:7
wasted 162:5
wealth 233:8
weekend 214:6
weeks 158:10
173:19
Weihe 245:17
whatsoever
216:12 219:16
Whichever
216:17
wife 126:8
224:22
will's 170:15
wills 131:13
146:8 151:19
152:8,18
169:10 189:11
194:6 203:9
233:15 242:16
245:1 246:19
Wilmott's 245:4
win 237:7
winding 153:3
wisely 180:6
wishes 144:14
156:16 157:3,7
233:4 239:12,
22
withdrawn 226:9
withdrew 121:2

witnessed
180:16 214:15
witnesses 153:2
171:14 180:1,
15 205:8,9,11
231:19 234:19
238:23 239:17
241:13 242:23,
24 243:12
word 158:3
235:11
words 163:23
185:17 254:6
work 141:13
143:4 181:5
196:3
worked 176:24
181:8
working 180:23
worth 149:19
wrangled 253:15
wrangling
253:11
write 137:25
138:7 164:17
writing 138:1,4
229:2 242:17
255:2,13,19
written 161:18
201:18 203:17
213:9 235:9
255:22 256:3,9
wrong 179:13
192:1 240:14
253:15
wrote 130:8
211:8 221:19
229:12 231:14

Y

Yates 136:24
137:8 139:13,
15,17,18
140:1,19 144:6
148:25 155:11
156:7
year 200:22
years 125:7
143:1 155:3
224:23 225:7

Z

zip 122:18,21

Appendix 4

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

IN RE: ESTATE OF

File No. 502012CP4391XXXXNB IH

SIMON L. BERNSTEIN

Deceased.

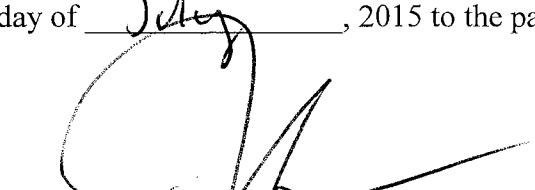
NOTICE OF HEARING

TO: ALL PARTIES ON CERTIFICATE OF SERVICE ATTACHED

YOU ARE HEREBY NOTIFIED that the undersigned will call up for hearing before the Honorable JOHN PHILLIPS, Judge of the above court, in the Judge's chambers in the Palm Beach North County Courthouse, 3188 PGA Blvd, Courtroom 3, Palm Beach Gardens, FL 33410 on **September 15, 2015 at 9:30 AM (one hour set aside)**:

CASE MANAGEMENT CONFERENCE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by e-mail service or U.S. Postal Service on the 31st day of July, 2015 to the parties on the attached Service List.


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ASHLEY N. CRISPIN
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<p>Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34th St. Boca Raton, FL 33434 iviewit@iviewit.tv</p>	<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com Lisa.friedstein@gmail.com Beneficiary</p>
<p>Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents & Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>		

Appendix 5

IN THE SUPREME COURT OF FLORIDA

CAUSE NO. SC15-1077

LOWER TRIBUNAL No(s).:

- 1. CASE: 502015CP00271XXXXNB, FORMERLY
502012CP004391XXXXSB, FORMERLY 20I2CP004391IX;**
- 2. CASE: 502011CP000653XXXXSB;**
- 3. CASE: 502014CP002815XXXXSB;**
- 4. CASE: 502014CP003698XXXXSB;**
- 5. CASE: 502015CP001162XXXXSB;**
- 6. CASE: 502014CA014637XXXXMB;**

OTHER RELATED CASES TO NEXUS OF EVENTS

- 7. CASE: 13-CV-03643 - FEDERAL LAWSUIT IN THE US
DISTRICT COURT OF EASTERN ILLINOIS - HON. JUDGE
JOHN ROBERT BLAKELY;**
- 8. CASE: 07-CV-11196 BERNSTEIN, ET AL. V APPELLATE
DIVISION FIRST DEPARTMENT DISCIPLINARY COMMITTEE,
ET AL. – HON. JUDGE SHIRA A. SCHEINDLIN;**
- 9. CASE: CA01-04671 AB FIFTEENTH JUDICIAL - HON. JUDGE
JORGE LABARGA.**

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

**ELIOT IVAN BERNSTEIN,
PETITIONER**

A handwritten signature in black ink, appearing to read "ELIOT IVAN BERNSTEIN", is overlaid with a blue ink fingerprint.

**PETITION FOR ALL WRITS, WRIT OF PROHIBITION, WRIT OF
MANDAMUS AND PETITION TO STAY CASES AND TEMPORARILY
RESTRAN SALE, TRANSFER, DISPOSITION OF ANY ASSET AND FOR
PRESERVATION OF ALL EVIDENCE**

**WARNING:
POTENTIAL CONFLICTS OF INTEREST**

Eliot Ivan Bernstein has pursued in investigations since early 2000 to present, including a Petition to the White House¹, the White House Counsel's Office, the US Attorney General's Office, investigations to the SEC², FBI, and various State Attorney Generals, and actions with the USPTO, and other legal actions, including RICO and ANTITRUST civil litigation and criminal complaints several Florida Supreme Court Justices, The Florida Bar, several New York Supreme Court Justices, the New York Supreme Court Disciplinary Agencies 1st & 2nd, several large law firms and lawyers, political figures at the highest levels in both Florida and New York and others and this may cause any review of the following matters by any member of The Florida Bar, a subsidiary of the Florida Supreme Court, with any title in the organization, to prejudice the

¹

<http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090213%20FINAL%20SIGNED%20LETTER%20OBAMA%20TO%20ENJOIN%20US%20ATTORNEY%20FINGERED%20ORIGINAL%20MAIL%20I.pdf>

²

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf>

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rights of Eliot Bernstein and his family and will be construed as a denial of due process that obstructs justice.

Defendants in the RICO and other actions include:

- STATE OF FLORIDA,
- OFFICE OF THE STATE COURTS ADMINISTRATOR, FLORIDA,
- **FLORIDA SUPREME COURT,**
 - Jorge Labarga, in his official and individual capacities, [this lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election where he aided in the failure to recount the People's vote when he was a civil circuit judge and for his effort to derail Eliot's legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess filed before his court. Proskauer v. Iviewit, Case #CASE NO. CA 01-04671 AB.]
 - Charles T. Wells, in his official and individual capacities,
 - Harry Lee Anstead, in his official and individual capacities,
 - R. Fred Lewis, in his official and individual capacities,
 - Peggy A. Quince, in his official and individual capacities,
 - Kenneth B. Bell, in his official and individual capacities,
 - THOMAS HALL, ESQ. in his official and individual capacities,
- **THE FLORIDA BAR,**
 - JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,
 - KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,
 - LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,
 - ERIC TURNER, ESQ. in his official and individual capacities,



- KENNETH MARVIN, ESQ. in his official and individual capacities,
- JOY A. BARTMON, ESQ. in her official and individual capacities,
- JERALD BEER, ESQ. in his official and individual capacities,
- BROAD & CASSEL, and, all of its Partners, Associates and Of Counsel, in their professional and individual capacities,
- JAMES J. WHEELER, ESQ. in his professional and individual capacities,
- DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION – FLORIDA,
- CITY OF BOCA RATON, FLA., [Police Department]
 - DETECTIVE ROBERT FLECHAUS in his official and individual capacities,
 - CHIEF ANDREW SCOTT in his official and individual capacities,
- CHRISTOPHER C. WHEELER, ESQ. in his professional and individual capacities, [now involved in the Estate and Trust matters]
- MATTHEW M. TRIGGS, ESQ. in his official and individual capacity for The Florida Bar and his professional and individual capacities as a partner of Proskauer,
- ALBERT T. GORTZ, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]

That the Florida judicial system has not only failed Bernstein twice in protecting his properties, life and liberty but it has played a significant role in the alleged criminal acts committed against Petitioner, his family and now perhaps has led to the death of his father, as alleged by Petitioner's brother Ted as a possible "murder." The recent criminal acts committed by Florida Bar attorneys and fiduciaries of the estates and trusts of Simon and Shirley Bernstein. These

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estate and trust crimes part of a fraudulent scheme and an attempt to rob and preclude Petitioner from inheritance, through Post Mortem crimes committed after the passing of his mother and father Shirley and Simon Bernstein through sophisticated complex legal frauds, including multiple Frauds on the Court and Fraud by the Court itself, with irrefutable evidence of criminal acts by lawyers and law firms and now new allegations that Judges are involved on the attempt to fix and silence the crimes of other members of the Florida Bar and others.

That in the original instance of fraud that occurred against Petitioner and his family in the Courts, many of the Florida Supreme Court Justices named herein may recall that Bernstein in early 2000 began pursuing members of the Florida Bar from a case that began with Jorge Labarga and the international law firm Proskauer Rose intimately involved in thefts of technologies valued as “The Holy Grail” and “Priceless” by leading engineers and when Judge LaBarga was a circuit court judge in Palm Beach County and the complaints against the lawyers and judges involved made their way all the way up to the Supreme Court and why many of the Florida Supreme Court Justices are named in all ongoing actions, including the instant matters involving the fraud on the court of Judge Martin Colin and Judge David French, where yet again we find members of the Florida Bar, two Florida judges and several more Florida attorneys at law involved in the criminal acts described herein and again using the Florida Courts to directly



deprive Petitioner and his family of their rights and further retaliate against Petitioner to directly attempt to stop his pursuit of his Intellectual Property rights and more.

These matters are brought expressly to the forefront of this case so matters of conflicts of interest may be properly adjudicated even in the hearing of the instant petitions for writs and other relief and for consideration as to whether the entirety of these matters should be transferred to a jurisdiction outside the State of Florida and other proper relief.

**PETITION FOR ALL WRITS, WRIT OF PROHIBITION, WRIT OF
MANDAMUS AND PETITION TO STAY CASES AND TEMPORARILY
RESTRAIN SALE, TRANSFER, DISPOSITION OF ANY ASSET AND
FOR PRESERVATION OF ALL EVIDENCE**

Now comes ELIOT IVAN BERNSTEIN ("PETITIONER") who respectfully petitions and pleads and shows this court as follows:

- I. This is a Petition for All Writs and is a Writ of Mandamus, Writ of Prohibition and a Temporary Restraining Order-Stay prohibiting any transfer, sale or disposition of any assets herein under the Estates and Trusts of Simon and Shirley Bernstein and Trusts of PETITIONER'S minor children and further requiring the parties to preserve any and all evidence, documents, records, notes, statements,

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properties and materials relating to these Estate and Trust matters in all cases stated in the caption.

2. It is respectfully submitted that Hon. Judge Martin Colin (“COLIN”) has failed to perform mandatory duties under Florida law by failing to mandatorily Disqualify himself under the Judicial Canons and as required by law by instead issuing a “Recusal” Order sua sponte within 24 hours of Denying the Disqualification motion “as legally insufficient” and then after “Recusal” acted outside of his jurisdiction to poison and prejudice these cases by communicating with other Judges to transfer the cases while acting as a “material witness” to fraud upon and in his own court. In so doing Judge Martin Colin has acted in excess of his jurisdiction and outside the law and must be prohibited by the writ herein. Because the Orders of Judge Colin who should have mandatorily Disqualified are a nullity and void and must be officially voided, there are no valid and proper Orders under which the parties are acting and thus the parties herein and each case listed in the caption shall be temporarily restrained from any further transfers, sale, disposition or compromise of any asset herein pending proper determinations of authority to act, proper determinations of who is and should be Trustee, the Personal Representative and what Dispositive documents prevail and other substantive orders in the case.

BASIS FOR INVOKING JURISDICTION



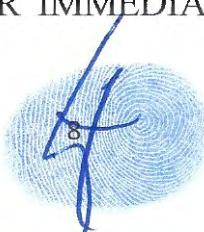
3. This is an Original Proceeding filed in the Florida Supreme Court pursuant to Florida Rule of Civil Procedure 9.100(b) and 9.030 for extraordinary writs.
4. Florida Rule of Appellate Procedure Provides:

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

5. This Court has jurisdiction to issue writs of mandamus, prohibition and any other writ within the exercise of its judicial authority. See *McFadden vs. Fourth Dist. Court of Appeal*, 682 So.2d 1068 (Fla. 1996).
6. Florida Rule of Appellate procedure 9.100(h) provides:

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

7. On May 14, 2015, Petitioner filed a “VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF



JUDGE MARTIN COLIN" (EXHIBIT A) and now seeks Mandamus to compel Hon. Judge Martin Colin to strike his Order Denying the Petition (EXHIBIT B) for mandatory Disqualification as "legally insufficient," and further strike his Order (EXHIBIT C) for Sua Sponte Recusal ordered the day after denying the Petition for Disqualification and then enter an Order of Disqualification as required by law. Petitioners also seek Prohibition which is also appropriate to prevent Judge Colin from further acting in excess of lawful authority and outside his jurisdiction as Judge Colin acted unlawfully in denying the Motion for Mandatory Disqualification as "legally insufficient" and by his own Sua Sponte Recusal Order issued within 24 hours thereafter showed he had continued to act outside the law and further tainting and poisoning the case by communicating with two other local Judges which ultimately lead the action which is immersed in fraudulent filings, fraudulent documents and fraud on the court to somehow be Transferred to one Hon. Judge Coates who himself was previously a Partner working at Proskauer Rose, an international law firm whose conduct and actions are clearly implicated in these cases in the Probate Courts of Florida. In fact, Judge Coates who gets these Probate cases after Judge Colin acts to poison these cases with other Florida Judge, worked in the office of Proskauer Rose right across the hall from Petitioner here in Boca Raton, Florida during key times at issue in the underlying actions.



**IMMINENT AND IMMEDIATE PENDING ACTIONS MAKING
PROHIBITION, STAY AND TEMPORARY RESTRAINING ORDER
APPROPRIATE**

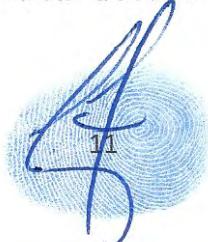
8. Prohibition and further Stay and Temporary Restraining Order is further appropriate since the unlawful acts of Judge Colin in denying Disqualification and instead issuing “Recusal” could have the effect of leading the parties herein to further act in fraud such as an immediately imminent illegal Sale of the deceased Simon Bernstein home in Boca Raton, Florida pursuant to an illegal Order of Sale by Judge Colin which should have been vacated as a nullity upon his mandatory disqualification, yet despite being a legal nullity and there being no lawful authority to act, the parties acting in fraud could infer this Sale still proper to move forward and thus must be Stayed and temporarily restrained pending further hearings and determinations. Of fundamental relevance herein and as set out in the mandatory Disqualification motion of Judge Colin, actions were permitted to continue in fraud in his courts for nearly 2.5 years yet Judge Colin had never held a hearing to determine a proper Trustee of the Trusts, no hearing for the meaning and proper construction of the Trusts, and likewise never held a hearing to determine the validity of any Will or Trust nor the Personal Representative of either estate and instead Judge Colin’s Court simply permitted parties intertwined in the Fraud such as Ted Bernstein to continue to act illegally selling off property, stealing personal property and making other dispositions and

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now the illegal sale of the deceased Simon Bernstein home by Ted Bernstein is imminently scheduled for sale by tomorrow, June 10, 2015. It is noted that in the Estate of Shirley Bernstein alone which was first filed in 2011, there has been no Trust accountings in over 4 years.

STATEMENT OF FACTS

9. The mandatory disqualification of Judge Colin herein came in the Estate cases of my parents, Shirley and Simon Bernstein, with Shirley predeceasing Simon in Dec. 2010 and Simon passing in Sept. 2012. According to the “official” Court records to date, Judge Colin presided over the Estate of Shirley Bernstein while initially Judge French presided over the Estate of Simon Bernstein although eventually Judge Colin begins making rulings and taking action in both cases. At the time of Simon Bernstein’s passing in 2012, his eldest son Ted Bernstein was claiming possible murder of his father at the hospital in Boca Raton, and proceeded to take steps to claim possible murder with the Coroner, members at the hospital and eventually the Palm Beach County Sheriff’s Office back at the home of Simon Bernstein shortly after he was declared deceased. Since that time, valuable personal property items and jewelry which itself was worth more than a million dollars has gone missing and unaccounted for, Simon’s home computer and hard drives had been wiped clean, Shirley’s condo on the beach was sold off illegally, while multiple key and critical documents like Trusts and other business

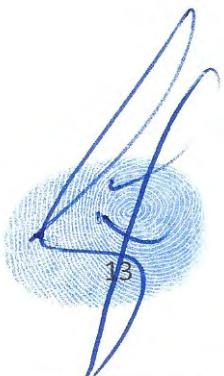


documents went “missing” and/or not produced by the involved attorneys and fiduciaries. Simon Bernstein had been in the insurance business some 50 years or so and a fair approximate combined worth of both estates could be \$50 to \$100 million.

10. This estimate of combined value does not consider the “missing Iviewit stock” wherein the international law firm of Proskauer Rose was directly involved with Simon Bernstein and the Bernstein family trust and estate planning where the “missing Iviewit stock” alone could send the value of the Estates into the billions of dollars.
11. Yet, despite significant estate and trust planning to provide for Petitioners minor children, Joshua, Jacob and Daniel Bernstein, under Judge Colin the minor children have not only been kicked out of the St. Andrew’s school for non-payment of education bills despite Shirley and Simon having planned for them to attend this school through graduation (including fully funded college plans) and provide for their welfare, but the minor children have even faced risk of having electricity cut off while the children’s home has already had the home security system cut off and other bills remaining unpaid while Ted Bernstein and others have secreted away monies, properties and documents and records while Judge Colin acted as Probate Judge.



12. Thus, Petitioner herein, Eliot I. Bernstein, filed a detailed and specified Motion for mandatory Disqualification of Judge Colin on or about May 14, 2015. The motion satisfied all requirements under the law and rules pertaining to mandatory Disqualification under the Canons of Judicial Conduct and was proper in all respects. The motion, which is annexed hereto, set out mandatory Disqualification under several provisions (Florida Rule of Judicial Administration 2.330, Florida Statute 38, and Florida Code of Judicial Conduct, Canon 3(B)7, 3(B)5, 3(E)(1), 3(E)1a, 3(E)1b and 3(E)1b(iv)) pertaining to (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer; (b) or personal knowledge of disputed evidentiary facts concerning the proceeding; (c) is to the judge's knowledge likely to be a material witness in the proceeding.
13. While Petitioner set out a proper legally sufficient motion to mandate Disqualification under all three grounds, most troubling and critical for purposes of the Writ of Prohibition as it relates to Judge Colin's conduct acting in excess and outside jurisdiction is the continuing to act and interfere in proper adjudication of the cases with other judges while being a material witness to the ongoing and continuing frauds in his courts and on his court. See, COLIN Sua Sponte Recusal issued within 24 hours of illegal denial of mandatory disqualification motion.

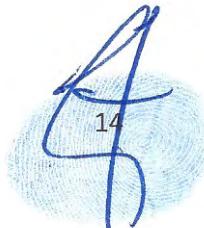


A handwritten signature in blue ink, appearing to read "ELIOT I. BERNSTEIN". Below the signature, the number "13" is handwritten in blue ink.

14. It is noted that at the time this mandatory disqualification motion had been filed, Judge Colin had already permitted the cases to continue for nearly 2.5 years without ever holding a hearing to determine who the proper Trustees were, who proper Personal Representatives of the Estate were and are, what the construction and meaning of the Trusts and Estates should be all the while permitting parties such as Ted Bernstein and attorneys Tescher and Spallina who are involved in the direct frauds upon his court to nonetheless continue acting permitting properties to be illegally sold, substantial monies and assets transferred and disposed of while denying Petitioner and Petitioner's minor children rights of inheritance causing substantial financial and related harm.

15. Such Disqualification motion was filed against the further backdrop of a case wherein the Trustee being illegally allowed to act, Ted Bernstein, had such concerns and suspicions that deceased Simon Bernstein (his father) may have been murdered that he sought action by the Coroner, action to get an independent autopsy and a complaint to the Palm Beach County Sheriff's all within a short amount of hours after Simon Bernstein passed.

16. The Motion for Mandatory Disqualification was filed nearly two years after Petitioner had first filed an Emergency Motion in both the Estate cases of Shirley and Simon Bernstein showing direct fraud on the Court of Judge Colin by the filings of Attorneys Donald R. Tescher, Esq. and Robert L. Spallina, Esq. dating



back to at least October of 2012. By the time the May 2015 Disqualification was filed herein, a paralegal Notary Public Kimberly Moran who was employed by Tescher and Spallina had already been under investigation and later charged and convicted in Notary Fraud involving the same filings made by the Attorney Tescher and Spallina law firm in Oct. 2012. Attorney Spallina, himself, later admitted to the Palm Beach Sheriff of fraudulent actions by himself personally in conspiracy with his partner Tescher involving one of the Trusts (2008 Shirley Bernstein Trust), wherein attorney Spallina admitted to fraudulently changing such 2008 Trust of Shirley Bernstein to change the beneficiaries of this Trust to benefit both Ted Bernstein and Pam Bernstein Simon.

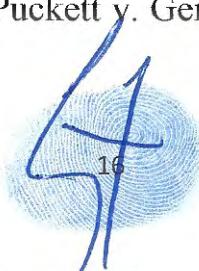
17. Yet Judge Colin, despite stating on the Record on Sept. 13, 2013 that Miranda warnings were appropriate for Ted Bernstein and his attorneys Tescher and Spallina and others, continued to allow the parties to move forward in fraud and held no hearings to correct the frauds and took no actions to refer the attorneys Spallina and Tescher to proper authorities. This was the first hearing held after I filed a detailed Emergency Motion in May of 2013 detailing the fraud upon Judge Colin's Court and other improprieties and requests for relief.
18. While Judge Colin's full involvement in the frauds is presently unknown, it is clear that he was made directly aware of the frauds by Petitioner's Emergency motion filing in May, 2013, if not directly aware or involved earlier. It presently



remains unclear the extent to which Judge Colin's acts post sua sponte recusal have further poisoned the fair adjudication of the cases herein.

MANDAMUS

19. A Writ OF Mandamus is appropriate and required to direct JUDGE COLIN to vacate his prior illegal ORDERS, specifically the Sua Sponte Order of Recusal and Order Denying the motion for Disqualification as “legally insufficient” and to further enter an Order of Disqualification and Vacating all other Orders in the case. The writ of mandamus is appropriately used to require a government actor to perform a nondiscretionary duty or obligation that he or she has a clear legal duty to perform. See *Austin v. Crosby*, 866 So. 2d 742, 743 (Fla. 5th D.C.A. 2004) (holding that mandamus may only be granted if there is a clear legal obligation to perform a duty in a prescribed manner). It applies to enforce a right already established. *Austin*, 866 So. 2d at 744. The writ of mandamus will issue to require a trial court to comply with the mandate of an appellate court. *Superior Garlic Int'l, Inc. v. E&A Produce Corp.*, 29 Fla. L. Weekly D2341 (Fla. 3d D.C.A. Oct. 20, 2004).
20. “Mandamus is a common law remedy used to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law.” *Poole v. City of Port Orange*, 33 So. 3d 739, 741 (Fla. 5th DCA 2010) (citing *Puckett v. Gentry*, 577 So. 2d 965, 967 (Fla. 5th



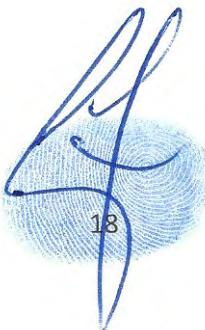
DCA 1991)). “A duty or act is ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.” Austin v. Crosby, 866 So. 2d 742, 744 (Fla. 5th DCA 2004).”

21. “Mandamus is a common law remedy used to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law.” Poole v. City of Port Orange, 33 So. 3d 739, 741 (Fla. 5th DCA 2010) (citing Puckett v. Gentry, 577 So. 2d 965, 967 (Fla. 5th DCA 1991)). “A duty or act is ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.” Austin v. Crosby, 866 So. 2d 742, 744 (Fla. 5th DCA 2004).
22. Petitioner’s motion for Disqualification clearly shows it was properly filed according to law and was facially valid and sufficient and thus Petitioner has established a clear legal right to Disqualification by Judge Colin and mandamus is thus appropriate to enforce this right. The only question before this Court is whether Petitioner met this burden in the filing of the mandatory Disqualification of May 2015 and this Petition and such original Disqualification motion (EXHIBIT A) clearly shows the burden was met by Petitioner thus making mandamus appropriate at this time.



**DISQUALIFICATION MOTION SHOWED JUDGE COLIN AS A
MATERIAL FACT WITNESS TO FRAUDULENT FILINGS BY
ATTORNEYS ROBERT SPALLINA AND DONALD TESCHER USING A
NOW DECEASED SIMON BERNSTEIN TO CLOSE THE ESTATE OF HIS
WIFE, SHIRLEY BERNSTEIN, WHO PREDECEASED HIM**

23. The Disqualification motion clearly demonstrated Judge Colin as a material fact witness in relation to the fraud by Attorneys Spallina and Tescher specifically in relation to an Oct. 24, 2012 filing wherein Attorney Spallina files multiple documents allegedly signed by then Deceased Simon Bernstein nearly 6 months before, yet filing these documents in Judge Colin's Court in the Estate of Shirley Bernstein as if Simon was present and still alive, thus using a Deceased person to attempt to close the Estate of Shirley Bernstein. One of the documents filed at this time is an April 9, 2012 Petition for Discharge which was signed before attorney Robert Spallina allegedly by Simon Bernstein. In addition to this document being fraud as purporting in October of 2012 to be filed by Simon who was now deceased, the document had further fraud in the document such as alleging Waivers by the Simon Bernstein children had been performed by such date and yet these Waivers were not completed as of April 9, 2012. These Waivers which were not completed as of April 9, 2012 are other documents later admitted by the Tescher Spallina employee and Notary Kimberly Moran to have been forged. The Disqualification motion further shows Judge Colin and his Court Officer having



Ex Parte contact with Attorney Spallina two weeks later on Nov. 5, 2012 but not even this Ex Parte communication is docketed until the next day, Nov. 6, 2012.

An excerpt of the Disqualification motion shows *just some of the material fact issues relating to the scheme of fraud in Judge Colin's court* as follows from paragraph 19:

19. This lack of impartiality by Judge Colin and his Court is further compounded by the facts shown by the face of the Court's own Docket and files that it took at least overnight to even Docket the Nov. 5, 2012 Ex Parte Memo on Nov. 6th, 2012 which leads right in and goes hand in hand with the other mandatory grounds for Disqualification on his own initiative for now having knowledge of disputed evidentiary facts involving the proceeding and being likely to be called as a material and-or fact witness, as it is unknown:

- a. Were the Oct. 24, 2012 Filings filed in person and if so by whom?;
- b. If filed in person is Case Manager Astride Limouzin the person who "received" the filings for the Court or is she just the go between with Spallina office and Judge Colin on the Ex Parte Memo?
- c. Who communicated on the file with Judge Colin? Just Limouzin or any other Clerks and Case Managers?
- d. If filed by Mail then by whom and where is the correspondence and envelopes that the filings arrived in to show who signed the correspondence and mailed them if so? ;
- e. If filed by mail then where are the envelopes and correspondence or has this evidence been destroyed?
- f. Why such a long delay between when the Nov. 5th 2012 Ex Parte Memo was created and then Docketed on Nov. 6, 2012?
- g. How was the Memo transmitted to Spallina office? By fax, by mail? Were any phone calls made by the Court or Court Clerks and Case Managers? Any other Ex Parte communications?
- h. Why was the Nov. 5th, 2012 Memo done Ex Parte and not Communicated to all parties with standing in Shirley's case not only for purposes of avoiding impartiality but also to timely apprise the parties of said filings and defects?



- i. Did Judge Colin review the documents?
- j. Did Judge Colin know if Simon was deceased and when did he know? Who told him?

24. Note: These are not an exhaustive list of material fact questions surrounding these fraudulent filings and actions but were sufficient for the mandatory Disqualification as set out in the May 2015 motion.

25. The Disqualification motion in Exhibit A shows other legally proper and valid grounds for disqualification based upon reasonable fear of bias and lack of impartiality and is detailed in the grounds. It is petitioned to this Court that this May 2015 Disqualification motion is not an exhaustive list of the errors and grounds for Disqualification of Judge Colin but was clearly legally sufficient at the time and Judge Colin and Mandamus should now be issued.

26. As a further except of the May 2015 Disqualification motion, the following is presented:

20. Finally, in his own words in the first day of the hearing to sell the house on March 26, 2015, Colin stated that he first had to have hearings to remove Ted, hearings for trust construction to determine validity and investigation of wrongdoings beyond Tescher and Spallina before being able to proceed further and yet with none of those things were achieved and at the next hearing he allows the sale of the house ignoring his prior statement:

13 MR. ROSE: We didn't share the appraisal
14 because, frankly, we were concerned it would be
15 public and that would defeat their chance of
16 selling it.
17 THE COURT: I'm not -- look, nothing is easy
18 here. It's not going to get easier until we can

19 get hearings where I can start to knock off some
20 of the issues, which is what I have been saying
21 now like a broken record.
22 At some point, either Eliot is going to be
23 sustained on his positions or he's going to be
24 overruled, but one way or the other, we can put
25 some of this stuff to rest. The problem is we're
1 doing all of this business with some of the metes [matters]
2 of the case still up in the air where I haven't
3 been able to adjudicate; the claims that Ted
4 should be removed; the claims that there's
5 wrongdoing beyond Spallina and Tescher, the trust
6 is not valid. I mean, give me a chance to rule on
7 that, because once I rule on that, then the matter
8 is over with on those and you'll know one way or
9 the other what to do.

27. Yet, despite Judge Colin proclaiming on the Record that he had to have hearings on whether Ted should be trustee and what the proper construction of the instruments are, Judge Colin proceeds to allow the Simon Bernstein home to be sold by Ted Bernstein in the next hearing and falsely proclaims this to be an “arms-length” transaction despite never having testimony from the alleged buyer of the home nor disclosing the identity of the buyer. See, Exhibit A Disqualification motion. This comes after Judge Colin has already allowed Ted Bernstein to sell a condo of Shirley Bernstein’s allegedly as the successor Trustee of Shirley’s Trust and yet it is the precise Shirley’s Trust of 2008 that attorney Spallina had admitted to fraudulently altering making such admission to the Palm Beach County Sheriff’s Office on or about Jan. 2014, nearly a year and a half before, without Judge Colin ever holding a hearing on these issues. It is further



noted that Ted Bernstein is acting almost solely upon the acts of Tescher and Spallina who were clearly shown by this time to have been engaged in massive fraud upon the Court, yet Colin permits Ted Bernstein to continue to act.

28. COLIN had a statutory duty and was mandated by judicial canons to disqualify himself on his own initiative years before his Sua Sponte Recusal on May 20, 2015 and after PETITIONER filed a Petition to Disqualify on May 14, 2015 that was legally sufficient within Fla. Stat. 38.10 and Fla. Rules Jud. Admin 2.330 and Judicial Canons.
29. That Petitioner, being Pro Se, also motioned COLIN several times to disqualify on his own initiative as required under statutes and Judicial Canons and COLIN failed to rule on the motion and disqualify himself.
30. The Florida Code of Judicial Conduct Canon 3 provides states:

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

31. Disqualification is mandatory under Florida Rule of Judicial Administration Rule 2.330 and Florida Statute 38.10. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the



judge must be disqualified." *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994). Positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988); *Levine v. United States*, 362 U.S. 610 (1960);

32. Should a judge not disqualify himself, the judge is in violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.") "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);

33. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which further disqualifies the judge. Should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996).

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

"A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently" Section E. Disqualification.



(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding."

35. The issues before this Court are the failure of COLIN to mandatorily Disqualify and the "**legal sufficiency**" of the motion to Disqualify filed by PETITIONER and more importantly the failure of COLIN to mandatorily disqualify on his own initiative versus waiting for PRO SE PETITIONER to file sufficient pleadings. In order to demonstrate legal sufficiency, PETITIONER needed to show:

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

State ex rel. Brown v. Dewell, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). *See also Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981). **The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially.** *State v. Livingston*, 441 So. 2d 1083, 1086 (Fla. 1983) (emphasis added). In a case where the PETITIONER'S liberty is at stake, the court "should be especially sensitive to the basis for the fear." *Chastine v. Broome*, 629 So. 2d 293, 294 (Fla. 4th DCA 1993). The circumstances of this case are of such a nature that they are "sufficient to warrant fear on PETITIONER'S part] that he would not receive a fair hearing by the assigned

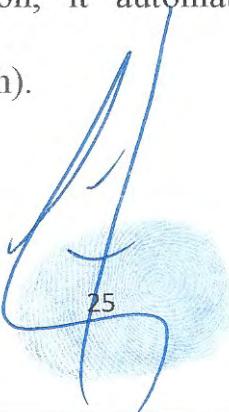


judge.” *Suarez v. Dugger*, 527 So. 2d 191, 192 (Fla. 1988).

36. For all the reasons set forth herein and by the attached Disqualification Motion of May 2015 in Exhibit A and upon all the proceedings, documents and records herein, Mandamus must now issue for Judge Colin to strike the prior Sua sponte Order of Recusal, strike the Order denying the Disqualification motion as legally insufficient, and void all Orders in the case from Nov. 2012 forward at minimum.

PROHIBITION

37. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. *Carroll v. Fla. State Hosp.*, 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge’s order denying a motion to disqualify).
38. WRIT OF PROHIBITION is proper to prevent an inferior court or tribunal from improperly exercising jurisdiction over a controversy and if a petition for a writ of prohibition demonstrates a preliminary basis for entitlement to relief, the court can issue an order to show cause why relief should not be granted. Once a show cause order issues in prohibition, it automatically stays the lower court proceeding. Fla. R. App. P. 9.100(h).



39. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. *Carroll v. Fla. State Hosp.*, 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge's order denying a motion to disqualify).
40. That COLIN influencing the matters after recusal appears further obstruction and may have given Proskauer inside information and records with intent and scienter in further efforts to derail PETITIONER'S rights.

The Court further stated:

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

41. This is the exact same divisive and devious conduct exhibited herein – these state actors are employing the very institution they have subverted to achieve their ends.
42. Thus, in this case, Judge Colin proceeded to poison the further hearing and adjudication of the cases in Florida by having ex parte communications with other Judges of the Florida Courts while he should have been disqualified as a material witness to the Tescher Spallina Moran frauds and for other grounds. Yet, this



process of poisoning the case with other Judges leads to the case being directed to one Judge Coates who himself was a Proskauer Rose partner out of the Boca Raton, Florida office right across the hall from Petitioner herein when Proskauer and related parties were stealing away patents and technologies valued in the hundreds of billions (if not trillions) over the lifetime of the IP and heralded by leading engineers and experts as the “holy grail” of the internet.

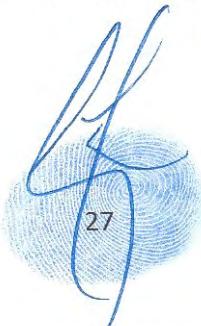
43. Proskauer Rose, themselves, had in fact “billed” for Estate and Trust work involving Simon Bernstein and Petitioner’s minor children in Billings that came out in a prior action here in Florida heard before Judge Labarga.

See, Proskauer v. Iviewit Lawsuit – Proskauer Legal Bills
@
<http://www.iviewit.tv/20040404ProskauerBillsIviewit.pdf>

06/29/99 M ROBBINS 3.00 Draft and preparation of memoranda to Gortz; Revisions to The Jacob Bernstein 1999 Trust subscription agreement, See Proskauer Rose Billing Lawsuit

09/27/99 M ROBBINS .50 Inter-office conference with G. Karibjanian re: trusts and waiver of permitted transferee provision of S. Bernstein’s subscription agreement.

09/28/99 M ROBBINS 1.25 Meeting with Simon Bernstein re: transfer of shares to trusts. Send LLC Agreement to Simon Bernstein. Inter-office conferences with G Karibjanian re: transfer of shares to trusts. Preparation of e-mail to G. Karibjanian retransfer of shares to trusts.



44. Judge Colin had already been petitioned and advised about the “elephant in the room” being the Proskauer Rose involvement and missing Iviewit stock and patent fraud by the May 2013 Emergency Motion attached herein and further set out in the May 2015 Disqualification motion. .
45. Attorneys Spallina and Tescher had already filed a Will of Simon Bernstein on or about Oct. 2, 2012 shortly after Simon’s passing that was prepared by Proskauer Rose and thus, clearly Simon Bernstein’s passing was noted in the State of Florida Palm Beach County Court System prior to the Oct. 24, 2012 fraud by Spallina and Tescher when now deceased Simon Bernstein is being used to “close” Shirley Bernstein’s Estate and certainly Simon’s passing was registered in the Florida Probate Court system at the time of the subsequent Nov. 2012 Ex Parte communication to Spallina by Judge Colin’s case assistant on behalf of Judge Colin.
46. Yet, even in “resigning” from the case by the sua sponte recusal Judge Colin continued to poison proceedings and a writ of prohibition must now issue along with protective Orders as requested.

ALL ORDERS OF JUDGE COLIN ARE A NULLITY AND ARE VOID

47. Where a judge fails to disqualify, there is no jurisdiction to act and any order issued is illegal and void. *Kilbourn v. Thompson*, 103 U.S. 168 (1881). In *Kilbourn*, the Sergeant-at-Arms of the United States House of Representatives



was held not to have immunity for ordering that the PLAINTIFF be arrested under a warrant issued by the House for refusing to testify because they lacked jurisdiction to issue such an order. *Id.* The court held that the House *did not have jurisdiction* to conduct the particular investigation. The Sergeant at Arms was liable for false arrest and could not assert the issuance of the warrant as a defense. *Id.* An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See *Pennoyer v. Neff* (1877) 95 US 714; *Windsor v. McVeigh* (1876) 93 US 274; A void judgment is no judgment at all and "a court must vacate any judgment entered in excess of its jurisdiction." *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972). *Kalb v. Feuerstein* (1940) 308 US 433.

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



certainly in contravention of it, their judgments and orders are regarded as nullities..." *Valley v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348.

49. Thus, because Judge Colin should have disqualified and acted outside his jurisdiction, all such Orders of Judge Colin should now be vacated and voided. Judge Colin himself, even prior to the Sept. 2013 Hearing which occurred after his court was expressly petitioned on the Tescher Spallina fraud by the May 2013 Emergency Motion, must be charged with personally knowing of Simon's passing by May of 2013 since he issued an Order denying the Emergency motion in BOTH the Estates of Shirley and Simon and thus must have known Simon had passed by that date. It is noted, however, that Judge French had been assigned to Simon's estate in May of 2013 yet Judge Colin issued the Order denying the Emergency motion. Further, Judge Colin must be chargeable with reading the filings in his own Court by the time he issued the Order closing Shirley's Estate in Jan. 2013 and thus should have known of Simon's passing by that time and thus all Orders from Jan. 2013 on must be vacated.

ALL PRIOR ORDERS OF JUDGE COLIN SHOULD BE VACATED AS VOID AND A LEGAL NULLITY

50. "Procedural due process promotes fairness in government decisions by requiring the government to follow appropriate procedures when its agents decide to deprive any person of life, liberty or property." *John Corp. v. City of Houston*, 214 F.3d 573, 577 (5th Cir. 2000) (internal citations and quotations omitted).



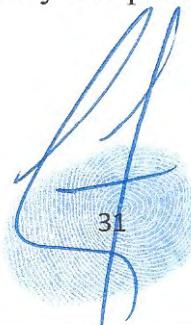
“Substantive due process, by barring certain government actions regardless of the fairness of the procedures used to implement them, serves to prevent governmental power from being used for purposes of oppression.” Id. In order to establish either a substantive or procedural due process violation, a plaintiff must first establish the denial of a constitutionally protected property interest. See *Bryan v. City of Madison*, 213 F.3d 267, 276 (5th Cir. 2000).

LEGAL AUTHORITIES

MANDATORY DISQUALIFICATION

51. COLIN had a statutory duty and was mandated by judicial canons to disqualify himself on his own initiative years before his Sua Sponte Recusal on May 20, 2015 and after PETITIONER filed a Petition to Disqualify on May 14, 2015 that was legally sufficient within Fla. Stat. 38.10 and Fla. Rules Jud. Admin 2.330 and Judicial Canons.
52. That Petitioner, being Pro Se, also motioned COLIN several times to disqualify on his own initiative as required under statutes and Judicial Canons and COLIN failed to rule on the motion and disqualify himself.
53. The Florida Code of Judicial Conduct Canon 3 provides states:

A Judge SHALL disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to



instances where: (a) the judge has a personal bias or prejudice concerning the party or a party's lawyers.

54. Disqualification is mandatory under Florida Rule of Judicial Administration Rule 2.330 and Florida Statute 38.10. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994). Positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988); *Levine v. United States*, 362 U.S. 610 (1960);
55. Should a judge not disqualify himself, the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.")"[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);

56. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his “appearance of partiality” which further disqualifies the judge. Should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996).

57. Disqualification is Mandatory under the Code of Judicial Conduct, Canon 3 “A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently” Section E. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding.”

58. The issues before this Court are the failure of COLIN to mandatorily Disqualify and the “legal sufficiency” of the motion to Disqualify filed by PETITIONER and more importantly the failure of COLIN to mandatorily disqualify on his own initiative versus waiting for PRO SE PETITIONER to file sufficient pleadings. In order to demonstrate legal sufficiency, PETITIONER needed to show:

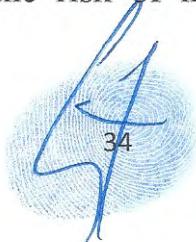


...a well-grounded fear that he will not receive a fair [hearing] at the hands of the judge. It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling.'

State ex rel. Brown v. Dewell, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938).

See also Hayslip v. Douglas, 400 So. 2d 553 (Fla. 4th DCA 1981). The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially. State v. Livingston, 441 So. 2d 1083, 1086 (Fla. 1983) (emphasis added). In a case where the PETITIONER'S liberty is at stake, the court "should be especially sensitive to the basis for the fear." Chastine v. Broome, 629 So. 2d 293, 294 (Fla. 4th DCA 1993). The circumstances of this case are of such a nature that they are "sufficient to warrant fear on PETITIONER'S part] that he would not receive a fair hearing by the assigned judge." Suarez v. Dugger, 527 So. 2d 191, 192 (Fla. 1988).

59. PETITIONER and his minor children are entitled to a full and fair proceeding, including a fair determination of the issues by a neutral, detached judge. Holland v. State, 503 So. 2d 1354 (Fla. 1987); Easter v. Endell, 37 F.3d 1343 (8th Cir. 1994). Due process guarantees the right to a neutral, detached judiciary in order "to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected



interests.” *Carey v. Piphus*, 435 U.S. 247, 262 (1978). Principles of due process demand that this case be heard by another judge selected without COLIN’S prejudice and for COLIN to disqualify himself and remove his Orders issued outside his jurisdiction and outside the color of law:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See *Carey v. Piphus*, 435 U.S. 247, 259-262, 266- 267 (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. See *Matthews v. Eldridge*, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, ‘generating the feeling, so important to a popular government, that justice has been done,’ *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

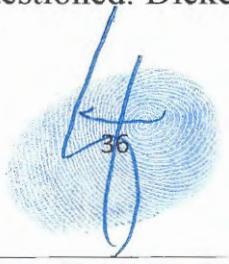


60. The disqualification rules require judges to avoid even the appearance of impropriety and COLIN'S self-dealing actions after knowing he would be a material and fact witness to crimes that occurred in his court by officers and fiduciaries he appointed, in which his own actions became questionable,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

It is the established law of this State that every litigant...is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the court to scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any manner where his qualification to do so is seriously brought into question. The exercise of any other policy tends to discredit and place the judiciary in a compromising attitude which is bad for the administration of justice. *Crosby v. State*, 97 So.2d 181 (Fla. 1957); *State ex rel. Davis v. Parks*, 141 Fla. 516, 194 So. 613 (1939); *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932); *State ex rel. Mickle v. Rowe*, 100 Fla. 1382, 131 So. 3331 (1930).

* *

The prejudice of a judge is a delicate question for a litigant to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge in question should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned. *Dickenson v. Parks*, 104 Fla. 577, 140



So. 459 (1932); State ex rel. Aguiar v. Chappell, 344 So.2d 925 (Fla. 3d DCA 1977).

61. The United States Supreme Court has stated:

...the inquiry must be not only whether there was actual bias on respondent's part, but also whether there was 'such a likelihood of bias or an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused.' Ungar v. Sarafite, 376 U.S. 575, 588 (1964). 'Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties,' but due process of law requires no less. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). *Taylor v. Hayes*, 418 U.S 488, 501 (1974) (emphasis added).

62. The appearance of impropriety violates state and federal constitutional rights to due process. A fair hearing before an impartial tribunal is a basic requirement of due process. See *In re Murchison*, 349 U.S. 133 (1955). "Every litigant is entitled to nothing less than the cold neutrality of an impartial judge." *State ex rel. Mickle v. Rowe*, 131 So. 331, 332 (Fla. 1930). Absent a fair tribunal, there can be no full and fair hearing.

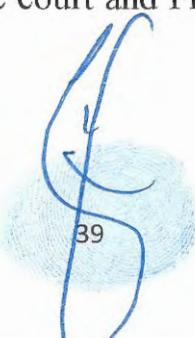
63. The issues before this Court are the dismissal of the Recusal order of Colin in favor of a mandated mandatory disqualification of COLIN and voiding of his

prior orders and the question of “legal sufficiency” of the motion filed by PETITIONER; there is no deference owed to the lower court. *Smith v. Santa Rosa Island Authority*, 729 So. 2d 944, 946 (Fla. 1st DCA 1998). The test for determining the legal sufficiency of a motion for disqualification is an objective one which asks whether the facts alleged in the motion would place a reasonably prudent person in fear of not receiving a fair and impartial hearing. See *Livingston v. State*, at 1087. The fact that the crimes were committed in COLIN’S court by Officers and Fiduciaries under COLIN’S tutelage requires mandatory disqualification on COLIN’S own initiative and casts “a shadow...upon judicial neutrality so that disqualification [of the circuit] is required.” *Chastine v. Broome*, at 295.

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

impartial due process under law by retaliating for two years against PETITIONER instead.

65. The Due Process Clause serves to protect use of fair procedures to prevent the wrongful deprivation of interests and is a guarantee of basic fairness. Johnson v. Mississippi, 403 U.S. 212, 216 (1971); Peters v. Kiff, 407, U.S. 493, 502 (1972). "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552 (1965) Garraghty v. Va. Dep't of Corr., 52 F.3d 1274, 1282 (4th Cir. 1995); Denying access to important records, evidence, and witnesses and mistreating PETITIONER and his minor children as a pro se party are violations of Equal Protection and due process of law. Pro se parties are a distinct minority class in judicial proceedings. COLIN should have demanded that the minor children and PETITIONER were represented by counsel, forced bonding of the fiduciaries and officers he appointed involved in the criminal acts, posted bonds for the court, reported the misconduct, removed all parties involved in the fraud instead of allowing them to continue to participate for months and even to this day, disqualified himself and instead COLIN took opposite actions to harm PETITIONER and his minor children and delay their inheritances by continuing the Fraud on the court, Fraud in the court and Fraud by the court, to intentionally

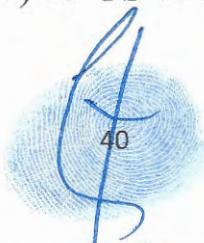


cause catastrophic financial ruin upon PETITIONER and his minor children by continuing to hold fraudulent proceedings and illegally issue orders.

66. None of the orders issued by a judge who has been disqualified or should have disqualified by law are valid. They are void as a matter of law, and are of no legal force or effect. The orders issued by COLIN are null and void and of no force and effect as they are procured by fraud, without jurisdiction, the result of unlawful rulings, are unconstitutional and violate due process causing criminal Obstruction of Justice.

ALL ORDERS OF JUDGE COLIN ARE A NULLITY AND ARE VOID

67. Where a judge fails to disqualify, there is no jurisdiction to act and any order issued is illegal and void. Kilbourn v. Thompson, 103 U.S. 168 (1881). In Kilbourn, the Sergeant-at-Arms of the United States House of Representatives was held not to have immunity for ordering that the PLAINTIFF be arrested under a warrant issued by the House for refusing to testify because they lacked jurisdiction to issue such an order. *Id.* The court held that the House did not have jurisdiction to conduct the particular investigation. The Sergeant at Arms was liable for false arrest and could not assert the issuance of the warrant as a defense. *Id.* An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See *Pennoyer v. Neff* (1877) 95 US 714; *Windsor v. McVeigh* (1876) 93



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

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

**PETITION TO STAY CASES AND TEMPORARILY RESTRAIN ANY
SALE, TRANSFER, DISPOSITION OF ANY ASSET OR PROPERTY
AND PRESERVATION OF EVIDENCE**

69. Petitioners must establish the following four elements:



(1) a substantial likelihood that the plaintiffs will prevail on the merits; (2) a substantial threat that plaintiffs will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to plaintiffs outweighs the threatened harm the injunction may do to the defendant; and (4) granting the preliminary injunction will not disserve the public interest. *Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11th Cir.1994).

70. The mandamus petition herein and filed motion for mandatory Disqualification clearly shows said motion was legally sufficient and Judge Colin should have mandatorily disqualified. Thus Petitioners have a substantial likelihood to prevail on this application. In addition to an illegal sale of real property being the home of deceased Simon Bernstein imminently scheduled for sale by June 10, 2015, Petitioners have shown loss of property, loss of records, loss of documents and evidence, loss of trusts and inheritances and other issues of irreparable harm. Granting a temporary stay and injunction against further threatened injury to Petitioners outweighs and harm to Respondent –defendants. Granting a temporary stay is in the public interest until a neutral court can sort out the frauds and conflicts and proper parties and proper trustees and proper trusts and instruments.

71. PETITIONER has suffered at the hands of the Florida court system for thirteen years and has been denied INTELLECTUAL PROPERTIES and due process to seek redress as the alleged criminals are almost all attorneys at law in their various capacities as private lawyers, judges, prosecutors and politicians.



72. PETITIONER has suffered at the hands of the Florida court system for almost three years since the passing of PETITIONER'S father and has been denied PROPERTIES rightfully his through inheritance and again the criminals are almost all attorneys at law and many are connected to the prior INTELLECTUAL PROPERTIES thefts.

73. PETITIONER again cannot get redress or due process in the Florida court system and seeks to have the cases moved from the Florida court system as due to his pursuit of Supreme Court Justices, the Florida Bar and many Florida Lawyers and Law Firms and therefore PETITIONER fears he cannot get a fair and impartial hearing and adequate remedy of law by any party that is a member of the Florida Bar.

74. PETITIONER has battled two years to remove JUDGE COLIN for a situation of Fraud on the Court that was irrefutable and cause for disqualification on several grounds but who refused to follow Judicial Canons and Law and thus has caused severe harms to PETITIONER and his three minor children as the record reflects.

75. Even when “recusing” JUDGE COLIN influenced inappropriately the case knowingly to a former PROSKAUER partner and where PETITIONER was again harmed as the new judges COATES then had access to all the courts records to gain further advantage over PETITIONER. That COLIN and COATES knew of



the conflict of interest and that PROSKAUER was a Counter Defendant in the certain of PETITIONER'S Counter Complaints and a party to the matters.

76. That COATES had reviewed the case file and stated on the record that he was NOT CONFLICTED with PETITIONER and the matters until PETITIONER reminded JUDGE COATES that despite his desire to stay on the case that he had JUDICIAL CANONS that could make his retaining the case violate them, whereby JUDGE COATES after several attempts to claim NO CONFLICT suddenly SUA SPONTE recused himself.
77. That due to this nefarious setup of PETITIONER'S cases to further stymie and delay and interfere with PETITIONER'S due process and procedure rights PETITIONER fears that no matter how or who the cases are transferred to in Florida that PETITIONER cannot receive due process and any successor to Judge Coates was part of a forgone plan to derail due process.

CONCLUSION AND PRAYER

WHEREFORE, PETITIONER seeks a WRIT OF PROHIBITION to prohibit COLIN from:

- a. Acting in excess of his lawful jurisdiction;
- b. Attempting to enforce the May 20th 2015 SUA SPONTE RECUSAL or ANY OTHER ORDER;



- c. Taking any action in this matter other than vacating and voiding all Orders and immediately disqualifying himself;
- d. Prohibition is invoked for the protection of PETITIONER and his minor children, whose safety and well being are in danger if this WRIT is denied for lack of a legal remedy.

WHEREFORE, PETITIONER seeks a WRIT OF MANDAMUS, compelling the COLIN to:

- a. abide by the laws of the State of Florida, Federal law and the United States Constitution and cease acting beyond his jurisdiction immediately;
- b. set aside the May 20th 2015 Order to Recuse as void *ab initio* immediately and instead disqualify himself and make NO FURTHER ACTION;
- c. set aside the ALL ORDERS as void *ab initio* immediately;
- d. set aside all other Orders in his Court as *void ab initio* immediately as they are the product of fraud on, in and by the court; and,
- e. immediately disqualify himself from this case and take no further action.



WHEREFORE, PETITIONER seeks a 30 day STAY ORDER for all cases in order to move the cases to a prescreened conflict free venue, either state or federal.

- a. IMMEDIATELY SEIZE ALL ASSETS AND PROPERTIES OF THE ESTATES AND TRUSTS of Simon and Shirley Bernstein and have all assets that have been converted through the fraudulent orders immediately be returned and put in protective custody by this Court, until all matters of document fraud, trust constructions, trust validity, fraud and breaches of fiduciary duties can be adjudicated by a fair and impartial court of law; and,
- b. Reverse COLIN'S acts to interfere with the next venue in these matters by having the case assigned to a proper jurisdiction and venue without COLIN'S steering the case to a court and judge that he influenced the outcome in choosing.

And for such other and further relief as to this Court may seem just and proper.

DATED: Tuesday, June 30, 2015

Respectfully submitted,

/s/ Eliot Ivan Bernstein

46

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by e-filing and email on this Tuesday, June 30, 2015.

Respectfully submitted,

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47

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the font standards, i.e. Times New Roman 14 point font as set forth in Florida Rule of Appellate Procedure 9.210.

DATED: Tuesday, June 30, 2015

Respectfully submitted,

/s/ Eliot Ivan Bernstein

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EXHIBITS

URL'S ARE FULLY INCORPORATED HEREIN BY REFERENCE.

Exhibits	Document - URL
A	See Attachment – Disqualification Petition
B	See attachment – Order Denying Disqualification Petition
C	See attachment – Order Sua Sponte Recusal
1	September 02, 2014 Counter Complaint http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf
2	October 06, 2014 Colin Order Prohibiting Attorney/Fiduciaries from being sued http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141006%20Order%20on%20Ted%20Bernstein%20Removal%20as%20Trustee%20and%20Attorney%20Protection%20Order.pdf
3	July 25, 2012 ALLEGED Simon Bernstein Trust (See Pages 5,6 and 16, 17) http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120725SimonBernsteinAmendedRestatedTrust.pdf
4	Crystal Cox Blog http://tedbernsteinreport.blogspot.com/2014/07/alan-rose-john-pankauski-and-ted.html
5	TED Testimony Admitting Force and Aggression to be used against PETITIONER with his counsel. http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140711%20Hearing%20TED%20ADmits%20FORCE%20AND%20AGGRESSION%20AGAINST%20ELIOT.pdf
6	July 18, 2014 COLIN Privilege Order

	<u>http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140718%20Order%20Regarding%20Privilege.pdf</u>
7	Palm Beach County Sheriff Report (Pages 25-28) <u>http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf</u>
8	Palm Beach County Coroner Report (Pages 31-51) <u>http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf</u>
9	May 06, 2015 TED Deposition (Pages 115-134) <u>http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf</u>
10	September 13, 2013 Emergency Hearing <u>http://www.iwatchit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tesch%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf</u>
11	May 14 2015 Motion for Disqualification <u>http://iwatchit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf</u>
12	June 16, 2014 Petition to Remove Judge Colin <u>http://iwatchit.tv/Simon%20and%20Shirley%20Estate/20140616%20FINAL%20SIGNED%20PRINTED%20OBJECTION%20TO%20PROPOSED%20AND%20EXISTING%20ORDERS%20and%20DISQUALIFY%20OF%20HON%20JUDGE%20MARTIN%20COLIN.pdf</u>
13	January 01, 2014 Motion to Disqualify Colin <u>http://iwatchit.tv/Simon%20and%20Shirley%20Estate/20140101%20Final</u>

45
50

	<u>%20PRINTED%20SIGNED%20Motion%20to%20Disqualify%20Colin%20and%20more%20131279ns.pdf</u>
14	Iviewit RICO and Antitrust <u>http://www.iviewit.tv/20071215usdcnycomplaint.pdf</u>
15	Iviewit RICO and Antitrust Amended Complaint <u>http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080509%20FINAL%20AMENDED%20COMPLAINT%20AND%20RICO%20SIGNED%20COPY%20MED.pdf</u>
16	Candice Schwager, Esq. Warning - PETITIONER correspondences with Sheriff Andrew Panzer & DOJ OIG Michael Horowitz <u>http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150411CandiceSchwagerEsqWarningDOJOIGHorowitzAndSherifPanzerLetters.pdf</u>

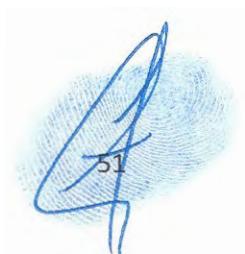



EXHIBIT A



52

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 Judge Martin Colin 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

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

COMES NOW Eliot Bernstein ("Petitioner") and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin, 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 Martin Colin is a circuit judge in the 15th Judicial Circuit Probate Division.

Motion for Disqualification Judge Colin

1 Page

Thursday May 14, 2015

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 Colin provided by rules, statute and by the Code of Judicial Conduct.

- a. Judge Colin has violated the following Judicial Canons, including but not limited to,
 - i. Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary
 - ii. Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities
 - iii. 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.
- (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.

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.
- (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.

E. Disqualification.

Motion for Disqualification Judge Colin

2 | Page

Thursday, May 14, 2015

(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;

F. Remittal of Disqualification.

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

b. Judge Colin has violated Statutes related to, including but not limited to,

- i. 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 more.
- ii. Fraud in the Court
- iii. Fraud by the Court
- iv. Obstruction of Justice through Denial of Due Process

Motion for Disqualification Judge Colin

31 Page

Thursday, May 14, 2015

v. Aiding and Abetting and more.

c. Judge Colin has violated Probate Statutes and Rules

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

3. 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.

4. 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.

5. 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.

6. 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 Florida
Rule of Civil Procedure 1.080.

7. 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 Colin under Rule 1.080.

Motion for Disqualification Judge Colin

4 Page

Thursday, May 14, 2015

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.

8. That Petitioner asserts that he will not and has not received a fair trial or hearing because of the following specifically described prejudices and biases of Judge Colin under Rule 2.330 (d), and shall be mandatory 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;

9. Judge Colin had reasons to voluntarily disqualify himself from these proceedings prior to and regardless of this Motion to Disqualify him by Petitioner and has failed to do so prompting Pro Se Petitioner to file this disqualification on multiple grounds.

10. Judge Colin's Court Docket in this case reflects an Entry on Nov. 6, 2012 which is the Filed and Time-Stamped Date by the Court Clerk's Office of a Memorandum¹ allegedly made by

¹ November 05, 2012 Memorandum

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Receipts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf>

Astride Limouzin, Case Manager which by the express notations on said document was done on behalf of Judge Martin Colin, the Judge in this case at that time.

11. Notwithstanding the fact that this is listed as an Ex Parte communication in the Court's own Docket which will be addressed later, the Ex Parte communication is addressed to Attorney Robert L. Spallina. The Memorandum document purports to be notifying Attorney Spallina on behalf of Judge Colin that "Receipts for assets from all of the specific beneficiaries were not notarized." It is important to note that Attorney Spallina is fully aware at this time that his client Simon Bernstein the Personal Representative has passed away on September 13, 2012 and yet he continues to file with the Court documents on his deceased clients behalf to close the Estate months after his passing and presumably without notifying the Court.
12. However, by the time of this Ex Parte communication which purports to be by Astride Limouzin of Judge Colin's Court on behalf of Judge Colin to Attorney Spallina dated Nov. 5, 2012 by the express language of the document and is rejecting for filing Waivers not notarized by decedent Shirley's deceased at the time husband, Simon Bernstein², and, Eliot Ivan Bernstein, Jill Bernstein-Iantoni, Pam Bernstein-Simon, Theodore Stuart Bernstein and Lisa Bernstein-Friedstein, as the adult surviving children of Shirley Bernstein in the Shirley Bernstein Estate case, Judge Colin's Court had already received for filing:
 - a. A Petition for Discharge (Full Waiver)³ (also needing notarization but not notarized) to close Shirley's Estate allegedly dated April 9th, 2012 and allegedly signed by Simon

² Simon Bernstein un-notarized Waiver @ URL

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf>

³ Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL

Bernstein on said date and Subscribed before Attorney Robert Spallina on same date of April 9, 2012, yet which is not Filed and Docketed with the Court until Oct. 24, 2012 with Judge Colin's Court and time-stamped by the Clerk's Office on said date, thus meaning Simon Bernstein was acting as Personal Representative/Executor to close Shirley's Estate a month after he was Deceased on Sept. 13 2012; being filed and time-stamped as received by the Court Clerk of Judge Colin's Court nearly 2 weeks before the Nov. 5, 2012 Ex Parte Memo above;

- b. A Tax Statement⁴ allegedly dated April 9, 2012 and allegedly signed by Simon Bernstein on said date indicating no Florida Estate Tax due yet again this Document was Filed and Time-stamped with Judge Colin's Court Oct. 24, 2012 nearly 2 weeks before the Ex Parte Memo from Judge Colin to Robert Spallina allegedly made by Judge Colin's Case Manager Astride Limouzin on Nov. 5, 2012 and again posited with the Court by Simon acting as the Personal Representative/Executor after he is deceased; and
- c. A Probate Checklist⁵ dated Feb. 15, 2012 which again references Attorney Robert Spallina as the involved attorney, Simon Bernstein as the Personal

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>

⁴ Affidavit of No Florida Estate Tax Due @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf>

⁵ Probate Checklist

Representative/Executor of the Estate but which is not only substantially defective in the items it references but again is not filed until Oct. 24, 2012 and time-stamped as received by Judge Colin's Court Clerks on said date again being filed by Simon acting as Personal Representative/Executor *nearly a month after Simon Bernstein passed away and was deceased but nearly 2 weeks before the Ex Parte Memo to Attorney Spallina by Judge Colin via Case Manager Astride Limouniz dated Nov. 5, 2012.*

13. Judge Colin is chargeable with knowledge of the documents filed and entered into his Court upon which he is adjudicating and presiding over.
14. Thus, prior to transmitting the Nov. 5th 2012 Ex Parte Memorandum from Judge Colin via his Case Manager Astride Limouzin to Attorney Robert Spallina, Judge Colin's Court had received multiple filings as referenced above which are not only dated many months prior to the actual filing date but are clearly filed nearly an entire month after Simon Bernstein was deceased and at least one of these documents is Subscribed and witnessed by Attorney Robert Spallina being the Petition to Discharge to close Shirley's Estate and Judge Colin is now communicating with Attorney Spallina Ex Parte according to the Court's own Docket.
15. As of this date itself, Nov. 5, 2012, Judge Colin should have been Disqualified under the Florida Rules and Statutes and now should be Disqualified under at least 3 separate grounds of the Rules and Codes as an instance in which a Judge's impartiality may be reasonably questioned, as one with knowledge of disputed evidentiary facts concerning the proceeding and both as a material witness or likely material witness and - or fact witness of disputed and material evidentiary facts in the proceeding.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf>

Motion for Disqualification Judge Colin
81 page
Thursday May 14, 2015

16. Now, back to the **Ex Parte** nature of the Nov. 5, 2015 Memo from Judge Colin through Judge Colin's Caseworker Astride Limouzin to Attorney Robert Spallina who is now shown and presumably already known to Judge Colin and his Court Clerks to have filed with the Court multiple documents on behalf of a Deceased person Simon Bernstein and being filed months and months after allegedly performed and completed, yet secrets this information from the Court presumably.

17. A careful review of the Nov. 5, 2012 **Ex Parte** Memo shows that while the Memo is dated Nov. 5, 2012 on the face of the document, the document is not time-stamped with the Court Clerk's for 24 hours or so or at least until sometime the next day Nov. 6, 2012 as shown by the time stamp on the face of the document.

18. Judge Colin's impartiality can reasonably be questioned by the act of he and his Court Clerk Case Manager Astride Limouzin discovering filings in the Court by Attorney Robert Spallina on Oct. 24, 2012 purporting to act on behalf of a Deceased person Simon Bernstein without any authority demonstrated to act for now Deceased Simon Bernstein and by filing documents purportedly completed nearly 6 months earlier in April 2012, yet instead of Ordering Attorney Spallina for Disciplinary Investigation and to also immediately appear before his Court to Show Cause why said actions should not be immediately referred to Investigative and Prosecutorial authorities, Judge Colin and his Case Manager send an **Ex Parte** Memo to correct un-notarized Waivers with no mention of the Petition for Discharge now filed on behalf of Deceased Simon Bernstein clearly not able to act on said date.

19. This lack of impartiality by Judge Colin and his Court is further compounded by the facts shown by the face of the Court's own Docket and files that it took at least overnight to even Docket the Nov. 5, 2012 **Ex Parte** Memo on Nov. 6th, 2012 which leads right in and goes hand

in hand with the other mandatory grounds for Disqualification on his own initiative for now having knowledge of disputed evidentiary facts involving the proceeding and being likely to be called as a material and-or fact witness, as it is unknown:

- a. Were the Oct. 24, 2012 Filings filed in person and if so by whom?;
- b. If filed in person is Case Manager Astride Limouzin the person who “received” the filings for the Court or is she just the go between with Spallina office and Judge Colin on the Ex Parte Memo?
- c. Who communicated on the file with Judge Colin? Just Limouzin or any other Clerks and Case Managers?
- d. If filed by Mail then by whom and where is the correspondence and envelopes that the filings arrived in to show who signed the correspondence and mailed them if so? ;
- e. If filed by mail then where are the envelopes and correspondence or has this evidence been destroyed?
- f. Why such a long delay between when the Nov. 5th 2012 Ex Parte Memo was created and then Docketed on Nov. 6, 2012?
- g. How was the Memo transmitted to Spallina office? By fax, by mail? Were any phone calls made by the Court or Court Clerks and Case Managers? Any other Ex Parte communications?
- h. Why was the Nov. 5th, 2012 Memo done Ex Parte and not Communicated to all parties with standing in Shirley’s case not only for purposes of avoiding impartiality but also to timely apprise the parties of said filings and defects?
- i. Did Judge Colin review the documents?
- j. Did Judge Colin know if Simon was deceased and when did he know? Who told him?

20. For purposes of avoiding even the appearance of impropriety, Judge Colin should have Disqualified on Nov. 5, 2012 or at the moment his Court and - or Court Clerk or Case Manager had any involvement in the receipt, handling and processing of any of the filings of Oct. 24, 2012 made by a deceased Personal Representative/Executor, Simon Bernstein.

21. Judge Colin should have disqualified then and must be disqualified now.

22. Even assuming arguendo that Judge Colin had no actual knowledge of the Oct. 24, 2012 filings attempting to use Deceased Simon Bernstein to close the Estate of Shirley Bernstein and had no actual knowledge of the Nov. 5th 2012 Ex Parte communication on his behalf to Attorney Spallina directly involved in the fraudulent illegal acts of using Deceased Simon Bernstein to close Shirley's Estate, at that time, clearly by the time Judge Colin issued the Order to Close the Estate in Jan. 2013⁶ Judge Colin must be presumed to have read and reviewed the documents and filings upon which he issues and rationally bases his Order closing the Estate in Jan. 2013 upon and thus should have not only not issued such an Order but should have halted, frozen and stayed the case and case files of all those involved for investigation by this time and then Disqualified himself as clearly at minimum his own Court officers and Case Manager Astride Limouzin had direct involvement and knowledge of material facts and he could not be in charge of investigating himself and his officers.

23. Now if it is assumed arguendo that Judge Colin will somehow claim he had no knowledge of the Court Docket and filings upon which he issued in Jan. 2013 closing Shirley's Estate upon documents filed by Attorney Spallina which purport to have Simon Bernstein take action as the Personal Representative/Executor while deceased because somehow Judge Colin will claim

⁶ Order of Discharge

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf>

that he had not read the documents upon which he based this Order, then this raises a separate basis of Disqualification under the rule requiring the Judge to diligently (and competently) hear cases that are assigned and thus Judge Colin should have been disqualified then and must now be disqualified.

24. Yet even if it is assumed arguendo that Judge Colin had no knowledge of these matters as of the date he issues the Jan. 2013 Order to close Shirley's estate, which of course again raises Disqualification under the rule of "diligently" hearing cases assigned, clearly by the time of May 06, 2013 upon the first filing of Petitioner's "EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE"⁷ this Court and Attorney Spallina are both put on Notice by Petitioner's motion of :

- a. The fraud and alleged fraud in the filings directly involving Spallina including but not limited to documents filed to close Shirley's Estate by Simon Bernstein acting as the Personal Representative of Shirley when Simon Bernstein was already Deceased (Pages 40-43 - Section "IX.FORGED AND FRAUDULENT DOCUMENTS FILED IN THE ESTATE OF SHIRLEY IN THIS COURT BY TESCHER AND SPALLINA CONSTITUTING A FRAUD ON THIS COURT AND THE BENEFICIARIES AND MORE);

⁷ May 06, 2013 Petition @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

- b. That there were improper notarizations in Dispositive Documents including a Will and Trust (Pages 43-45 Section "X. INCOMPLETE NOTARIZATION IN THE ALLEGED 2012 AMENDED TRUST OF SIMON AND MORE" and "XI. INCOMPLETE NOTARIZATION IN THE 2012 WILL OF SIMON AND MORE")
- c. That Spallina and Tescher had withheld from beneficiaries in violation of Probate Rules and Statutes any documents on Shirley's Estate and Trusts for approximately 18 months which should have created further bases for this Court to Order investigation and a prompt hearing to determine truth and authenticity in the Trusts and Estate dispositive documents (Pages 37-40 Section "VIII. PETITIONER FORCED TO RETAIN COUNSEL DUE TO PERSONAL REPRESENTATIVES LACK OF DUTY AND CARE, BREACHES OF FIDUCIARY DUTIES AND CONFLICTS OF INTEREST REGARDING MISSING ESTATE ASSETS AND DOCUMENTS AND MORE");
- d. Of utmost importance should have been information that Ted Bernstein himself and with the aid of his counsel reported the possible Murder of he and Petitioner's Father, which was reported by Ted Bernstein on the date Simon passes away to the Palm Beach County Sheriff and the Coroner and starting two official inquiries into allegations of Murder⁸ (Pages 85-86 Section "XVII. ALLEGED MURDER OF SIMON BERNSTEIN");

⁸Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male**.

Motion for Disqualification Judge Colin

13 | 5

Thursday, May 14, 2015

- e. That the Court and Spallina are notified of substantial personal property missing (stolen) including jewelry and artwork worth millions of dollars and that Shirley's condominium had already been sold by Ted Bernstein and yet no Determination had been made by this Court regarding the validity of the Trusts and Ted Bernstein's right to act and dispose of assets (Pages 51-57 "XIV. VANISHING ESTATE ITEMS AND ASSETS");
- f. That the Court and Spallina are notified of the "Elephant in the Room" relating to the Iviewit stock and Intellectual Property Interests that Simon Bernstein had, worth an estimated billions of dollars, which is tied into a prior RICO action and a prior car-bombing of Petitioner's Minivan (see www.iviewit.tv for graphic images of the Car Bombing that looks like a scene from a war) that was now relating to the case before this Court (Pages 57-82 Section "XV. THE ELEPHANT IN THE ROOM THE IVIEWIT COMPANIES STOCK AND PATENT INTEREST HOLDINGS OWNED BY SIMON AND SHIRLEY, AS WELL AS, INTERESTS IN A FEDERAL RICO ACTION REGARDING THE THEFT OF INTELLECTUAL PROPERTIES AND ONGOING STATE, FEDERAL AND INTERNATIONAL INVESTIGATIONS.")
- g. That the Court is notified of an alleged Life Insurance fraud scheme (Pages 27-37 Sections "VI. MISSING LIFE INSURANCE TRUST AND LIFE INSURANCE POLICY OF SIMON" and "VII. INSURANCE PROCEED DISTRIBUTION SCHEME");
- h. That other assets were remaining that should have been frozen such as the St. Andrew's home recently listed by Petitioner's father weeks before his passing for over \$3 million.

25. Simply reviewing the September 13, 2013 Hearing Transcript⁹ of a proceeding before Judge Colin regarding the Emergency Petition filed on May 06, 2013 and heard on September 13, 2013 (held on the anniversary of Simon's death four months after filing) shows further clear basis for Disqualification of Judge Colin on numerous grounds including knowledge of disputed evidentiary facts and likelihood of being called as a fact witness premised upon his involvement and knowledge of the Ex Parte Communications with Attorney Spallina on Nov. 5th 2012 after the fraudulent filings of Spallina on Oct. 24, 2012 but also based upon clear bias and prejudice and lack of impartiality as by this date September 13, 2013 Judge Colin:

- a. knows about Tescher and Spallina using alleged documents of Deceased Simon Bernstein to close Shirley's Estate filed on Oc. 24, 2012;
- b. knows of the fraudulent Notaries made upon the Waivers that had first been rejected by his Court via the Ex Parte Memo of Nov. 5, 2012 for having no Notaries and then later submitted with the fraudulent Notaries to help close the Estate;
- c. knows that Tescher and Spallina have never been Ordered to Show Cause before his Court about the fraud;
- d. knows he had not referred Tescher and Spallina's law firm's conduct for Attorney Discipline investigation;
- e. knows of the claims of substantial personal properties stolen and missing from Shirley's Estate;

⁹ September 13, 2013 Hearing Judge Colin

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf>

Motion for Disqualification Judge Colin

15 Page

Thursday, May 14, 2015

- f. knows of Spallina's firm withholding any documents on Shirley's Trusts from beneficiaries for over two years, which should have raised clear red flags particularly in light of the frauds on his own Court by Tescher and Spallina's firm;
- g. knows of the failure to have any Accounting of Shirley's Estate with the failure ongoing for years by this time in violation of Probate Rules and Statutes;
- h. knows he has conducted no Hearing to determine the proper construction and meaning of Shirley's Trusts and Estate, which remains incomplete to this date and determine who the proper Beneficiaries, Trustee and Representatives should be, all which remains unknown to this date;
- i. knows that Ted Bernstein himself reported possible Murder of Simon Bernstein to police authorities and the state Medical Examiner for autopsy on the date of Simon's passing¹⁰;
- j. knows of the "elephant in the room"¹¹ being Iviewit and the Iviewit stock and patents valued in the billions involving Simon Bernstein and now a missing part of the Estates and Trusts and tied into a prior RICO and Antitrust Lawsuit and a car-bombing of Petitioner's minivan reported and investigated by authorities; and
- k. knows that Petitioner's minor children have been intentionally and with scienter denied the trust and inheritance funds for their food, shelter, and well being for months that were all part of their inheritance and yet Judge Colin wants to talk instead that day for most of the hearing about Dunkin Donuts, Burger King and having Petitioner cut his

¹⁰ May 06, 2013 Petition - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"

¹¹ May 06, 2013 Petition - Section XV "The Elephant in the Room" Pages 57-82

Court lawn¹², instead of addressing any of the serious crimes and frauds in his own Court where he and his Court staff are now witnesses and centrally involved in the fraudulent activities.

26. Now perhaps Judge Colin missed lunch and was hungry that first hearing four months after an Emergency Motion was filed by Petitioner and was thinking about Dunkin Donuts and Burger King but there is no way to look at this proceedings and the transcript without not only finding clear bias and prejudice and lack of impartiality in adjudicating rights to such a gross degree as to constitute not only an abdication of Judicial function, duties and responsibility but done in such a way as to be a mockery of the judicial system and process and denying very important rights and claims raised in Petitioner's filings.
27. Consistent with what has emerged in not only this and other Florida Probate Courts but other Courts in New York and around the nation, a review of the Transcripts of proceedings before Judge Colin shows the standard "M.O.", modus operandi, used by corrupted and conflicted Courts by neglecting and burying the real issues of fraud and integrity of proceedings and filings and actions of licensed attorneys and instead proceeding to threaten and harass those exposing the wrongdoings, as is the case with Petitioner as the exposer of fraud, who then is assaulted with multiple hearings for his alleged Contempt, attempts to have Guardians appointed over his family, threats of sanctions and acts of judicial mockery.
28. Judge Colin falsely claims on this September 13, 2013 date not only that no Emergency issues had been raised in Petitioner's Emergency Motion but also that no assets were left to freeze as

¹² September 13, 2013 Hearing Page 11

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENT_S.pdf

requested in the relief of the Emergency Motion when in fact the St. Andrews's home that had been listed and valued at over \$3 million dollars by Simon Bernstein in the months before his passing still had not been sold and of course there is and was the millions in personal property reported as missing and stolen and the illegal sale of Shirley's Trust Beach Condominium all of which can be subject to claw back processes and other injunctive relief while of course the very real emergency issues of actual fraud upon the Court had been shown involving Judge Colin, the Courts employees and his appointed Officers and Fiduciaries making them all Fact and Material Witnesses at minimum and thus emergency and related relief could and should have been granted, including the voluntary disqualification and more.

29. By the time of this hearing on September 13, 2013, not only did Judge Colin wholly fail to have attorneys Tescher and Spallina Show Cause after the Nov. 5, 2012 Ex Parte Memo and discovery of fraud filings by their office knowingly acting on behalf of their client a deceased Personal Representative/Executor Simon Bernstein to FRAUDULENTLY close Shirley's Estate, Judge Colin also wholly failed to have Attorney Tescher and Spallina and the alleged Fiduciary of Shirley's Trust Ted Bernstein answer in Court that day, especially after Tescher, Spallina and Ted Bernstein had never even submitted a written answer to Petitioner's very specific, detailed Emergency Motion filed May 06, 2013 and subsequently filed motions (Non-Emergency as Colin had forced Eliot to refile his Emergency Pleading several times as a Non-Emergency before allowing it to be heard) placing Tescher, Spallina and Ted Bernstein on further notice of fraud allegations and more.
30. The date of this Hearing was nearly an entire year after Tescher and Spallina had first submitted the fraudulent filings before Judge Colin's Court in Oct. 2012 and yet they were not Ordered to answer the Emergency Petition while allowing Shirley's Estate and Trust to be

squandered in fraud and unaccounted for, as Spallina, Tescher and Ted seized Dominion and Control of the Estates and Trusts of both Simon and Shirley Bernstein through a series of fraudulent dispositive documents and refused to give beneficiaries any documents in violation of Probate Statutes and Rules and Colin remained asleep at the wheel.

31. It is respectfully submitted that by this time on September 13, 2013, Judge Colin is engaging in the aiding and abetting of the fraud and attempting to cover up past fraud in, upon and by the Court, by what is known as “Steering” and orchestrating of the proceedings away from the crimes and criminals and begins a cleverly disguised retaliation against Petitioner that continues to bias and prejudice Petitioner to this date.
32. This can be more clearly seen in the subsequent Evidentiary Hearing of Oct 28, 2013¹³ when again, Judge Colin at the helm, steers and directs the proceedings to avoid the issues of Fraud upon and before his own Court by limiting the proceeding to testimony about a \$25,000 value to Shirley’s Estate Inventory (which was never served to beneficiaries in Violation of Probate Rules and Statutes) and discusses not throwing Spallina’s Legal Assistant and Notary Public, Kimberly Moran “under the bus” who has by this time admitted to the Governor’s Office and West Palm Beach police that she not only falsely Notarized the Waivers, including for a deceased Simon but also forged the signatures for six separate parties, including for the decedent Simon Bernstein Post Mortem, that are ultimately filed before Judge Colin to illegally close the Shirley Estate. Note, while Moran admits to falsifying Notaries and forging signatures on Waivers, not only is there no full record of her acts before Colin’s Court but more importantly none of her admissions addresses the other clear fraud such as the Petition for

¹³ October 28, 2013 Evidentiary Hearing

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf>

Motion for Disqualification Judge Colin

1901 Page 6

Thursday, May 14, 2015

Discharge containing Spallina's signature on the document filed on behalf of Deceased Simon Bernstein on Oct. 24, 2012 by Tescher and Spallina, utilizing a Deceased person to close Shirley's Estate and Colin has direct knowledge that no examination of Spallina and Tescher regarding their involvement in the Petition and other document frauds used to close the Estate illegally and knowledge of Moran's admitted activities has occurred even to this date in his Court with his own office and Case Manager implicated by the Ex Parte Memo yet Colin has continued to allow Ted Bernstein who has been represented by Spallina and Tescher continue to act with no accountability where almost all the crimes committed directly benefited Ted Bernstein who had been disinherited.

33. At no time does Judge Colin in the Evidentiary Hearing with Tescher, Spallina and Ted Bernstein present seek to ascertain the truth of the fraud, forgeries and fraud on his Court but more importantly wholly failed to force Spallina or Tescher to Show Cause or swear them in to answer questions to explain the acts of Tescher and Spallina's Legal Assistant and Notary Public Moran and explain their law firms acts of filing documents with a deceased client acting as a fiduciary while dead and more importantly no investigation into how Spallina's signature is on the Petition for Discharge also fraudulently filed before Judge Colin, which is Not the subject of any Admissions by his employee Kimberly Moran and where she was not involved in that crime.

34. Judge Colin simply later permits Spallina and Tescher to withdraw as attorneys, instead of removing them instantly and securing their files and the corpus of the Estate and Trusts while the material facts surrounding the fraud that directly involve Spallina by his own Signature on the Petition for Discharge, Judge Colin and his Case Manager Limouzin, by the Nov. 5th 2012 Ex Parte Memo communication remain undetermined and unheard.

35. These are additional grounds for removal in that Judge Colin's failure to Order attorneys Tescher, Spallina and the fiduciary Ted Bernstein at minimum to Show Cause before the Court on the frauds on the Court and for Discipline having actual knowledge of the substantial likelihood of misconduct by the fraud by presence of Spallina's own signature on the document purported to be April 9, 2012 Petition for Discharge but not filed with Judge Colin's Court until Oct. 2012 when Simon Bernstein is Deceased nearly a month is itself a failure to discharge Judicial obligations; and then being further Disqualified for being the necessary fact witness of his own Ex Parte Communication to Spallina as evidenced by the Nov. 5th, 2012 Memo and by prejudice and bias shown by the failure to Order Tescher, Spallina and Ted Bernstein for investigation and discipline and Show Cause before his own Court not only in Nov. 2012 but which has still not happened to this day in May of 2015 some 2.5 years later while permitting Ted Bernstein to continue to act as Trustee and Personal Representative/Executor when Ted Bernstein is directly intertwined, interconnected and involved with his own counsel Spallina and Tescher (as they represented Ted in Shirley's Estate and Trusts while acting as Co-Personal Representatives and Co-Trustees of Simon's Estate and Trusts and further represented themselves in their fiduciary capacities in Simon's Estate and Trusts) as attorneys involved in the fraud that ultimately benefit their client and business associate Ted and his lineal descendants who are all considered predeceased for all purposes of dispositions of the Shirley Trust and without their fraudulent documents and fraudulent scheme upon the Court would remain so.

36. That after reopening the illegally closed Estate of Shirley in the September 13, 2013 Hearing and immediately prior to the Evidentiary Hearing, Judge Colin, knowing of the Fraud on the Court and already stated to Ted and his counsel Spallina, Tescher and Manceri that he had enough evidence in the hearing to read them all their Miranda Warnings for two separate

Motion for Disqualification Judge Colin

21 | Page

Thursday, May 14, 2015

crimes identified in the hearing (the Moran fraudulent notarizations and forgeries and Spallina's using a dead Simon to posit documents with Court to close Shirley's Estate) then shockingly and appallingly appointed Ted as a Successor Personal Representative to the newly reopened Shirley Estate shortly thereafter although Ted was not then qualified to serve under Florida Probate Rules and Statutes..

37. It is noted that while an Attorney was present as Counsel for the Petitioner's Minor children in the hearing this Court held on or about Oct. 28 2013, the record should reflect that this counsel Brandan J. Pratt, Esq. not only failed to inform the Court he was retained to represent Petitioner's Minor children Josh, Jacob and Danny Bernstein and instead in the hearing misrepresented to the Court he was representing Eliot and Candice despite their opposition to this claim, but said counsel Pratt further wholly failed to properly and competently cross examine Spallina, Tescher, Moran and Ted Bernstein and call proper witnesses at this hearing to delve into the criminal and civil torts against the beneficiaries despite advance preparation and planning to the contrary with Eliot and Candice. Pratt claimed he was very close to Judge Colin after the hearing and knew what he wanted.

38. Counsel Pratt failed to examine any of the witnesses about the Tescher and Spallina Petition to Discharge fraud, the fraudulent positing of fraudulent records with the court and failed to examine Ted Bernstein, Spallina and Tescher about known personal property items valued at over \$1 million that they were in had custody over as fiduciaries that he knew were alleged stolen and Counsel Pratt was immediately after the hearing withdrawing as counsel but was requested by Petitioner in writing to notify his malpractice carrier of malpractice for his conduct and misrepresentations of this hearing. The Transcript in this regard clearly speaks for


Motion for Disqualification Judge Colin

22

Thursday, May 14, 2015

itself on what material issues were not only never addressed by Judge Colin but also never asked by Counsel Pratt. See Discharge letter to Counsel Pratt¹⁴.

39. Improper representation by attorney Pratt, likely malpractice itself, does not eliminate Judge Colin's obligations to address fraud upon his own Court by licensed attorneys and fiduciaries he appointed and in fact the actions of attorney Pratt may likely be part of additional steering and orchestration of the proceedings to cover-up the real fraud and delay and denial to Petitioner, his wife Candice Bernstein, and their Minor children Josh, Jacob and Danny of lawful inheritance and monies due under the Trusts.
40. Pratt seemingly falls out of the sky days before the Hearing and is retained by Eliot and Candice for their children's representation, it was later learned that Pratt, on information and belief, was close personal friends and business associates with Andrew Shamp, Esq. and where Shamp it was later learned worked directly for Ted Bernstein in the past as an employee.
41. This pattern of aiding, abetting and obfuscation of the fraud and criminal enterprise and pattern of acts at play as seen further in Judge Colin's continued abdication of judicial functions in duties in relation to the sale of the St. Andrew's home.
42. This Court's recent Order on May 06, 2015 (which falls under the 10 day rule for disqualification herein) permitting the Sale of the St. Andrew's Home shows even further grounds for mandatory Disqualification of Judge Colin (on his own initiative without waiting for Pro Se Petitioner to file a disqualification pleading) although ample grounds have already been established dating back to Nov. 2012.

¹⁴ Brand Pratt Letter and Conflict of Interest Disclosure Form

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131109HuthPrattWithdrawLetterandConflictDisclosure.pdf>

43. Judge Colin has absolute, unequivocal direct knowledge that no testimony of the alleged “buyer” occurred during the Hearing on the sale of the St. Andrew’s Home and knows Florida law requires no undue influence or pressure must be exerted or buyer or seller for there to be an “arms-length” transaction yet issues an Order May 6, 2015 as if the Buyer provided testimony when in fact the buyer’s identity is not even known.

44. In fact, despite Florida’s rigid Disclosure laws Judge Colin has withheld a lis pendens I attempted to file on the property and still has not let said lis pendens be filed or published to this Buyer or any prospective buyer and has threatened Petitioner that if he disclosed the Lis Pendens or the fact that the home was tangled in these litigations he would hold him in contempt.

45. According to the Florida Real Property Appraisal Guidelines Adopted Nov. 26, 2002 by the Florida Department of Revenue Property Tax Administration Program Definitions Section 3.1.8 Arm’s-Length Transaction: “ This means a sale or lease transaction for real property where the parties involved are not affected by undue stimuli from family, business, financial, or personal factors.” See, <http://dor.myflorida.com/dor/property/rp/pdf/FLrpg.pdf>.

46. Yet, not only does Judge Colin have actual knowledge he took no testimony from the Buyer since the Buyer was not only not present in Court but the identity not disclosed, but Judge Colin knows the case is ripe with nothing but pressure and undue influence such that Judge Colin has covered up fraud upon his own Court involving licensed attorneys, failed to discharge Judicial obligations and failed to abide by the Code of Judicial Conduct, knows the Trustee he is permitting to act Ted Bernstein reported a possible murder of Petitioner’s father Simon Bernstein the property owner prior to passing, allowing Ted Bernstein to act despite knowing his attorneys and Ted are involved in fraud on the Court and yet failing to conduct a

hearing into the construction and truth of the Trusts even though he says on the Record he knows he has to conduct a hearing and feigned at reading the attorneys Miranda Warnings, has reasons to investigate and suspect these are a continuation of RICO acts tied to a car-bombing, knows or has reason to know the sale is grossly undervalued at \$1,100,000.00 as the property was listed for \$3,200,000.00 weeks prior to the possible murder of Simon Bernstein, knows he and his own Court staff are at least involved as witnesses if not for the fraud itself and is willing to forego his own Judicial responsibilities which could lead to the end of his Judicial career but issues a false order nonetheless saying an arm's length transaction to an unknown buyer, possible straw man buyer was made.

47. Judge Colin knows and should know due process is violated by withholding the identity of the alleged buyer and making such person or entity available for cross-examination.
48. This would seem more than reflective of substantial pressure and influence at play and reflective of a fire sale.
49. Last, fair market value has been defined as "the sum arrived at by fair negotiation between an owner willing to sell and a purchaser willing to buy, neither being under pressure to do so." Flagship Bank of Orlando v. Bryan, 384 So.2d 1323 (Fla. 5th DCA 1980). A witness for the appellee admitted at the deficiency hearing that the bank was under pressure to sell the lots and that its bid was lowered because the bank would not be able to sell the lots for what they were worth. The bid price was therefore more an indication of a "quick sale" value than of the property's true fair market value. BARNARD v. FIRST NAT. BK. OF OKALOOSA CTY. 482 So.2d 534 (1986) District Court of Appeal of Florida, First District. February 4, 1986.
50. Judge Colin could have Judicially Subpoenaed the Realtor Petitioner had originally spoken to who initially had a far differing opinion of the sales price and value of the home but who then

Motion for Disqualification Judge Colin

25 | Page

Thursday, May 14, 2015

refused to get involved due to the presence of another of Ted Bernstein's attorneys Alan Rose who, according to his bio at his firm's website, "Handled securities arbitration for investor in a Madoff feeder fund against major brokerage firm which recommended the investment. confidential terms." The case was settled on confidential terms." See, <http://mracheck-law.com/ourteam/alan-b-rose/>

51. Further, Judge Colin silenced Petitioner via an illegal Order that mandated that Petitioner could do nothing to directly or indirectly notify the buyer of the Lis Penden or that litigation involving the house was at play and had testimony from the Realtor, John Poletto that he had not notified the buyer of any potential litigation and this seems to force Petitioner to not disclose pertinent facts to a buyer in opposite Florida's disclosure laws.
52. Finally, in his own words in the first day of the hearing to sell the house on March 26, 2015, Colin stated that he first had to have hearings to remove Ted, hearings for trust construction to determine validity and investigation of wrongdoings beyond Tescher and Spallina before being able to proceed further and yet with none of those things were achieved and at the next hearing he allows the sale of the house ignoring his prior statement:

13 MR. ROSE: We didn't share the appraisal
14 because, frankly, we were concerned it would be
15 public and that would defeat their chance of
16 selling it.

17 THE COURT: I'm not -- look, nothing is easy
18 here. It's not going to get easier until we can
19 get hearings where I can start to knock off some
20 of the issues, which is what I have been saying
21 now like a broken record.

22 At some point, either Eliot is going to be
23 sustained on his positions or he's going to be
24 overruled, but one way or the other, we can put
25 some of this stuff to rest. The problem is we're
I doing all of this business with some of the metes [matters?]

2 of the case still up in the air where I haven't
3 been able to adjudicate; the claims that Ted
4 should be removed; the claims that there's
5 wrongdoing beyond Spallina and Tescher, the trust
6 is not valid. I mean, give me a chance to rule on
7 that, because once I rule on that, then the matter
8 is over with on those and you'll know one way or
9 the other what to do.

53. That since May 06, 2013 Judge Colin, knowing of the fraudulent documents in the Estates and Trusts of Simon and Shirley Bernstein, knowing that Simon Bernstein's 2012 Will and Amended Trust done only days before his death when Simon was suffering severe mental and physical duress have been determined by Governor Rick Scott's Notary Public Division to be improperly notarized and further Petitioner has alleged they are wholly fraudulent, knowing that there are ongoing criminal investigations into the documents of both Estates and Trusts, knowing that the new Executor of Simon's Estate has claimed that Ted is not a legally valid Trustee of Simon's Trust¹⁵ by the very terms of the Trust that claim that a Successor cannot be related to the issuer, knowing that Ted is considered predeceased for all purposes of dispositions under the Shirley and Simon trust, knowing that Peter Feaman, Esq., has stated to Colin that Ted and his counsel Alan B. Rose are not qualified as Trustee and Counsel due to serious problems with Ted and Alan's misconduct¹⁶, knowing that Ted and his counsel Alan B. Rose are counter defendants in two counter complaints filed by Petitioner in these matters with allegations of serious breaches of fiduciary duties (which Colin stayed) and more, knowing that Eliot has filed a

¹⁵ O'Connell Affirmative Defense, Ted is not a valid Trustee

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf> (Page 7)

¹⁶ Peter Feaman, Esq. Letter to Brian O'Connell Regarding Ted Bernstein and Alan Rose, Esq. misconduct

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O%27Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

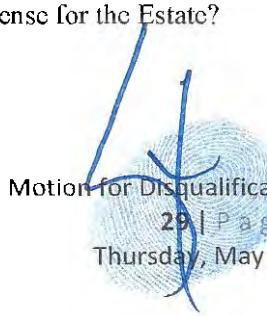
Counter Complaint in the Shirley Trust case that has both he and Judge French listed as material and fact witnesses that may be Defendants in future amended pleadings¹⁷, has ignored all of these facts and held hearing, after hearing, after hearing and has:

- a. allowed Estate and Trust properties to be disposed of and distributed without knowing who the beneficiaries are at this time due to the fraudulent documents affects not being resolved at this time,
- b. allowed Estate and Trust properties to be disposed of and distributed without knowing if the Wills and Trusts are valid,
- c. allowed assets to be converted and changed, including allowing a JP Morgan IRA to be converted to a new account when the old account was missing beneficiaries and monies are alleged stolen from it,
- d. allowed assets to be sold and converted without any accountings in violation of Probate Statutes and Rules,
- e. allowed assets to be sold and distributions made to improper beneficiaries despite not having held trust construction or validity hearings to determine first who the true and proper beneficiaries are, thus delaying intentionally beneficiaries inheritances, while allowing assets to be distributed will now have to be clawed back,
- f. allowed fiduciaries and counsel involved in the commission of the fraud to continue to operate in the courtroom with impunity,
- g. allowed continuous hearings where the alleged Trustee Ted has brought in up to five lawyers to defend himself misusing Trust and Estate assets to do so, who have all now resigned other than Alan B. Rose,

¹⁷ Answer and Counter Complaint Oppenheimer Lawsuit Page 2 - Colin and French listed as Witnesses and Possible Defendants

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustec%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>

- h. deprived Minor possible beneficiaries from counsel despite their need arising from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
- i. deprived Eliot's family from inheritances that has caused massive financial damages to them despite their financial damage arising from the delays in their inheritances from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
- j. forced the Creditor William Stansbury for two years to accrue hundreds of thousands of dollars of legal fees, while blocking him from being able to have his counsel file to remove Ted, while the job of removing Ted was Colin's from the moment he became aware that Ted and his counsel had committed Fraud on the Court and stated he had enough to read them all their Miranda's twice,
- k. allowed a settlement with Stansbury where Ted Bernstein acting as the Trustee of the Shirley Trust and simultaneously a Defendant in the Stansbury Lawsuit with his attorney at law Rose acting as counsel to Ted in his conflicting capacities, that settled Ted personally out of the lawsuit and shifted the burden of the settlement cost entirely to the Trusts of Shirley and Simon beneficiaries and where Ted has no beneficial interests, thereby stiffing the beneficiaries with the settlement cost for acts Stansbury alleges were done primarily by Ted,
- l. allowed Ted and his counsel to block the Estate and Trust of Simon to intervene in an Illinois Federal Breach of Contract Lawsuit where the beneficiaries of the Estate and Trusts of Simon have potential interest in an insurance policy, where Ted is acting in conflict to achieve this as the Plaintiff in the Breach of Contract lawsuit who stands to get one fifth of the insurance benefit, whereas if the Estate and Trusts of Simon receive the proceeds Ted again would get nothing. Colin only allowing the Estate to intervene after Stansbury, in efforts to protect the beneficiaries who were unrepresented in the Federal lawsuit and himself to pay the entire cost of the litigation expense for the Estate?

Motion for Disqualification Judge Colin

29 | Page

Thursday, May 14, 2015

- m. been rude to Petitioner repeatedly and continuously shut him down during hearings, whenever fraud on the court is brought to his attention, and,
- n. interfered with Palm Beach County Sheriff investigations, having detectives told not to pursue Petitioner's criminal complaints and claiming his Court would handle the criminal matters and **fraud upon his Court.**

54. That from at least the September 13, 2013 hearing Judge Colin had a mandated duty to disqualify himself on his own initiative according to Judicial Canons, Attorney Conduct Codes and Law, as he became fully cognizant that his Court had become a crime scene involving Fraud on the Court and Fraud in the Court, directly involving Judge Colin and Judge French and their court, the Officers of the Court, including Attorneys at Law practicing before them, Fiduciaries appointed by them (Personal Representatives and Trustees) and other Court employees.

55. That once it was determined that crimes had been committed in Judge Colin and Judge French's courts constituting Fraud on the Courts and Fraud in the Courts in which Judge Colin would now be a material and fact witness to events in the matter, to avoid the appearance of impropriety and conflicts caused due to his direct involvement as both a material and fact witness, Judge Colin should have voluntarily on his own initiative disqualified himself and distanced himself from the matters, allowing a conflict free adjudicator to replace him who could have investigated the involvement of, the Court, Judge Colin, Judge French, the Officers of the Court and the Fiduciaries of the Court and this would have eliminated the appearance of impropriety created due to Judge Colin's direct involvement in the frauds that had occurred and his subsequent handling of investigations or lack thereof of himself and his court.

56. That failing to disqualify himself on his own initiative for mandated causes by Judicial Canons, Attorney Conduct Codes and Law, Judge Colin lost jurisdiction in this case and his continued actions are all outside the color of law.

57. That Judge Colin's acts forward in these matters from the point that he had knowledge of criminal misconduct in the Court that would make him a material and fact witness constitute Fraud by the Court.

It is alleged that Judge Colin began a Pattern and Practice of Fraud by the Court by continuing to rule in a matter where disqualification was mandated on his own initiative and so each judicial ruling and proceeding is therefore void.

58. That Petitioner fears that Judge Colin's acts after having cause to disqualify himself have prejudiced and biased the case and continue to prejudice and bias the case, as they are now viewed as part of a Cover Up of the crimes committed in his Court and on his Court by Colin's court appointed Officers and Fiduciaries and the perpetuation of new crimes by his Court.
59. That Petitioner fears that Judge Colin's acts outside the color of law after knowing of the causes mandating him to instantly disqualify have been prejudicial to Petitioner and favor those Court officials and fiduciaries that he appointed who committed the criminal acts in and on his Court and these acts have protected himself, his Court appointed officials, fiduciaries and employees who were involved and aid and abet them in evading prosecution and investigation in efforts to cover up criminal acts and have provided legal cover for new criminal acts to be committed under the guise of legal proceedings.
60. Colin is biased and prejudiced against Petitioner who has exposed the crimes of his Court and those committed in Judge David E. French's court in the Simon and Shirley Bernstein Estate and Trust cases and the case involving Petitioner's Minor children.
61. The Estate and Trust cases of Simon and Shirley Bernstein were improperly merged by Judge Colin and Judge French in violation of Probate Rules and Statutes as it was achieved without separate hearings by both Judges and thus improperly transferred to Colin's Court. This included a complex bait and switch, whereby once Colin had approved the transfer to himself of Judge French's case, Judge French's hearing was scheduled on the day before Christmas when the courthouse was closed entirely and Petitioner and his wife showed up to an empty building, ruining their holiday family planned trip to attend. That at the subsequent rescheduled hearing before Judge French, Judge Colin was instead presiding and when asked where Judge French was Colin stated it did not matter if he were there as he routinely handled French's cases. When Petitioner cited the rule calling for separate hearings by each

Judge, Colin proceeded ahead. That Petitioner fears that since the crimes were committed in both courts this **improper merging of the cases was to cover up and protect Judge French and his court officials from investigation and possible prosecution and remove one of the crime scenes entirely since similar acts of fraud are alleged in Judge French's court and similarly all his case files should have been sealed for investigation and he and his court officials questioned as to the Fraud on the Court and Fraud in the Court.**

62. Once Colin had evidence that **FELONY** crimes were committed in his Court and Judge French's court by Officers of their courts and fiduciaries of their courts, Colin and French had obligations under Judicial Canons, Rules of Professional Conduct and Law to report the misconduct to the proper criminal and civil authorities for investigation and failed to do so.

63. Once Colin had evidence of Fraud on the Court, he had obligations to immediately disqualify and allow for the resetting of the proceeding by removing all elements of the fraud, removing all officers of the court involved, all fiduciaries involved and have all court and other records of those involved seized for investigation, have all assets seized and frozen and turn the case over to a new adjudicator and Judge Colin did not do any of these things, in fact, he has intentionally and with scienter done the opposite.

64. That instead of doing what was mandated when Fraud on the Court is discovered, Colin has allowed a pattern and practice of retaliation against Eliot to take place for his efforts in exposing the criminal acts and has continuously allowed conflicted attorneys at law and fiduciaries, involved with the original fraudsters, to file pleading after pleading to attempt to harm Eliot and his family, including several contempt and guardianship hearings held against Eliot, all bleeding the estates and trusts of thousands upon thousands of illegal legal billings for conflicted counsel.

65. Petitioner has blown the whistle on corruption that took place in both Judge Colin and French's courts and has also been involved in an over a decade old whistleblowing lawsuit and other actions against members of this courthouse the 15th Judicial, The Florida Bar and many Judges of the Supreme Court of

Florida and Petitioner fears this also creates prejudice and bias against Petitioner with virtually the entire State of Florida legal machine conflicted with him.

66. Petitioner's prior Federal RICO sued the following parties of the Florida Bar Association:

STATE OF FLORIDA,
OFFICE OF THE STATE COURTS
ADMINISTRATOR, FLORIDA,

HON. JORGE LABARGA in his official and individual capacities,
[this lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election where he aided in the failure to recount the People's vote when he was a civil circuit judge and for his effort to derail Eliot's legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess filed before his court. Proskauer v. Iviewit, Case #CASE NO. CA 01-04671 AB.]

THE FLORIDA BAR.

JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,
KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,
LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,
ERIC TURNER, ESQ. in his official and individual capacities,
KENNETH MARVIN, ESQ. in his official and individual capacities,
JOY A. BARTMON, ESQ. in her official and individual capacities,
JERALD BEER, ESQ. in his official and individual capacities,
BROAD & CASSEL, and, all of its Partners, Associates and Of Counsel, in their professional and individual capacities.
JAMES J. WHEELER, ESQ. in his professional and individual capacities,

FLORIDA SUPREME COURT,

Hon. Charles T. Wells, in his official and individual capacities.
Hon. Harry Lee Anstead, in his official and individual capacities,
Hon. R. Fred Lewis, in his official and individual capacities,
Hon. Peggy A. Quince, in his official and individual capacities,
Hon. Kenneth B. Bell, in his official and individual capacities,
THOMAS HALL, ESQ. in his official and individual capacities,
DEBORAH YARBOROUGH in her official and individual capacities.

DEPARTMENT OF BUSINESS AND

PROFESSIONAL REGULATION – FLORIDA,

CITY OF BOCA RATON, FLA., [Police Department]

DETECTIVE ROBERT FLECHAUS in his official and individual capacities,
CHIEF ANDREW SCOTT in his official and individual capacities,

CHRISTOPHER C. WHEELER, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]

MATTHEW M. TRIGGS, ESQ. in his official and individual capacity for The Florida Bar and his professional and individual capacities as a partner of Proskauer,

ALBERT T. GORTZ, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]¹⁸

67. Petitioner feels that Judge Colin's acts outside the color of law have been intentional to prevent Petitioner from gaining his inheritance and having funds that could be used in this legal action against his court and Petitioner's other legal actions against members of the Florida Bar, including protecting what Judge Colin claims in a Florida Bar Publication to be his mentor¹⁹, Chief Judge Jorge Labarga, who is a central figure in Petitioner's ongoing civil and criminal complaints regarding theft of Intellectual Properties of Petitioner's and his father.

68. Judge Colin is acting outside his jurisdiction once he was mandated to disqualify on his own initiative and acting outside the color of law and therefore he should disqualify on his own initiative instantly and his orders must then be voided. Judge Colin is a disqualified judge who has not relinquished his unlawful jurisdiction.

69. Judge Colin now is also adverse to Petitioner because Petitioner has filed with the Federal Court in the Northern District of Illinois under The Honorable John Robert Blakey exposing the corruption in his Colin's court and throughout the Probate courts in Florida²⁰. Petitioner is seeking to have these Probate cases transferred to the Federal Court involving estate related subject matter (the insurance breach of contract proceeds) under Blakey for investigation, review and further adjudication of the matters free

¹⁸ Full List of Iviewit RICO Defendants @

<http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm>

¹⁹ Colin statement regarding Labarga as his mentor

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20061224%20Palm%20Beach%20County%20Bar%20Association%20Judge%20Martin%20Colin%20Mentor%20Judge%20Labarga.pdf>

²⁰ Omnibus Motion Federal Court

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20FINAL%20ESIGNED%20NOTICE%20OF%20OMNIBUS%20MOTION%20ECF%20STAMPED%20COPY.pdf>

Motion for Disqualification Judge Colin

34 | Page

Thursday, May 14, 2015

of conflicts and illegal activities, once Judge Colin complies with the mandated disqualification or is forced off the case if he continues to refuse.

70. Petitioner has sought Federal Court intervention due to the fact that Petitioner is adverse to all Florida State Bar Members and where he has taken civil action and filed criminal complaints against the Florida State Bar and thus all members are technically and legally conflicted and adverse to Petitioner as members of the organization Petitioner is pursuing.
71. Petitioner has been viciously retaliated by Judge Colin by denying him due process in one manner or another, acting above the law and removing rights of Petitioner and his Minor children, while protecting his Court and those involved in criminal misconduct from exposure of the crimes committed in his and Judge French's court by Officers and Fiduciaries of the Court.
72. Where it may be learned by investigation that both Judge Colin and Judge French may be involved directly in the original Frauds Upon the Court and were willing participants in such crimes against Petitioner and his family, including but not limited to, Fraud on the Court, Fraud in the Court, Fraud by the Court, Forged documents posited with the Court by officers and fiduciaries of the Court, Fraudulent Notarizations (including Post Mortem for decedents in the actions) filed and posited with the Court, Illegal Closing of an Estate using a deceased person's identity and ultimately the possible Murder of Simon Bernstein as alleged by Ted Bernstein and others (not Petitioner) on the day Simon died.
73. Judge Colin's actions once he failed to disqualify as mandated, outside the color law and without jurisdiction, make him an accomplice to current and ongoing fraud against Eliot and Eliot's Minor children who are beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein and it is clear that Eliot has valid fear that he has been denied due process and procedure once his mandatory disqualification was not entered on his own initiative.

Rule 2.330 (d) Grounds.

(2) That the judge before whom the case is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto or is interested in the result thereof, or that

said judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to the cause.

74. Judge Colin will be a material and fact witness regarding his direct involvement in the documents used fraudulently in his Court, regarding the interaction with the Officers of his Court involved, regarding the interaction with the Fiduciaries of his Court he appointed and his interaction with the Court employees involved in this case as described above, regarding the criminal misconduct that has occurred in and on his Court and that of Judge French's court. Judge Colin's position now as a material and fact witness MANDATE under Judicial Canon his INSTANT DISQUALIFICATION.

75. Judge Colin due to his direct involvement in the matters and failure to disqualify upon mandated grounds requiring his disqualification on his own initiative will now also make him a party of interest in ongoing and future criminal and civil actions to determine if he has committed felony acts and more in so acting outside the color of law. Now there is not only an appearance of impropriety but the alleged possible criminal misconduct of Judge Colin which may constitute criminal impropriety and again cause for MANDATORY DISQUALIFICATION.

76. Judge Colin cannot investigate his own court, himself and the officers and fiduciaries of his Court, especially where he is directly involved, due to the appearance of impropriety this creates and this appearance of impropriety prejudices Petitioner from due process rights.

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

Motion for Disqualification Judge Colin

36 Page

Thursday, May 14, 2015

promptly filed. A motion made during hearing or trial shall be ruled on immediately.

77. This Motion is being made within 10 days from Petitioner's receipt of a "FINAL ORDER GRANTING SUCCESSOR TRUSTEE'S MOTION TO APPROVE SALE OF TRUST PROPERTY signed May 06, 2015. Where this Order, as with all Orders issued after Judge Colin's Mandatory Disqualification was failed, is an illegally obtained Order and therefore legally void, other grounds for this Order mandating disqualification have also been described herein.

78. This Motion for Disqualification is timely because all actions past and future of Judge Colin are void as his disqualification from the matters should have occurred the instant he was aware that crimes occurred in his Court and on his Court by his appointed Officers and Fiduciaries and thus all judicial acts both past, present and future are all grounds for immediate investigation, disqualification, voiding of all orders and sanctions.

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.

79. 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 Colin has to voluntarily disqualify under Judicial Canons, Attorney Conduct Codes and Law and whereby whether legally sufficient or not 2.330 allows Colin to disqualify on his own.

Motion for Disqualification Judge Colin

37 Page

Thursday, May 14, 2015

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.

80. 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.

81. Petitioner seeks that upon disqualification of Judge Colin, that all prior factual or legal rulings be vacated by the successor judge due to the alleged criminal acts and civil torts against Petitioner. That further, Petitioner seeks a replacement Judge who is not a member of the Florida Bar to preside over the cases of Judge Colin involving the Estates and Trusts of Simon and Shirley Bernstein and the case involving the Trusts of Petitioner's minor children. That due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida by members of the Florida Bar Petitioner is seeking this Court to move the matters to a Federal Court²¹. The following cases that Judge Colin presides over are all tainted for the same reasons as stated herein and judge Colin should immediately voluntarily disqualify himself from these cases as well and save Petitioner the expense and aggravation of having to file Disqualification pleadings in each case to force his mandated disqualification:

²¹ May 14, 2015 Letter to Judge Blakey

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20Letter%20Scheduling%20and%20Discovery%20to%20Hon%20Judge%20John%20Robert%20Blakey.pdf>

- 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.

82. Petitioner states that Judge Colin 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 but refused to do so on the repeated requests of Petitioner. If for any reason Judge Colin finds this Motion legally insufficient for any reason, Judge Colin must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes and Law.

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.

83. 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 Probate rulings thus far that have interfered intentionally with their and Petitioner's expectancies that this Disqualification be made instantly as it is legally sufficient and MANDATED. Delays could cause further harm of Petitioner's minor children and Petitioner which would result in

Motion for Disqualification Judge Colin

39

Thursday, May 14, 2015

additional damages and liabilities to those parties ultimately held accountable for the acts of Judge Colin outside the Color of Law.

84. That PRIOR to any other actions by Judge Colin, 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.

85. Petitioner has supplied a legally sufficient Affidavit herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Colin immediately disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Colin that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Canons, Attorney Conduct Codes and Law.

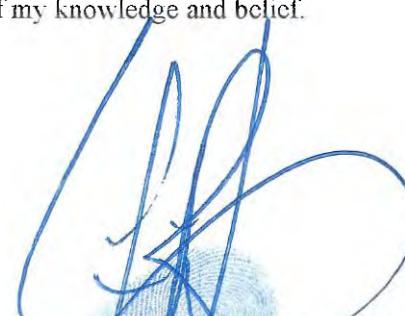
Under Penalties of perjury, I swear under oath and affirm that I have read the foregoing and the facts


Motion for Disqualification Judge Colin
40 | Page
Thursday, May 14, 2015

alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 14th day of May, 2015

Respectfully Submitted,



Eliot Ivan Bernstein
2753 NW 34th ST
Boca Raton, FL 33434
Telephone. 561-245-8588
iviewit@iviewit.tv

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 14th day of May, 2015.



Eliot Ivan Bernstein
2753 NW 34th ST
Boca Raton, FL 33434
Telephone. 561-245-8588
iviewit@iviewit.tv

STATE OF FLORIDA

COUNTY OF PALM BEACH COUNTY

Sworn to or affirmed and subscribed before me this 14th day of May, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification. California DL #C16956008

NOTARY PUBLIC



Sarah Barnett

Print name of Notary:

Sarah Barnett



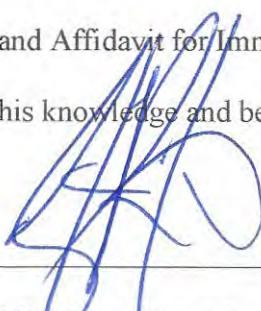
Motion for Disqualification Judge Colin

41 | Page

Thursday, May 14, 2015

AFFIDAVIT

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin is true and correct to the best of his knowledge and belief



Eliot Ivan Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588
iViewit@iViewit.tv

May 14th, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 14th day of May, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification California DL # C16956008

Notary Public



Print name: Sarah Barnett

Stamp

My commission expires: 07/05/2016



Motion for Disqualification Judge Colin

42 | Page
Thursday, May 14, 2015

**EXHIBIT 1 - URL EXHIBITS FULLY INCORPORATED BY REFERENCE HEREIN IN THE
MOTION**

1. November 05, 2012 Memorandum

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Receipts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf>

2. Simon Bernstein un-notarized Waiver @ URL

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf>

3. Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>

4. Affidavit of No Florida Estate Tax Due @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf>

5. Probate Checklist

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%202024%202010.pdf>

6. Order of Discharge

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf>

7. May 06, 2013 Petition @ URL

Motion for Disqualification Judge Colin

43 Page

Thursday, May 14, 2015

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

8. Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male**.

9. September 13, 2013 Hearing Judge Colin

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf>

10. May 06, 2013 Petition - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"

11. May 06, 2013 Petition - Section XV "The Elephant in the Room" Pages 57-82

12. September 13, 2013 Hearing Page 11

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf>

13. October 28, 2013 Evidentiary Hearing

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf>

14. Brand Pratt Letter and Conflict of Interest Disclosure Form

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131109HuthPrattWithdrawalLetterandConflictDisclosure.pdf>

15. O'Connell Affirmative Defense, Ted is not a valid Trustee

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf> (Page 7)

Motion for Disqualification Judge Colin

44 | Page

Thursday, May 14, 2015

16. Peter Feaman, Esq. Letter to Brian O'Connell Regarding Ted Bernstein and Alan Rose, Esq. misconduct

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O%27Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

17. Answer and Counter Complaint Oppenheimer Lawsuit Page 2 - Colin and French listed as Witnesses and Possible Defendants

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>

18. Full List of Iviewit RICO Defendants @

<http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm>

19. Colin statement regarding Labarga as his mentor

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20061224%20Palm%20Beach%20County%20Bar%20Association%20Judge%20Martin%20Colin%20Mentor%20Judge%20Labarga.pdf>

20. Omnibus Motion Federal Court

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20FINAL%20ESIGNED%20NOTICE%20OF%20OMNIBUS%20MOTION%20ECF%20STAMPED%20COPY.pdf>

21. May 14, 2015 Letter to Judge Blakey

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20Letter%20Scheduling%20and%20Discovery%20to%20Hon%20Judge%20John%20Robert%20Blakey.pdf>


Motion for Disqualification Judge Colin

45 Page

Thursday, May 14, 2015



Eliot I. Bernstein
Founder & Inventor
Direct Dial: (561) 245-8588 (o)
(561) 886-7628 (c)

Thursday, May 14, 2015

The Honorable John Robert Blakey
United States District Court for the Northern District of Illinois Eastern Division
Everett McKinley Dirksen
United States Courthouse
219 South Dearborn Street
Chicago, IL 60604
Courtroom 1725 | Chambers 1046
Telephone Number: (312) 435-6058
Fax Number: (312) 554-8195

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

Dear Honorable Judge John Robert Blakey,

I write to acknowledge and express my understanding of my obligations to conform my filings to the formatting rules of the Court and matters within the Court's jurisdiction. I also write in regards to Scheduling issues after our status call this week with your Court indicating Discovery to be closed upon the taking of the Deposition of my brother, Plaintiff, Ted Bernstein.

I will respectfully be seeking leave by way of formal motion to open the Discovery not only for further examination of Ted Bernstein but also to Notice for

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

Deposition Judge Martin Colin of the Palm Beach Probate Court who I have just petitioned for Mandatory Disqualification on numerous grounds under the Florida Rules and Code including but not limited to being a necessary fact witness and material witness to actions of fraud upon his Court involving licensed attorneys Tescher and Spallina who have also been part of the litigation before this Court.

I have attached the Disqualification motion herein with respect to Florida Judge Colin for good faith reference and seek leave to move by way of formal motion within this Court's formatting rules to demonstrate the intertwined nature of the actions in this Court with the fraud and actions in Judge Colin's Court.

Please note that the car-bombing of my family mini-van in Boynton Beach, Florida was a very real thing and not a day goes by when I don't wonder what will happen any time my wife, children or I get in to a car. Full pictorial evidence and reports by involved authorities thus far can be found at my website at www.iviewit.tv .

This car-bombing was also reported as part of a Petition I filed with the White House to President Obama, the White House Counsel's Office, the US Attorney General, FBI, SEC and other related federal and state agencies and I have attached a link to this Petition which provides a good overview of the "elephant in the room" being the nature of my Technology which is used on the Hubble Space Telescope, for a mass of US Defense applications, across the globe for digital imaging across the internet and more and also outlines how I was directed by Harry I. Moatz of the Office of Enrollment and

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

Discipline of the USPTO to file a Petition claiming fraud upon the United States as well as myself and shareholders involving the Technology, which led to suspensions of the Intellectual Properties. The Technology was validated, used, tested and approved by leading engineers and computer experts on property owned by Lockheed Martin in Orlando, Florida at Real3d, Inc. which was at that time a consortium owned by the Intel Corporation, Lockheed Martin and Silicon Graphics and the technologies were valued in the hundreds of billions of dollars over the life of the IP claimed as the "holy grail" of the internet by these leading engineers. See,

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090213%20FINAL%20SIGNED%20LETTER%20OBAMA%20TO%20ENJOIN%20US%20ATTORNEY%20FINGERED%20ORIGINAL%20MAIL%201.pdf> .

Also please note that not only is the car-bombing a very real event that occurred in my life during this ongoing Technology fraud and theft, but as noted in the White House Petition and elsewhere even a Federal Agent such as FBI Special Agent Luchessi of the Palm Beach Office of the FBI has "gone missing" according to West Palm Beach Florida FBI Office (leading to my being directed to former Inspector General Glenn Fine of the Department of Justice for resolution, which still has not occurred) while investigating the Iviewit matters leaving myself in a position of not being able to trust even federal officers and agents and thus I typically err on the side of documenting all

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

important information in all known places and federal state and international offices. Now as you may be aware from my prior filings, there are new frauds and criminal acts by same, similar, and/or related actors with reports that my father may have been murdered.

Since the time of the February 2009 White House Petition filing when I was personally on the phone line confirming the fax number and receipt for the White House and White House Counsel's office, not a single US Secret Service Officer, Capitol Police, US Marshall or other federal agent has shown up to say I filed a frivolous and harassing Petition to the President or to challenge the veracity of my statements in the Petition. Again, I respectfully remind the Court that I was directed by a Federal official, Harry I. Moatz, Director of the Office of Enrollment and Discipline, to file a petition for suspension claiming Fraud Upon the United States by Patent Bar Attorneys and others

Judge St. Eve had already granted me Leave to Amend my Complaint and the motion to take Florida Judge Colin's Deposition in this Court will demonstrate the relevance to these proceedings and action by the intertwined orchestration of fraud cover up by Judge Colin in his Court also involving Ted Bernstein who is a party in this action and attorney Spallina and others common in both cases also exposing the depth and breadth of the powerful financial interests at play. See the 2009 SEC Petition for general background,

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf>

Respectfully Yours,


Eliot I. Bernstein
Founder & Inventor

Iviewit Holdings, Inc. – DL
Iviewit Holdings, Inc. – DL
Iviewit Holdings, Inc. – FL
Iviewit Technologies, Inc. – DL
Uview.com, Inc. – DL
Iviewit.com, Inc. – FL
Iviewit.com, Inc. – DL
I.C., Inc. – FL
Iviewit.com LLC – DL
Iviewit LLC – DL
Iviewit Corporation – FL
Iviewit, Inc. – FL
Iviewit, Inc. – DL
Iviewit Corporation

cc/ec:

Enclosure(s)/Attachment(s)/URL's

All Uniform Resource Locators (URL's) and the contents of those URL's are incorporated in entirety by reference herein and therefore must be included in your hard copy file WITH ALL EXHIBITS, as part of this correspondence and as further evidentiary material to be Investigated. Due

Iviewit Holdings, Inc./Iviewit Technologies, Inc.
2753 N.W. 34th St. Boca Raton, Florida 33434-3459
(561) 245-8588 (o) / (561) 886-7628 (e) / (561) 245-8644 (f)

ivewit@iviewit.tv - www.iviewit.tv

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

to allegations alleged by New York State Supreme Court Whistleblower Christine C. Andersou and similar claims in the Iviewit RICO & ANTITRUST Lawsuit regarding Document Destruction and Tampering with Official Complaints and Records, PRINT all referenced URL's and their corresponding exhibits and attach them to your hard copy file, as this is now necessary to ensure fair and impartial review.

In order to confirm that NO DOCUMENT DESTRUCTION OR ALTERATIONS have occurred, once complete forward a copy of this correspondence with all exhibits and materials included to, Eliot I. Bernstein at the address listed herein. This will insure that all parties are reviewing the same documentation and no additional illegal activity is taking place. If you, for any reason, are incapable of providing this confirmation copy, please put your reasons for failure to comply in writing and send that to Eliot I. Bernstein at the address listed herein. Note, that this is a request only for a copy of this Correspondence and the referenced materials and NOT a request for any Case Investigation information, which may be protected by law.

cmb/eib

EXHIBIT B

A handwritten signature in blue ink, appearing to read "John Doe".

53

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE /GUARDIANSHIP DIVISION "IY"

CASE NO. 502014CP003698XXXXSB

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

v.

ALEXANDER BERNSTEIN; ET AL.,
Defendants.

/

**ORDER DENYING VERIFIED SWORN EMERGENCY PETITION AND
AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN
COLIN**

THIS CAUSE came before the Court on Eliot Bernstein's Verified Sworn Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin. It is hereby,

ORDERED AND ADJUDGED that the Eliot Bernstein Verified Sworn Emergency Petition and Affidavit for Immediate Disqualification is **Denied** as legally insufficient.

DONE AND ORDERED in chambers, at Delray Beach, Palm Beach County, Florida this 18th day of May, 2015.

SIGNED & DATED
MARTIN H. COLIN MAY 18 2015
Circuit Court Judge
JUDGE MARTIN H. COLIN

Copies furnished:

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
2753 NW 34th Street
Boca Raton, Fl. 33434

John P. Morrissey, Esquire
330 Clematis Street, Suite 213
West Palm Beach, Fl. 33401

Alan Rose, Esquire
505 South Flagler Drive, Suite 600
West Palm Beach, Fl. 33401

Pamela Beth Simon
303 East Wacker Drive, Suite 2725
Chicago, IL 60601

Brian M. O'Connell, Esquire
515 North Flagler Drive, 20th Floor
West Palm Beach, Fl. 33401

EXHIBIT C



A blue ink signature is positioned above a blue ink stamp. The stamp contains the number "54" in a bold, sans-serif font, surrounded by a circular, textured border.

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

CASE NO: 502011CP000653XXXXSB
PROBATE DIVISION: IY

**IN RE: SHIRLEY BERNSTEIN
ESTATE**

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.



MARTIN H. COLIN
Circuit Judge

Copies furnished:

Eliot Bernstein
 2753 NW 34th Street
 Boca Raton, Fl. 33434

Alan Rose, Esquire
 505 South Flagler Drive, Suite 600
 West Palm Beach, Fl. 33401

Pamela Beth Simon
 950 North Michigan Avenue, #2603
 Chicago, IL 60611

Max Friedstein and Carley
 Friedstein, Minors
 c/o Jeffrey and Lisa Friedstein
 2142 Churchill Lane
 Highland Park, IL 60035

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

CASE NO: 502015CP001162XXXXSB
PROBATE DIVISION: IY

ELIOT BERNSTEIN, individually;
ELIOT BERNSTEIN as a beneficiary of the
2008 SIMON L. BERNSTEIN TRUST
AGREEMENT, as amended and restated in the
SIMON L. BERNSTEIN AMENDED AND
RESTATE TRUST AGREEMENT dated
July 25, 2012 and as Legal Guardian of
JOSHUA BERNSTEIN, JACOB BERNSTEIN,
and DANEIL BERNSTEIN,

Plaintiffs,

v.

THEODORE STUART BERNSTEIN, individually;
THEODORE STUART BERNSTEIN, as Successor
Trustee of the 2008 SIMON L. BERNSTEIN TRUST
AGREEMENT, as amended and restated in the
SIMON L. BERNSTEIN AMENDED AND RESTATED
TRUST AGREEMENT dated July 25, 2012; ALEXANDRA
BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN;
MOLLY SIMON; JULIA IANTONI; MAX FRIEDSTEIN;
CARLY FRIEDSTEIN; JOHN AND JANE DOE 1-5000,

Defendants.

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a

South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.



MARTIN H. COLIN
Circuit Judge

Copies furnished:

Eliot Bernstein
2753 NW 34th Street
Boca Raton, Fl. 33434

John P. Morrissey, Esquire
330 Clematis Street, Suite 213
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515 North Flagler Drive, 20th Floor
West Palm Beach, Fl. 33401

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

CASE NO: 502014CP002815XXXXSB
PROBATE DIVISION: IY

**OPPENHEIMER TRUST COMPANY
OF DELAWARE, in its capacity as
Resigned Trustee of the Simon Bernstein
Irrevocable Trusts created for the benefit
of Joshua, Jake and Daniel Bernstein,**

Petitioner,

VS.

**ELIOT AND CANDICE BERNSTEIN,
in their capacity as parents and natural
guardians of JOSHUA, JAKE AND
DANIEL BERNSTEIN, minors,**

Respondents.

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.


MARTIN H. COLIN
Circuit Judge

Copies furnished:

Eliot and Candice Bernstein
2753 NW 34th Street
Boca Raton, Fl. 33434

Steven A. Lessne, Esquire
777 South Flagler Drive, Suite 500 East
West Palm Beach, Fl. 33401

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

CASE NO: 502012CP004391XXXXSB
PROBATE DIVISION: IY

THE ESTATE OF
SIMON L. BERNSTEIN,
Deceased.

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.


MARTIN H. COLIN
Circuit Judge

Copies furnished:
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Lisa Friedstein and Carley
Friedstein, Minors
c/o Jeffrey and Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035

Joshua, Jacob and Daniel
Bernstein, Minors
c/o Eliot Bernstein
2753 NW 34th Street
Boca Raton, Fl. 33434

Irwin J. Block, Esquire
700 S. Federal Highway, Suite 200
Boca Raton, Fl. 33432

Gary Shendell, Esquire
2700 N. Military Trail, Suite 150
Boca Raton, Fl. 33431

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

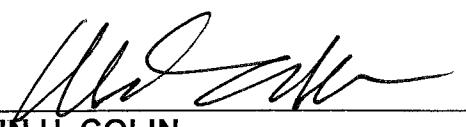
CASE NO: 502012CP004391XXXXSB
PROBATE DIVISION: IY

**THE ESTATE OF
SIMON L. BERNSTEIN,**
Deceased.

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.


MARTIN H. COLIN
Circuit Judge

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Bernstein, Minors
c/o Eliot Bernstein
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Boca Raton, Fl. 33432

Gary Shendell, Esquire
2700 N. Military Trail, Suite 150
Boca Raton, Fl. 33431

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

CASE NO: 502014CP003698XXXXSB
PROBATE DIVISION: IY

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

v.

ALEXANDER BERNSTEIN; ET AL.,
Defendants.

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.


MARTIN H. COLIN
Circuit Judge

Copies furnished:
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and Eliot and Candice Bernstein,
2753 NW 34th Street
Boca Raton, Fl. 33434

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Pamela Beth Simon
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Brian M. O'Connell, Esquire
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West Palm Beach, Fl. 33401

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

CASE NO: 502011CP000653XXXXSB
PROBATE DIVISION: IY

**IN RE: SHIRLEY BERNSTEIN
ESTATE**

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.



MARTIN H. COLIN
Circuit Judge

Copies furnished:

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Julia Iantoni, a Minor
c/o Guy and Jill Iantoni
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Highland Park, IL 60035

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

PROBATE DIVISION
CASE NUMBER: **502012CP004391XXXXNB**
DIVISION: **IJ**

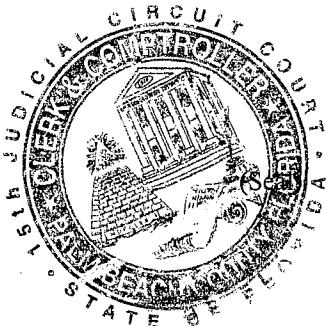
IN RE: ESTATE OF

SIMON L BERNSTEIN, Deceased

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated **05/19/15**, the above styled case is reassigned to Division **IJ**, Judge(s) **JUDGE HOWARD K COATES** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.



Sharon R. Bock
Clerk & Comptroller

BY: Sharon R. Bock
Deputy Clerk

2015 MAY 19 PM 4:27
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH-FILED

cc:

CC: ALL PARTIES

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

PROBATE DIVISION *2011*
CASE NUMBER: **502012CP000653XXXXNB**
DIVISION: IJ

IN RE: ESTATE OF

SHIRLEY BERNSTEIN, Deceased

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated **05/19/15**, the
above styled case is reassigned to Division **IJ**, Judge(s) **JUDGE HOWARD K COATES** for all
further proceedings.

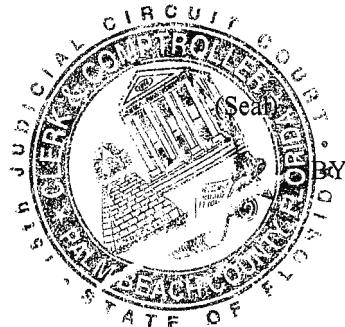
WITNESS my hand and seal of this Court this 19 day of May, 2015.

Sharon R. Bock
Clerk & Comptroller

Sharon R. Bock
Deputy Clerk

26 MAY 19 PM 4:27
PAM BERKMAN, CLERK
SOUTH BAY BRANCH FILED

cc:
CC: ALL PARTIES



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

PROBATE DIVISION
CASE NUMBER: 502014CP003698XXXXNB
DIVISION: IJ

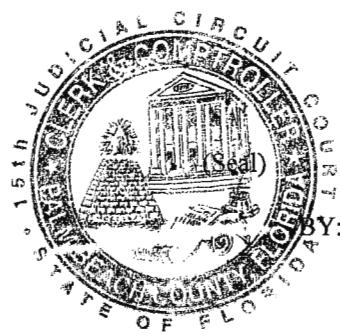
IN RE: SHIRLEY BERNSTEIN TRUST AGREEMENT

DTD MAY 20, 2008, AS AMENDED

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated **05/19/15**, the above styled case is reassigned to Division **IJ**, Judge(s) **JUDGE HOWARD K COATES** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.



cc:
CC: ALL PARTIES

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

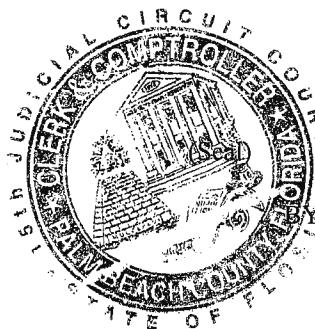
PROBATE DIVISION
CASE NUMBER: **502015CP001162XXXXNB**
DIVISION: IJ

IN RE: THE 2008 SIMON L. BERNSTEIN TRUST AGREEMENT

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated **05/19/15**, the above styled case is reassigned to Division **II**, Judge(s) **JUDGE HOWARD K COATES** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.



Sharon R. Bock
Clerk & Comptroller

Sharon R. Bock
Deputy Clerk

2015 MAY 19 PM 4:26
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FLORIDA
SOUTH CITY BRANCH FILED

cc:

CC: ALL PARTIES

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

PROBATE DIVISION
CASE NUMBER: **502014CP003698XXXXNB**
DIVISION: IJ

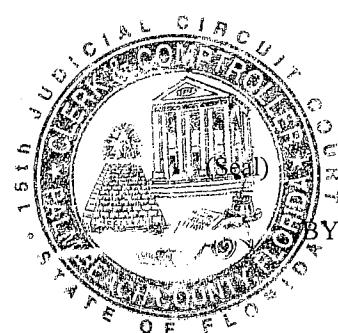
IN RE: SHIRLEY BERNSTEIN TRUST AGREEMENT

DTD MAY 20, 2008, AS AMENDED

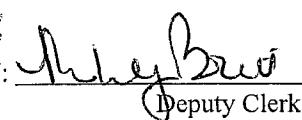
CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated **05/19/15**, the above styled case is reassigned to Division **IJ**, Judge(s) **JUDGE HOWARD K COATES** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.



Sharon R. Bock
Clerk & Comptroller


Deputy Clerk

05 MAY 19 PM 4:27
SOUTH CIRCUIT
PALM BEACH COUNTY, FLORIDA
CLERK'S OFFICE
RECEIVED
SOUTH CIRCUIT
PALM BEACH COUNTY, FLORIDA
CLERK'S OFFICE

cc:

CC: ALL PARTIES

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

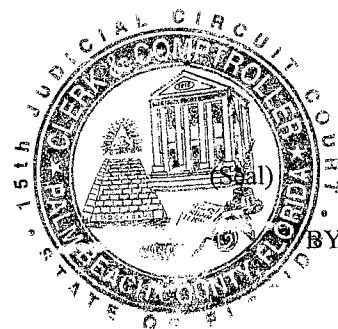
PROBATE DIVISION
CASE NUMBER: 502014CP002815XXXXNB
DIVISION: IJ

IN RE: SIMON BERNSTEIN IRREVOCABLE TRUSTS CREATED FOR
THE BENEFIT OF JOSHUA, JAKE & DANIEL BERNSTEIN

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated **05/19/15**, the
above styled case is reassigned to Division **IJ**, Judge(s) **JUDGE HOWARD K COATES** for all
further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.



Sharon R. Bock
Clerk & Comptroller

2015 MAY 19 PM 4:27
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FLORIDA
SOUTH CITY BRANCH, FILED

cc:
CC: ALL PARTIES

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

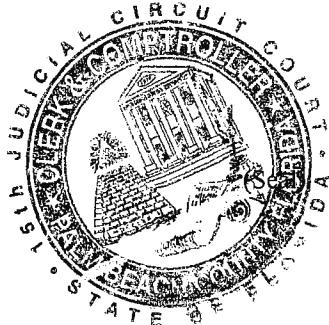
PROBATE DIVISION
CASE NUMBER: **502012CP004391XXXXNB**
DIVISION: **IJ**

IN RE: ESTATE OF
SIMON L BERNSTEIN, Deceased

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated **05/19/15**, the above styled case is reassigned to Division **IJ**, Judge(s) **JUDGE HOWARD K COATES** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.



Sharon R. Bock
Clerk & Comptroller

BY: Sharon R. Bock
Deputy Clerk

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH FILED

2015 MAY 19 PM 4:27

cc:
CC: ALL PARTIES

Appendix 6

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SIMON L. BERNSTEIN, PROBATE DIVISION

Deceased.

CASE NO. 502012CP004391XXXXSB

ELIOT IVAN BERNSTEIN, PRO SE

DIVISION: IY (COLIN)

Petitioner

vs.

TESCHER & SPALLINA, P.A., (and all parties, associates and of counsel); ROBERT L. SPALLINA (both personally and professionally); DONALD R. TESCHER (both personally and professionally); THEODORE STUART BERNSTEIN (as alleged personal representative, trustee, successor trustee) (both personally and professionally); et. al.

Respondents.

ORDER ON PETITION FOR RESIGNATION AND DISCHARGE

This cause was heard by the Court on the co-Personal Representatives' Petition for Resignation and Discharge on February 18, 2014, and the Court, having heard arguments of counsel, and otherwise being fully advised in the premises, ORDERS AND ADJUDGES AS FOLLOWS:

1. The Petitioners' request to accept their resignation is ACCEPTED. The co-Personal Representatives' Letters of Administration are hereby revoked.
2. Within business days from the later of the date of this order or the appointment of a successor fiduciary, the resigning co-Personal Representatives shall deliver to the successor fiduciary all property of the Estate, real, personal, tangible or intangible, all of the documents and records of the Estate and all records associated with any property of the Estate, regardless of whether such property has been previously distributed, transferred, abandoned or otherwise disposed of.

3. The Petitioners' request to reserve ruling on their discharge is ACCEPTED.

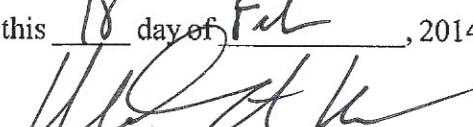
4. The resigning co-Personal Representatives shall file an accounting and a Renewed Petition for Discharge within sixty (60) days after the date hereof, which Renewed Petition for Discharge shall be verified and recite that the letters of administration have been revoked, the resigning co-Personal Representatives have surrendered all undistributed Estate assets, records, documents, papers and other property of or concerning the Estate to the successor fiduciary as set forth above, and the amount of compensation paid or to be paid by the resigning co-Personal Representatives pursuant to Probate Rule 5.430(g). Such accounting shall include cash and transactions from the commencement of administration of the Estate and ending as of the date the accounting is submitted.

5. The resigning co-Personal Representatives shall serve notice of filing and a copy of the accounting and Renewed Petition for Discharge on all interested parties and the notice shall state that the objection to the Renewed Petition for Discharge must be filed within thirty days after the later of service of the petition or service of the accounting on that interested person pursuant to Probate Rule 5.430(i).

6. The successor Personal Representative or Curator is authorized to pay a \$ _____ retainer to the accountant whom the Successor Personal Representative or Curator selects to provided the accounting which this Order requires. The accountant's hourly rate and compensation shall be subject to court approval.

*THE
COURT
IS GOING
TO ENFORCE
THIS
ORDER.*

DONE AND ORDERED in Delray Beach, Florida, this 18 day of Feb, 2014.


Circuit Judge

cc: Parties on attached service list

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Jill Iantoni (U.S. Mail)
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Mark R. Manceri, Esq. (E-mail)
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Fort Lauderdale, Florida 33308

Appendix 7

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT OF FLORIDA, 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; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of his minor children D.B., Ja. B. and Jo. B.;
JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;
LISA FRIEDSTEIN, Individually, as Trustee f/b/o
Max Friedstein and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her
minor child, C.F.,

Defendants.

AGREED ORDER ON ELIOT BERNSTEIN'S
MOTION FOR EMERGENCY INTERIM DISTRIBUTIONS

THIS CAUSE having come before the Court on August 19, 2014, upon Eliot Bernstein's Motion for Emergency Interim Distributions ("the Motion"), to pay the private school tuition costs for his children. The Court, having reviewed the Motion and heard argument of counsel and/or the parties, having been advised of the terms of the parties' Confidential Agreement for Receipt of Partial Distribution (the "Agreement"), having taken testimony from Ted Bernstein and from Eliot and

Candice Bernstein, and otherwise being fully advised in the premises, hereby ORDERS AND ADJUDGES that

1. The Emergency Motion is CONDITIONALLY GRANTED in part, on the terms set forth below.

2. The Trustee is authorized, directed and compelled to make payments to the St. Andrew's School on behalf of each of Eliot's three children in the amounts specified in the Agreement, to cover the 2013-2014 arrearages, and the full cost of tuition for 2014-2015 school year. If for any reason any of the children withdraw from or no longer attend the St. Andrews School, said school may not disburse any monies in the children's accounts (excess payments, refunds if applicable, or otherwise) to anyone absent an order from this Court.

3. The Trustee is authorized and directed to make such payment upon receipt from Eliot and Candice Bernstein of a signed copy of the Agreement.

4. In addition, based upon this order directing the Trustee to make such payment, the Court rules that the Trustee shall be held harmless and cannot be sued for the act of making these required, court-ordered distributions. Neither Eliot or Candice Bernstein, individually; Eliot Bernstein and Candice Bernstein, as guardians and natural parents of Daniel, Jacob and Joshua; nor any other beneficiary of The Shirley Bernstein Trust shall commence, prosecute or participate in any litigation against the Trustee concerning these payments.

5. Eliot Bernstein and Candice Bernstein, individually; Eliot Bernstein and Candice Bernstein, as guardians and natural parents of Daniel, Jacob and Joshua; and any other beneficiary of The Shirley Bernstein Trust are enjoined and precluded from filing or pursuing any action against

the Trustee in connection with the Trustee's distributions provided under the Agreement for the payment to St. Andrews School and this Order.

6. The Court finds that no beneficiary objected to the requested distribution, and finds that it is in the best interests of Eliot Bernstein and his children that these distributions be made directly to the St. Andrew's School. Because the Agreement relates to minor children, the Court orders that the Agreement be treated as confidential, to be provided solely to the parties (parties may share on a confidential basis a copy of the Agreement with counsel advising them in this matter). 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.

7. The Court retains jurisdiction to enforce the terms of this order, including enforcement of the injunction relief provided for herein.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 20 day of August, 2014.



Martin H. Colin
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

SERVICE LIST

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and Elliot and Candice Bernstein,
as Parents and Natural Guardians of
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Eric Bernstein, Michael Bernstein

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Counsel for Lisa Sue Friedstein, individually and
as trustee for her children, and as natural guardian
for M.F. and C.F., Minors; Jill Marla Iantoni,
individually and as trustee for her children, and as
natural guardian for J.I. a minor

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