

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.: 4D16-0222
L.T. No.: 2011CP000653XXXXSB
2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN,

Appellant / Petitioners,

**Appellant's Response to Show Cause;
Request for Extension to File Initial Brief**

v.

TED BERNSTEIN, AS TRUSTEE, ET AL.

Appellee / Respondent(s)

Appellant-Petitioner Eliot I. Bernstein, respectfully says and moves this Court as follows:

1. I am the Appellant and Petitioner herein and am responding to this Court's Order to Show Cause regarding the dismissal of the Appeal for lack of prosecution and respectfully request this Court grant a reasonable extension of time to allow me to file and serve my Initial Brief and am requesting no less than an additional 15 days from April 15, 2016 and ideally 30 days in the Court's discretion.
2. This is an Appeal of a "one-day" "Validity" Trial before Judge John Phillips relating to the validity of certain Wills and Trust instruments in a complex case that has at least 6 related Cases involved, although procedurally and substantively the cases have not been treated as a "complex" case under the Rules of Civil Procedure in the Probate Court and Courts below.

3. There are genuine and substantial merits to the instant appeal based upon US and State Constitutional principles such as denial of procedural and substantive Due process, failure to comply with the Rules of Civil Procedure and Pre-Trial and Trial procedural due process, abuse of discretion, Discovery abuses, best evidence and spoliation - loss of evidence issues, and related meritorious claims on appeal.
4. On April 4th, 2016 just 3 days after Appellee's attorney Alan Rose had filed the motion to Dismiss the Appeal for lack of Prosecution, I wrote to Alan Rose by email seeking voluntary consent to an Order granting at least 15 additional days after April 15th, 2016 but this was rejected by the Appellee and his attorney.
5. I also noted in this email as follows: *"Also, unless I have not received some form of Electronic or hard copy mail, I am not aware that the Clerk of the Lower Court has filed the Record as required and notice that you had not raised this issue in your motion."*
6. And further noted in the email, *"Thus a motion under 9.200(e) is required as well which you could have raised which provides: 'Duties of Appellant or Petitioner. The burden to ensure that the record is prepared and transmitted in accordance with these rules shall be on the petitioner or appellant. Any party may enforce the provisions of this rule by motion.'"*
7. Appellees knew that such Record had not been produced by the Clerk of the Court as of the time of the motion to dismiss but did not raise this issue with this Court.
8. Just 2 days after my Email to Alan Rose of April 4, 2016, the Clerk of the lower Court suddenly filed the Index and Record with this Court from 2 of the Cases in the lower Court below being the Shirley Bernstein Estate and Trust cases.

9. However, the Court's Order and Judgment that is on Appeal also involves the validity of instruments from the Simon Bernstein Trust and Simon Bernstein Estate cases under Case Numbers 502015CP001162XXXXSB and 502012CP004391XXXXSB and I contacted the Clerk of the Court on Monday April 11, 2016 and spoke with a Corine(sp) who indicated she would have to speak to her Supervisor to find out how long it would take to produce the Index and Record from the other 2 cases.
10. This Clerk called back and despite the fact that the Clerk's Office had already produced and filed the Index and Record with this Court from the Shirley cases and despite this Court having on file in the Docket an approval of my Indigency Status which appears in this Court's docket as filed on Jan. 20, 2016, I am now being told I have to re-apply for Indigency and that it will take the lower Court Clerk at least 3-5 days after Indigency is "re-approved" to produce and complete the Index and Record from each of these other cases.
11. There should be no reason to have to "re-apply" for Indigency status as my family remains on Food Stamps / Welfare having received no distributions from the Trusts and inheritances in the 4-5 years the respective cases have been in the Palm Beach courts.
12. Further, as it relates to timeliness, I was forced to expend substantial time repeatedly responding to motions below where I had already filed Unavailability, was under medication - treatment during a significant period of this time, repeatedly responding to motions by several attorneys as a pro se litigant who is indigent, have had periods of time where my entire internet and phone system have been suddenly "out" right around the times of deadlines below, and still have the related ongoing federal litigation for Life

Insurance proceeds which Ted Bernstein and related parties filed for in Illinois to address as well.

13. I am respectfully seeking a substantial and reasonable extension of time to complete the filing of the initial brief in this Court's own discretion taking into consideration the time delay that it will take the Clerk of the lower Court to produce the other cases as well and seek the lower court to be directed to waive the necessity of re-applying for indigency as such indigency was just recently approved by said Court in January of 2016, 3 months ago.

WHEREFORE, it is respectfully prayed for an Order granting an extension of time to file the initial brief upon reasonable terms no less than 15 days from April 15, 2016 and such greater period of time as in this Court's discretion is just and proper.

Dated: April 12, 2016

/s/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 12th day of April, 2016.

/s/ Eliot Ivan Bernstein

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