

**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.: 4D16-3162

L.T. No.:502012CA013933XXXXMB

**APPELLANT’S STATEMENT OF
SUBJECT MATTER JURISDICTION;
APPEALABLE ORDER AND MOTION
TO ACCEPT LATE FILING**

ELIOT IVAN BERNSTEIN

v. WILLIAM E. STANSBURY, et al.

Appellant / Petitioner(s)

Appellee / Respondent(s)

Comes now Eliot I. Bernstein, pro se, (“Appellant”) who respectfully prays and shows this Court as follows:

1. I, Eliot Ivan Bernstein, am the Appellant herein pro se.
2. Appellant makes this statement to respond to this Court’s Order of Sept. 16, 2016 asking for a statement of subject matter jurisdiction and appealability of the Order herein.
3. Appellant further makes a motion for this Court to accept my late filing due to significant medical issues as further shown herein having already filed a notice of medical unavailability with this Court in other pending cases at the 4th District Court of Appeals.

4. The statement of medical unavailability seeking extensions of time is attached as Exhibit 1 having been filed with this Court on or about Sept. 6, 2016 prior to issuance of the 10 day Order of this Court on Sept. 16, 2016. While that Motion for Extension was denied I will be timely asking for reconsideration based on the severe medical danger this puts me in.
5. This Court has Certiorari Jurisdiction under Florida Rules of Appellate Procedure 9.030(b)(2)(A) to review “non-final orders of lower tribunals other than as prescribed by rule 9.130;”.
6. This is an appeal which seeks review of the lower Court’s non-final Order permitting attorney Steven Lessne to withdraw as counsel and attorney of record for Bernstein Family Realty, “BFR”.
7. As this Court said in *Becker Poliakoff v King*, 642 So.2d 821 (Fla. Dist. Ct. App. 1994), “Approval by the court should be rarely withheld and then **only upon a determination that to grant said request would interfere with the efficient and proper functioning of the court.**”
8. At minimum, this appeal brings up for review whether it was an abuse of discretion and premature for the lower Court to simply permit Counsel Lessne to withdraw prematurely without determining the fraud upon the Court in the very appearance and representation by counsel Lessne in the case.

9. While on the “face of the Court records” it “appears” that Counsel Lessne had “appeared” in the case to represent “BFR”, this is not the case and at minimum is a factual issue not decided by the Court below where in fact counsel Lessne later claimed upon his withdrawal to be representing the “Manager” of BFR, one Janet Craig, and not BFR itself with counsel Lessne having also given the false and improper representation to myself and family that in fact counsel Lessne was representing BFR’s interests, a company owned by two of minor children and one adult child. Therefore, BFR appears to have never been represented by counsel in these matters.
10. These conflicts and this fraud on the court has never been determined or properly determined by the lower Court at this stage and thus, all of these matters go to whether a **“determination that to grant said request would interfere with the efficient and proper functioning of the court”**. See, **Becker, above.**
11. The issues raised are more than just whether counsel Lessne has civil liability to BFR and the Members/Owners/Beneficiaries of BFR who are my 3 sons, Joshua Ennio Zander, JNAB (Minor 1) and DEAOB (Minor 2) and more than whether attorney Lessne has breached duties and instead goes to fundamental fraud and Fraud Upon the Court and whether Bonding and other requirements and determinations should have been made prior to any Order to permit withdrawal

as counsel and in fact withdrawal was not appropriate versus removal by the court for Lessne's misrepresenting parties.

12. There are further related appealable issues as to the propriety in the lower court forcing myself in the case as a new "Manager" of BFR when this was never consented to in the proceedings.

13. With respect to the timeliness of the response herein, in addition to the prior filed request for extensions based on medical issues, I was referred by my primary physician to a cardiologist and neurologist which have been scheduled to determine a course of treatment for my vasolvega and sought in advance a several week break from opposing counsel Alan Rose and Steven Lessne who refused to grant me the time requested.

14. I sought a several week stay to deal with these very serious and life threatening issues of fainting due to vasolvega, which a primary factor to triggering such episodes is stress and whereby currently Appellant is in a number of highly stressful court cases, which have had numerous deadlines heaped on him in a short time, both in this Court and the Lower Court and the Illinois Federal Court that could be triggering the vasolvega attacks. While vasolvega is not particularly deadly, as the person typically recovers from unconscious after fainting the danger lies in falling while fainting and causing severe head injury. On or about 2013 when vasolvega first was diagnosed, Appellant had fallen

from a stool onto his head and was hospitalized for several days with bleeding on the brain.

15. Appellant began feeling faint often in bed and sought to have further tests conducted before something serious happened and asked opposing counsel Steven Lessne to stay matters until after Nov 1, 2016 to give time to get to doctors to determine a course of treatment.
16. Lessne refused to accommodate the request and shortly thereafter I had a vasovagal attack in my kitchen, whereby my son caught me and broke most of the fall where I would have severely injured my head on a tile floor falling backward. After laying me on the floor and seeing I was unconscious he tried to administer CPR and in the process cracked my ribs and bruised the cartilage.
17. The next day I then went to the Emergency room on 9/6/2016 and it was determined that I had cracked ribs and had injured and bruised cartilage and was told it would take 4-6 weeks to heal and I was prescribed pain medicine and anti-inflammatory drugs, which I have been on to this date. I was advised not to undergo stressful events that could trigger further attacks of vasovagals until seeing a cardiologist and neurologist to determine a course of treatment and I could not schedule them until I felt well enough to undergo tests that involve strenuous physical activities, such as stress tests due to the rib injury.

18. I am scheduled for the soonest appointment with a cardiologist recommended by my Primary Physician after my ribs have been given time to heal and to perform stress tests and more and it is scheduled for October 17, 2016.
19. I am scheduled for the soonest appointment with a neurologist recommended by my Primary Physician on October 24, 2016.
20. It would severely jeopardize my health to undertake these stressful filings on appeal and could cause fainting that leads to further harm. I have three children and a wife who depend on me and cannot be forced or pressured to achieve court deadlines that can easily be changed to accommodate this medical situation.

WHEREFORE, it is respectfully prayed for an Order accepting this late filing and statement of subject matter jurisdiction and seek an Extension and Stay of proceedings based upon serious medical issues until at least Nov. 1, 2016 and for such other and further relief as may be just and proper.

Dated: September 30th, 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 30th day of September, 2016.

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EXHIBIT 1

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

CASE NO: 4D16-1449

CASE NO: 4D16-1476

CASE NO: 4D16-1478

L.T. No.: 2011CP000653XXXXSB

2014CP003698XXXXNB

2014CP002815XXXXNB

ELIOT IVAN BERNSTEIN

v.

TED BERNSTEIN, AS
TRUSTEE, ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

Motion for Extension of Time and
Stay Proceedings - Notice of Medical Unavailability

1. Appellant Eliot Bernstein respectfully makes this motion and prays for an Extension of time to file and serve the Initial Brief in the above-referenced cases for at least 9 weeks.

2. Appellant was already going to be moving before this Court for an Extension of time today due to significant related litigation action in the Circuit court below and the Northern District of Illinois where Appellant's time has been significantly involved with nearly 15 or so "Orders" and Service of Court papers occurring in the last 2 weeks in the Circuit Court below and other substantial filings in Illinois.

3. However, as a result of unexpected injuries occurring just yesterday, Appellant Eliot Bernstein now must move for a substantially longer Extension of time and gives this Court notice that due this injury occurring just yesterday on September 05, 2016 by a vasovagal attack that caused him to faint and fall which led to a cracked rib and bruised ribs and also involved his son catching him during the fall and providing CPR, Appellant will be heavily medicated for the next 6-9 weeks and extremely limited in mobility during this time.

4. Appellant will not be able to attend any hearings during this time and seeks an Extension of time and stay on this case from responses and any other required Hearings and action until such time has elapsed for him to fully recover and cease pain medications.

5. Appellant has been medically advised by his Doctor to avoid stress during this time as stress is a major contributor to vasovagal attacks and rib injuries cause additional stress and therefore seeks this stay to last until November 01, 2016.

Dated: September 6th, 2016

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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 6th day of September, 2016.

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