

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 4D17-1932

ELIOT IVAN BERNSTEIN

L.T. CASE NOS. 2014CP003698 XXXX NB

Appellant,

v.

TED S. BERNSTEIN, AS TRUSTEE, et al.

Appellee.

**APPELLEE'S TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE
OF THE SHIRLEY BERNSTEIN TRUST, RESPONSE TO
APPELLANT'S PARTIAL RESPONSE TO SHOW CAUSE ORDER AND
REQUEST FOR A FURTHER EXTENSION OF TIME TO FULLY
SUBMIT BASED ON MEDICAL TREATMENT**

Appellee, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust ("Shirley Bernstein Trust"), responds to *Appellant's Partial Response to Show Cause Order and [Second] Request for a Further Extension of Time to Fully Submit Based on Medical Treatment* ("Partial Response"), and states:

1. Pro se Appellant, Eliot Ivan Bernstein ("Eliot"), has filed numerous meritless appeal, which cost the Trust and the beneficiaries of the Trust significant money. The non-monetary sanction of "no longer accepting his pro se filings" does nothing to harm Eliot's ability to pursue meritorious issues. So long as the issue actually has merit as determined by an attorney, and to quote from Eliot's response,

an attorney who has an "obligation to maintain the integrity of the legal profession." Eliot has no respect for the Court System or the professionals who serve it. As an "indigent" pro se litigant, Eliot has nothing to lose if he continues to abuse the system or the lawyers. Requiring an attorney to review and sign, under the dictates of section 57.105, is the proper balance and serves to protect the Trust from needless expense.

2. In his "Partial Response," served at 11:32 p.m. on the last day of the extension granted by this Court, Eliot fails to demonstrate cause. In its July 19 Order, this Court ruled Eliot "has initiated numerous meritless and improper pro se proceedings in this court and has abused the court system." Rather than explain the merit of his prior appeals, Eliot continues his attack on the justice system, pivoting his focus to directly criticize this Court. His suggestion this Court has engaged in an "illegal pattern and practice" to "further and cover up frauds upon the court" are demeaning and unacceptable. (*See* Partial Response at ¶8)

3. This Court should not tolerate such behavior, and should impose the sanction Eliot has been warned about. Indeed, if there were lingering concern the *non-monetary* sanction of "no more *pro se* filings" was appropriate and warranted, Eliot now has spoken and removed all doubt. Despite clear warning, Eliot has no interest in following the law, nor of acting civilly and respectfully.

4. Two small additional points. First, this will not be the first time Eliot is branded a vexatious and abusive pro se litigant. As detailed by Oppenheimer in the record of Case No. 4D-1449 before it was dismissed (*see* record of that appeal at pages 390-508; and also included within the Appendix to this Response), Eliot has previously been sanctioned by a federal district court. In that case, Eliot sued his lawyers (Proskauer Rose) and countless judges and lawyers – the Florida Supreme Court, the Florida Bar, the Virginia Bar, the State of New York, and hundreds of other defendants – for conspiring to steal his technology and deny him due process. *See Bernstein v. New York*, 591 F. Supp. 2d 448, 453 (S.D. N.Y. 2008) (the "NY Action"). Eliot sued for one **trillion** dollars.

5. U.S. District Judge Schira Scheindlin dismissed each of Bernstein's claims. (*See Oppenheimer Motion*, Exhibit E) When Eliot continued to pursue these claims, Judge Scheindlin ***court found Eliot's claims to be "frivolous, vexatious, overly voluminous, and an egregious abuse of judicial resources."*** *Eliot I. Bernstein v. State of New York, et al*, Case No. 1:07-cv-11196, *Order Denying Emergency Motion to Reopen Case* (S.D. N.Y. August 14, 2012). (*Id.* at 10) Eliot was cautioned that any additional frivolous filings could subject him to Rule 11 sanctions. *Id.*

6. Eliot ignored the court's admonition by filing two more motions to reopen the case. Judge Scheindlin sanctioned Eliot for repeatedly filing frivolous

papers. (*See Oppenheimer Motion*, Exhibit F) Specifically, the federal judge ordered Eliot pay \$3,500 to Proskauer Rose in monetary sanctions, and enjoined Eliot as follows:

Eliot I. Bernstein is hereby enjoined from filing any action in any court related to the subject matter of this action without first obtaining leave of this Court. In moving for such leave, Bernstein must certify that the claim or claims he wishes to present are new claims never before raised and/or disposed of by any court. Bernstein must also certify that claim or claims are not frivolous or asserted in bad faith. Additionally, the motion for leave to file must be captioned ‘Application Pursuant to Court Order Seeking Leave to File.’ Failure to comply strictly with the terms of this injunction shall be sufficient grounds for denying leave to file and any other remedy or sanction deemed appropriate by this Court.

Id. (emphasis added). Still undeterred, Eliot expressed his contempt for the NY court and the proscriptions of Rule 11 by stating the following: “Bernstein is notifying Proskauer and this Court that ***he will have a lifelong and generational long litigious history*** in pursuing his patent royalties...” *Id.*

7. The "skills" he has learned through years of vexatious litigation are on display in these trust and estate cases, and in this Court. Eliot's disrespect for this Court is no surprise when placed into that context.

8. Second, this Court is not the only Florida Court Eliot has attacked. Eliot’s first appellate petition to the Florida Supreme Court in these estate and trust matters, a *Petition for All Writs, Writ of Prohibitions, Writ of Mandamus and Petition*

to Estate Cases (Case No. SC15-1077),¹ began with a section headed: "**WARNING: POTENTIAL CONFLICTS OF INTEREST OF THIS COURT**," (Emphasis in original). That petition, at pages 2 through 6, is a diatribe against numerous members of the Florida Supreme Court, the Florida Bar and others. Eliot also has moved to disqualify numerous trial judges in this case (including former Judges John Phillips who presided over the key trial to determine beneficiaries). Eliot suggests no judge in Florida can treat him fairly. That is nonsense.

9. In short, as Oppenheimer's counsel put it, Eliot "has become skilled at filing vexatious pleadings, wasting judicial resources, sullyng hard-earned reputations, and publicly degrading the judicial system and its officers." (Oppenheimer Motion, Appendix at page 4) The record demonstrates that enough is enough, and this Court should impose the sanction of no further pro se filings.

WHEREFORE, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust, requests that the Court deny the second request for extension of time and enter an order imposing the sanction of no longer accepting Eliot Ivan Bernstein pro se filings in this Court.

¹ The Petition was transferred to this Court pursuant to *Harvard v. Singletary* (Case 4D15-3849); dismissed; rehearing en banc was denied; and the Florida Supreme Court dismissed the unauthorized appeal from an unelaborated order.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been served by e-mail on all parties listed on the attached service list, this 10th day of August, 2017.

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