

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD. 6/21/95,)
et al.,) Appellate Case No: 17-3595
Plaintiffs-Appellees,)
V.) LC No. 1:13-CV-O3643
HERITAGE UNION LIFE)
INSURANCE CO., et al.,)
Defendants-Appellees.)
)
APPEAL OF:)
ELIOT BERNSTEIN,)
Cross and Counter-Claimant-)
Appellant.)

**Motion for Clarification and Reconsideration of Order Dated April 11, 2018
or in the alternative a Payment Plan for Appeal Fee**

ELIOT IVAN BERNSTEIN (“Eliot”), Pro Se, hereby submits this Motion for Clarification and Reconsideration of Order Dated April 11, 2018 or in the alternative a Payment Plan for Appeal Fee.

1. That Eliot has spoken to the Clerk of this Court and the District Court Clerk to attempt to determine what standards were used in denying the In Forma Pauperis filing as stated in the April 11, 2018 Order which claims that Eliot did not prove indigence. Since there appears no set income level or other guide to determine or

prove indigence the Clerk suggested that the Court be requested to clarify how such determination was made and any applicable formulas for such determination.

2. Judge John Blakey stated in his denial of the In Forma Pauperis application that a large sum of money was coming to Eliot's children but as of this date those funds are not available and they are technically monies for Eliot's children not Eliot individually. If this were a factor then the Court should reconsider the application without including any such future monies.
3. That if the Court finds that Eliot is still not indigent despite the extreme poverty that has been heaped upon his family by PROVEN CRIMINAL ACTS of attorneys at law involved in the Estates and Trusts of his parents that have INTENTIONALLY interfered with his and his family's expectancy of their inheritance causing great economic harm to them that the Court consider in the alternative a payment plan for the \$505.00 filing fee of \$101.00 for five months as if the fee is paid in full this month it literally will take the children's lunch monies.
4. That further, a recent filing in the Florida Probate Court, see attached Exhibit 1, shows that lawyers for Eliot's son have filed an Objection to a proposed settlement based on the fact that Eliot's son Joshua was placed in a Guardian Ad Litem for MINOR children at a time when he was an adult and thus all settlements, appearances and consents given on his behalf were improper and therefore VOID.

5. The settlement reached in the lower court was based in part on false information that Joshua Bernstein had consented with others to the lower court settlement and this settlement approved by Judge Blakey will also have to be voided as it relied in part on the Florida Court as indicated in the Record.
6. Further, as the record reflects, Judge Blakey was notified that another FRAUD ON THE COURT by OFFICERS OF THE COURT had occurred that led to Eliot's dismissal from the case where it was claimed that he was not a beneficiary of his father's estate and did not have standing to participate in the lower court case. This fraud has now been exposed by a new Judge, Rosemarie Scher who has since the time of Eliot's dismissal determined that Eliot is in fact a beneficiary with standing in his father's estate and yet none of the Officers of the Court have notified the lower court or this Court that a fraud took place denying Eliot's constitutionally protected due process rights eliminating him from the case and entering settlements without him as a necessary party.
7. These multiple and ONGOING FRAUDS ON THE COURTS have cost Eliot, his wife and his children great costs to try and protect their rights to their properties without counsel and thus the Court should not only reconsider Eliot's In Forma.

WHEREFORE, Eliot respectfully prays that this Honorable Court grant the relief requested.

DATED: April 18, 2018

Respectfully submitted,

/s/ Eliot Ivan Bernstein

Cross and Counter-Plaintiff, Appellant
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CERTIFICATE OF SERVICE

Eliot Ivan Bernstein, Pro Se certifies that he filed a “Motion for Clarification and Reconsideration of Order Dated April 11, 2018 or in the alternative a Payment Plan for Appeal Fee” via ECF filing and served copies of same upon those listed below via ECF or email on this 18nd day of April, 2018.

/s/ Eliot Ivan Bernstein

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EXHIBIT 1

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY, FLORIDA

IN RE:

ESTATE OF SIMON L. BERNSTEIN
/

DECEASED.

CASE NO. 50-2012-CP-004391-XXXX-NB

**OBJECTION TO MOTION TO APPROVE MEDIATION SETTLEMENT
AGREEMENT WITH TESCHER & SPALLINA, P.A.**

COMES NOW Joshua Bernstein, by and through his undersigned legal counsels, Paul D. Turner, Esq., Christopher Perré, Esq., the law firm of Perlman, Bajandas, Yevoli & Albright, P.L., (“PBY&A”), and Marc J. Soss, Esq. (collectively “Counsel”), hereby files this objection to the Motion to Approve Mediation Settlement Agreement (the “Mediation Agreement”) and states as follows:

Background

1. On or about October 2, 2012, probate proceedings were commenced for the decedent.
2. At the time the proceedings were commenced, Joshua Bernstein (“Joshua”), one of the beneficiaries of the Estate and Trust of Simon L. Bernstein was a minor with a date of birth in August 1997.

3. On March 8, 2016, a Motion for Appointment of a Guardian Ad Litem (“GAL Motion”) to represent the interests of the children of Eliot Bernstein was filed with this Court. At the time the GAL Motion was filed Joshua was over the age of eighteen (18) years and did not require a guardian-ad-litem to be appointed for him.

4. On April 8, 2016, this Court approved the GAL Motion and appointed Diana Lewis, Esquire (“Lewis”), as the guardian-ad-litem for Joshua.

5. On November 9, 2016, a Motion to Approve Compromise and Settlement, Appoint a Trustee for the Trusts created for D.B., Ja.B. & Jo.B and Determine Compensation for Guardian-Ad-Litem was filed with this Court.

6. On October 27, 2017, a Motion to Direct Payments for Benefit of Eliot's Children to Court Registry in lieu of Appointing Trustee; and to Determine Compensation for Guardian Ad Litem and Discharge Guardian was filed with this Court. The matter is scheduled for hearing

on February 6, 2018.

Florida Guardian-Ad-Litem

7. Section 744.102(10) of the Florida Statutes defines the term “Guardian-Ad-Litem” as “a person who is appointed by the court having jurisdiction of the guardianship or a court in which a particular legal matter is pending to represent a ward in that proceeding.”

8. Section 744.3025, Claims of Minors, of the Florida Statutes, further provides:

- (1)(a) The court may appoint a guardian ad litem to represent the minor’s interest before approving a settlement of the minor’s portion of the claim in a case in which a minor has a claim for personal injury, property damage, wrongful death, or other cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor’s interest.
- (b) Except as provided in paragraph (e), the court shall appoint a guardian ad litem to represent the minor’s interest before approving a settlement of the minor’s claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000.
- (c) The appointment of the guardian ad litem must be without the necessity of bond or notice.
- (d) The duty of the guardian ad litem is to protect the minor’s interests as described in the Florida Probate Rules.
- (e) A court need not appoint a guardian ad litem for the minor if a guardian of the minor has previously been appointed and that guardian has no potential adverse interest to the minor.

- (2) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.
- (3) A settlement of a claim pursuant to this section is subject to the confidentiality provisions of this chapter.

9. A Guardian-Ad-Litem is appointed to represent the best interests of either an incapacitated individual or a minor in a legal proceeding.

Basis for Objection

10. At the time that Lewis was appointed to be the guardian ad litem for Joshua, he was neither a minor nor incapacitated. As a result, a guardian ad litem should not have been appointed for Joshua.

11. Between April 8, 2016, the date Lewis was appointed as guardian ad litem for Joshua and the date hereof, Lewis owed a fiduciary duty to Joshua. Notwithstanding said duty, Lewis has never communicated with him, discussed the legal proceedings or made him aware of the alleged settlement reached during the mediation. As of the date of the filing of this objection, Joshua is completely unaware of the terms of the proposed settlement and has never been provided a copy of the mediation settlement agreement.

12. As a result, a guardian ad litem should not have been ever appointed for Joshua, had no authority to bind Joshua to any settlement agreements she may have allegedly entered into on his behalf, and any settlements negotiated and/or entered into on his behalf by Lewis should be deemed void.

Conclusion

WHEREFORE, Joshua Bernstein pray this Honorable Court for an order (i) denying the Motion to Approve Mediation Settlement Agreement and all supplemental matters related thereto; (ii) removing Diana Lewis, Esquire as the guardian-ad-litem for Joshua; and (iii) awarding such other and further relief as deemed just and equitable under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 5, 2018, a true and correct copy of the foregoing document is being served, pursuant to Rule 2.516(b), Fla. R. Jud. Admin., *via* Florida Courts e-Filing Portal to the names and e-mail addresses provided by all parties, counsel of record and *pro se* parties.

Dated: February 5, 2018.

Respectfully submitted,

/s/ Paul Turner

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