

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

ELIOT BERNSTEIN, et al.,

Appellant(s)

Case #4D2025-0996  
L.T. #502018CA002317

v.

WALTER E. SAHM and PATRICIA  
SAHM,

Appellees.

/

**RESPONSE AND OBJECTION TO APPELLANTS' MOTION TO  
ACCEPT LESS THAN 2 DAY LATE INITIAL BRIEF IN THE  
DISCRETION OF THE COURT AND INTERESTS OF JUSTICE  
AND (ii) MOTION FOR DISMISSAL OR IN THE ALTERNATIVE (iii)  
MOTION FOR CLARIFICATION OF TIMING**

COMES NOW Appellee, Charles Revard, as Guardian of Patricia Sahm, by and through his undersigned counsel, and files this *Response and Objection to Appellants' Motion to Accept Less than 2 Day Late Initial Brief in the Discretion of the Court and Interests of Justice and (ii) Motion for Dismissal or in the Alternative (iii) Motion for Clarification Of Timing*, and in support thereof states as follows:

1. *Appellants' Motion to Accept Less than 2 Day Late Initial Brief in the Discretion of the Court and Interests of Justice* (hereinafter "the Motion") comes on the heels of Appellants' *third* failure to timely

file their Initial Brief. As set forth in Appellee's responses to Appellants' prior motions for extension of time filed in case 4D2025-0966, this Court has previously issued orders requiring Appellants to file their initial brief by July 8, 2025 (Appellants instead moved for an extension of time on July 11); by August 7, 2025 (Appellants instead moved for an extension of time on August 13); and most recently, by October 29, 2025—an order that Appellants again ignored, again choosing to file their *Motion* three days past the deadline.

2. Additionally, in case 4D2025-1033, this Court ordered Appellants to file their Initial Brief by September 4, 2025; instead, on September 9, 2025, Appellants moved for an extension of time, which this Court granted until October 29, 2025.

3. The Court's most recent scheduling order, dated October 24, 2025 ("the *October 24 Order*"), reads as follows:

...Appellants' October 3, 2025 motion for rehearing is granted, and Case No. 4D2025-0996 is reinstated in part, only as to the March 6, 2025 order. Further, ORDERED sua sponte that case numbers 4D2025-0996 and 4D2025-

1033 are now consolidated for all purposes and are to proceed under the time schedule for a nonfinal appeal and according to the requirements of Florida Rule of Appellate Procedure 9.130 and shall proceed under case number 4D2025-0996. The briefing schedule shall follow that established in Case No. 4D2025-1033. Appellants shall file a single initial brief addressing the issues in the appeals. Further, Appellants are advised against the practice of filing successive appeals from the same order.

4. As per the *October 24 Order*, the briefing schedule is to follow as established under Case No. 4D2025-1033.

5. Under Case No. 4D2025-1033, on September 29, 2025, this Court entered the following order (“the *September 29 Order*”):

Upon consideration of appellee's September 19, 2025 response, it is ORDERED that appellant's September 9, 2025 motion for extension of time is granted, and appellant shall serve the initial brief within thirty (30) days from the date of this order. In addition, if the initial brief is not served within the time provided for in this order, the above styled case may be subject to dismissal or the court in its discretion may impose other sanctions.

6. Pursuant to Florida Rule of Appellate Procedure 9.420(e) and Florida Rule of Judicial Administration 2.514(a), the initial brief was then due on October 29, 2025.

7. On October 29, 2025, for a third time, Appellants failed to

timely file either their Initial Brief or a motion requesting an extension of time. However, Appellants did file a Record on Appeal for case no. 4D2025-0994 (a related case that has since been dismissed) that same day.

8. Finally, on November 1, 2025, Appellants filed their Initial Brief along with the *Motion*.

9. On November 5, 2025, this Court entered an order directing Appellee to respond to the *Motion to Accept Late Initial Brief*.

## **II. ARGUMENT**

10. Appellants' continued dilatory conduct should not be rewarded. Appellants have already been granted two (2) prior extensions and continue to display a blatant and willful disregard for this Court's deadlines. They now presume the Court will indulge them yet again, effectively exploiting the Court's leniency. As per this Court's own *September 29 Order*, this Court should dismiss this appeal.

11. In the *Motion*, Appellants argue in part that their delay was

caused by this Court's that delay was due to this Courts reinstatement of the individual family appeal and consolidation with case no. 4D2025-1033. *Motion*, at ¶ 6. However, this argument is ill-considered, as Appellants have been on notice since the *September 29 Order* that their initial brief was due for case no. 4D2025-1033 on October 29. Moreover, Appellants previously sought and received an extension of time for their Initial Brief in case 4D2025-1033. Simply put, the deadline did not arise out of thin air; the original deadline was over two months ago. Appellants have simply ignored it.

Furthermore, Appellants may attempt to claim that the cases involved different defenses and that consolidation constitutes good cause for their delay, suggesting they could not have known a single consolidated response would be due on that date. However, this argument is fundamentally flawed. It was Appellants themselves who requested consolidation of case no. 4D2025-0996 and case no. 4D2025-1033 as part of the relief they sought when moving to reinstate the appeal. *Motion to Reinstate* at ¶ 8. Moreover, Appellee

expressly consented to that requested relief in its *Response*. Appellants are deliberately engaging in circular reasoning: demanding relief and then using that very relief as a pretext to justify additional delay. Appellants' conduct reflects a deliberate effort to secure contradictory advantages, a tactic this Court should not condone.

12. Appellants continue to argue that their software issues and technological difficulties in uploading the Appendix, along with difficulties in trying to search the Record of Appeal, constitute additional, sufficient reasoning for their delay. *Motion*, ¶¶ 9, 12–13. Appellants have long relied on purported technical issues as excuses for continually violating this Court's deadline orders (though Appellants have never explained why such technological issues prevented them from timely filing motions for extension of time).

13. In the instant *Motion*, Appellants claim that “difficulties arose around providing a proper Appendix and record for this court.” *Motion*, ¶ 9. However, this Court will recall that Appellants originally

moved for an extension of time to file an initial brief due to their difficulty in procuring the index to the record on appeal. When this Court then ordered that Appellants submit an appendix instead, Appellants failed to abide by that order, submitted the index to the record on appeal, then again claimed that technical difficulties had thwarted their ability to timely file their Initial Brief.

14. Specifically, Appellants argue that

[e]ven on the due date there were software technical difficulties trying to search and find documents for proper citation and “slow downs” in searching documents in the Bookmarked full ROA and shortly before midnight it became clear the brief would not be ready in proper format.

*Motion, ¶ 12.* Here, Appellants admit that the issue wasn't a “technical glitch” that prevented them from timely filing their Initial Brief. The real issue is that Appellants simply hadn't managed their time and were not going to finish the Brief by the due date. Appellants should not be rewarded for attempting to blame their procrastination or lack of time management on technology.

15. Moreover, once Appellants realized on October 29 (again,

by their own admission), they could have contacted undersigned counsel and requested a two or three-day extension. They did not. Nor did they even bother to timely file their *Motion*, instead waiting three (3) additional days.

16. Appellants' continued flagrant disregard for this Court's orders, rules, and schedule is simply part and parcel of their continued efforts to delay the final outcome of this foreclosure case, which has been pending for seven (7) years and has been marred by prior appeals (which this Court dismissed), repeated and bad faith bankruptcy filings, and multiple attempts to disqualify sitting judges. Appellant Eliot Bernstein is a serial litigant and is no stranger to this Court, having filed multiple prior appeals in various cases.<sup>1</sup>

17. Appellants next argue that “[i]n fact renewed efforts to seek

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<sup>1</sup> See, *Bernstein v. Bernstein*, 225 So. 3d 823 (Fla. 4th DCA 2017); *Bernstein v. Bernstein*, No. SC17-1282, 2017 WL 2962748, at \*1 (Fla. July 12, 2017); *Bernstein v. Stansbury*, No. SC17-361, 2017 WL 875890, at \*1 (Fla. Mar. 6, 2017); *Bernstein v. Estate Bernstein*, No. SC16-29, 2016 WL 104132, at \*1 (Fla. Jan. 7, 2016); *Bernstein v. Oppenheimer Tr. Co.*, No. SC17-229, 2017 WL 587242, at \*1 (Fla. Feb. 14, 2017)

voluntary agreements even on a Stay have proven ineffective" and that "Counsel specifically advised the Appellee - Plaintiff this very week that time was focused on this Appeal and again sought country [sic] agreement to no avail." Here, Appellant appears to simply be complaining that trial counsel for the Appellee has failed to agree to stay the lower court proceedings. Appellants' failure to secure their desired stay (which they have, noticeably, not moved for either in the trial court or this court) has no bearing on their inability to comply with this Court's deadlines, and is further evidence that their only goal here is to delay the proceedings.

18. Finally, to the extent that Appellants' assertion that their counsel "again sought country [sic] agreement to no avail" is a representation that Appellants' counsel reached out to undersigned counsel to seek their agreement to this *Motion*, such representation would be false. Undersigned counsel received no emails, faxes, letters, telephone calls, or any other correspondence or communication to that effect from Appellants' attorney. In short,

Appellants' counsel completely failed to contact undersigned counsel regarding this *Motion*. While Appellant's counsel may have contacted trial counsel, Appellant's counsel is well aware that Appellee has separate counsel for this appeal, and any attempt to contact trial counsel regarding appellate matters would be disingenuous.

19. Appellant's *Motion* does not contain the required certificate of conferral pursuant to Florida Rule of Appellate Procedure 9.300(a). "Rule 9.300 requires some actual contact with opposing counsel." *Merritt v. Promo Graphics, Inc.*, 679 So. 2d 1277 (Fla. 5th DCA 1996). The failure to include the certification required by Rule 9.300(a) is inappropriate and should provoke a summary denial of Appellee's motion. *Howard v. Baumer*, 519 So. 2d 679, 681 (Fla. 1st DCA 1988). Indeed, the Fifth Circuit Court of Appeal has held that "[m]options for extension of time will be continued to be summarily denied . . . when the moving party fails to comply with the requirement of the rule to contact opposing counsel and to state whether he agrees or objects to an extension." *Mills v. Heenan*, 382 So. 2d 1317, 1318 (Fla.

5th DCA 1980).

20. Appellee respectfully requests that this Court dismiss the instant appeal for failure to comply with this Court's *September 29 Order* and deny Appellants' request to accept the late filing as a sanction due to their never-ending course of dilatory conduct.

21. Alternatively, if this Court does grant the Appellants' *Motion*, Appellee respectfully requests that this Court clarify whether Appellee's response to Appellants' Initial Brief is due thirty (30) days from the date of Appellants' filing or if the response is due thirty (30) days from this Court's order granting Appellants' *Motion* as per Florida Rule of Appellate Procedure 9.300(b).

WHEREFORE, Appellee, by and through his undersigned counsel, respectfully requests that this Honorable court DENY Appellants' *Motion*, or should this Court grant the *Motion*, issue an order clarifying that Appellee's answer brief is due thirty (30) days from the date of this Court's order granting the *Motion* and accepting the late filed Initial Brief.

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Signed on November 17, 2025.

**KITROSER LEWIS & MIGHDOLL**

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/s/ Kathryn N. Lewis

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished on the 17th day of November, 2025, via e-service through the e-portal to Eric Joseph Cvelbar, Esquire, 1181 NW 57<sup>th</sup> Street, Miami, Florida 33127-1307 ([ecvelbar@hotmail.com](mailto:ecvelbar@hotmail.com)) (Counsel

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for Appellant).

/s/ Kathryn N. Lewis

Kathryn N. Lewis, Esquire  
Fla. Bar #59182

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing document has been composed in Bookman Old Style 14-point font and otherwise complies with the form requirements of Florida Rule of Appellate Procedure 9.045.

/s/ Kathryn N. Lewis

Kathryn N. Lewis, Esquire  
Florida Bar #59182

**CERTIFICATE OF CONFERRAL**

I HEREBY CERTIFY that prior to filing the *Motion for Clarification of Timing*, I discussed the relief requested in this *Motion* by email with counsel for Appellants on November 7 and 10, 2025 and counsel for Appellants did not agree with the relief requested in the *Motion*.

/s/ Kathryn N. Lewis

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