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Alan M. Rose,  
Mrachek, Fitzgerald, Rose, Konopka, Thomas, & Weiss, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401

*Re: Voluntary Request for Stay of Trial Dec. 15th @ 9:30 am; Judge John L. Phillips, North Branch of Palm Beach County Case No. Case # 502014CP003698XXXXSB – Shirley Bernstein Trust Construction and related CASE Numbers below (believed to be at North Branch NB now):*

1. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
2. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
4. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
5. Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case

Dear Mr. Rose:

I am writing to advise you that I am preliminarily retained and in the process of reviewing information to permit me to complete a proper Retainer and apply Pro Hac Vice in Florida as Trial Counsel for Eliot I. Bernstein and / or his minor children and am requesting that your office Voluntarily remove the matter from the Trial Calendar for Dec. 15th at 9:30 am EST.

Being from the State of Texas as a licensed attorney in good standing who is not presently licensed in the State of Florida, I understand I need "Local Counsel" in Florida to support my Pro Hac Vice application, however, I further understand that even obtaining a proper "Local Counsel" may take considerable time and when Eliot Bernstein has interviewed with prior Local Counsel providing case information and strategy, the local counsel then showed up in Court on behalf of your client Ted Bernstein instead.

Thus, simply for these reasons I am requesting that you voluntarily move the action off the Trial Calendar for Dec. 15th, 2015.

My preliminary review shows me this case is quite complex and perhaps should have been designated as such under Florida Rules of Civil Procedure.

In any event, there is a considerable number of documents, pleadings and relevant filings I will need to review to be properly prepared for Trial and voluntarily request that you move to stay the action for at least 30 days.

My understanding is that Eliot Bernstein even recently attempted to be heard before Judge Phillips at a Case-Management Conference held on Sept. 15, 2015 on the issue of having funds from the Trust to pay for Counsel for his children but did not get an opportunity to be fully heard before the Court and was otherwise denied on this day.



I also understand that Eliot I. Bernstein had previously filed even before that Case-Management Conference and applied to the Estate and the Trust for these funds but has so far been denied or not heard.

Thus, please confirm in writing by email at your earliest convenience by Monday morning 9 a.m., EST if you are moving to Stay the Trial or even withdraw the pleading altogether. I will be checking my email all weekend so please try to respond as timely as possible.

In the event you choose not to so move Voluntarily and stay the Trial scheduled for Dec. 15, 2015, it appears from my preliminary review that there are several grounds upon which to mandate a Stay of the Trial and even your removal as Trial Counsel upon grounds of being a necessary and material fact witness for the Trial.

I also understand that you have been sued in two counter-suits in these Florida proceedings and have a likely conflict of interest in representing Ted Bernstein as Trustee in the Trial on validity of Trusts and Wills of Shirley Bernstein and Simon Bernstein and that prior Judge Colin did not let you out of these cases as a counter defendant prior to his sudden recusal within 24 hours of denying a motion for mandatory Disqualification filed by Eliot Bernstein and thereafter Judge Colin acted to transfer the matters to the North Branch.

I have preliminarily reviewed the Transcript of Proceedings ( not signed by Stenographer ) of Sept. 15, 2015 and see many disturbing issues in a Trial moving forward on Dec. 15th, 2015 before Judge Phillips.

I also am reviewing related filings, pleadings and matters in the federal District Court of the Northern District of Illinois where Ted Bernstein is a party and the Estate of Simon Bernstein has been permitted to intervene and am investigating relief in the federal venue should I not hear back from



your office in a timely manner to voluntarily Stay the Trial scheduled before Judge Phillips on Dec. 15th, 2015.

Again, these are complicated cases with a volume of paper and pleadings and documents to review and request at least 30 days, I also think due to the complexity, especially with frauds relating to fiduciaries and counsel in the matters, the court should set this trial as a complex proceeding and follow those pre-trial prerequisites.

### **Improperly NOTICED Trial**

Simply reviewing the Notice that Eliot Bernstein was sent from the PR Brian O'Connell's office clearly shows the Case was Noticed to be heard in the Estate of Simon Bernstein.

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference, provides in part: "**The matter to be considered shall be specified in the order or notice setting the conference.**"

Yet, a simple review of the Transcript from the Case Management Conference Noticed in the Estate of Simon Bernstein before Judge Phillips on Sept. 15, 2015 shows that you either Mistakenly or Knowingly presented False Information before the Court claiming that All 4 Cases were Noticed. I further noticed that neither Florida Licensed attorneys Brian O'Connell, nor Juy Foglieta, who were both present and who had sent the NOTICE for the Conference stood up to Correct the Record on this day and instead went along with you and Judge Phillips Scheduling and Moving in the Shirley Bernstein case when the case was only Noticed for Simon Bernstein Estate.

I know at least here in Texas and in most states of the nation lawyers have Professional Obligations to Correct matters before Courts and Tribunals although I also know Courts have inherent authority to correct mistakes and preserve the integrity of the proceedings although I have not seen from Eliot Bernstein any notice that Judge Phillips has corrected this yet despite

being specifically pointed to it in a recent Motion for Mandatory Disqualification filed against Judge Phillips.

Of course I have further seen where Licensed attorney Peter Feaman on behalf of the Creditor William Stansbury noticed you about a Conflict of Interest in your representation of Ted Bernstein and the conflicting actions Ted Bernstein is taking in the Illinois Federal litigation and yet you have taken no action to address this conflict.

I further see where Licensed attorney Peter Feaman noticed the PR Brian O'Connell back in Aug. of 2014 that he had an Absolute Duty to take action to Remove Ted Bernstein but not only has he failed to so move, but now is taking action to not even present his Defense at Trial that was scheduled at a Conference his Office NOTICED for Simon Bernstein's case.

**Case - Management and Due-Process Issues:**

All of this is very problematic from a Due Process and ethical perspective particularly where almost None of the Standard Pre-Trial Case Management Rules have been followed or even allowed to be Discussed by Eliot Bernstein on Sept. 15, 2015 creating a further basis to Stay the current Trial.

These Rules include items such as:

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference:

[http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/\\$FILE/Civil.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/$FILE/Civil.pdf)

"At such a conference the court may:

(1) schedule or reschedule the service of motions, pleadings, and other papers;



(2) set or reset the time of trials, subject to rule 1.440(c); (3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)–(a)(2)(H) are present; (4) limit, schedule, order, or expedite discovery; (5) consider the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, and stipulations regarding authenticity of documents and electronically stored information; (6) consider the need for advance rulings from the court on the admissibility of documents and electronically stored information; (7) discuss as to electronically stored information, the possibility of agreements from the parties regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources; (8) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts; (9) schedule or hear motions in limine; (10) pursue the possibilities of settlement; (11) require filing of preliminary stipulations if issues can be narrowed; (12) consider referring issues to a magistrate for findings of fact; and (13) schedule other conferences or determine other matters that may aid in the disposition of the action. (b) Pretrial Conference. After the action is at issue the court itself may or shall on the timely motion of any party require the parties to appear for a conference to consider and determine: (1) the simplification of the issues; (2) the necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof; (4) the limitation of the number of expert witnesses; (5) the potential use of juror notebooks; and (6) any matters permitted under subdivision (a) of this rule

Nowhere in the Sept. 15, 2015 Conference Transcript is there any Discussion or Determination by the Court on: 1) Outstanding Discovery including requests for Production by Eliot Bernstein; 2) the need for Pre-Trial Depositions; 3) Disclosure of Expert Witnesses particularly in a case that already has Admitted Document Fraud in Documents filed with



the Court where Forensic Experts are likely necessary; 4) and many other pre-trial issues as outlined in the Case Management rules.

### **Disqualification as Necessary and Material Fact Witness**

Of greater concern is that you apparently are attempting to proceed to an Improperly Noticed Trial rushed without proper Case Management on behalf of a Trustee that both the PR, Creditor and Eliot Bernstein has said is Invalid based upon Trust language.

Yet, having preliminarily reviewed your May 20, 2015 Email about alleged "Original" Documents in a related Oppenheimer Trust and your subsequent June 4, 2015 letter issued upon your Law Firm Letterhead apparently providing further information on "Original" ( actually "Duplicate Original" ) documents in Your Possession but have failed to include a Sworn Affidavit detailing the **entire links in the Chain of Custody** for this "Original" Best Evidence and in this regard, my preliminary review is that you most likely must be Disqualified under Florida **RULE 4-3.7 LAWYER AS WITNESS** grounds and are intertwined in the Chain of Custody and Possession of these Originals and other items with the PR Brian O'Connell and attorney Joy Foglietta and other staff at the Ciklin law firm.

I understand from Eliot Bernstein that, contrary to the express statement in your June 4, 2015 letter on your Law Firm Letterhead, it was not you that hand-delivered this package to Eliot Bernstein but instead was the PR Brian O'Connell, further involving the PR in the chain of document and evidence custody.

As you plan to use dispositive documents as Exhibits (any originals, duplicates, etc.) at trial please submit these records directly to the court bates stamped so that I may know nothing happened to them in transit and they do not become confused with any of the fraudulent documents already in circulation, I will then obtain them directly from the court.

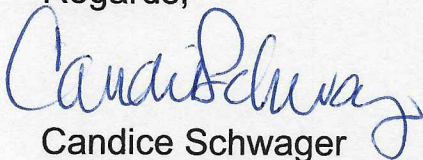


Another issue of concern is payment of attorney's fees for both Eliot and his minor children and as I will be reviewing the dispositive documents once I access them from the court for the terms I am of the understanding that beneficiary legal fees may be paid through wills and trusts for counsel, especially where this benefits the estates and trusts and the need for counsel was caused by serious breaches by the fiduciaries and counsel in these matters which has caused conflicts in beneficiaries and need for validity and construction hearings and more. I would presume forensic expenses will also be encumbered by the estates and trusts once we determine who we will have examine them. I would assume the same for Eliot and his children's costs for pre-trial expenses including but not limited to witnesses, depositions, etc.

I further understand there may be other Trust and business documents that anyone that is an "interested" party would standardly review with respect to Simon's Business Records and the Discovery requested by Mr. Eliot Bernstein from both your client and PR O'Connell.

Thus, based upon all the reasons, I am respectfully requesting that you Voluntarily move to Stay the Trial to investigate these matters, get Local counsel, and admitted Pro Hac Vice. Please respond by Monday morning.

Regards,

  
Candice Schwager

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