

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

CASE NO.: 50-2018-CA-002317

WALTER E. SAHM and  
PATRICIA SAHM,

Plaintiffs,

v.

BERNSTEIN FAMILY REALTY, LLC and  
ALL UNKNOWN TENANTS.

Defendants

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**SUGGESTION OF DEATH ON THE RECORD OF PLAINTIFF WALTER  
SAHM AN INDISPENSABLE PARTY FILED BY DEFENDANT CANDICE  
BERNSTEIN UNDER Fla. R. Civ. P. 1.260**

COMES NOW, Defendant Candice Bernstein, who respectfully shows this Court  
as follows:

1. I am the Defendant Candice Bernstein, an indispensable party with rights of beneficial ownership and possession of the real property that is the subject of this foreclosure action at 2753 NW 34th St, Boca Raton, FL 33434 located in Palm Beach County.
2. Without waiving any defenses or objections made in this action on the record orally and by written filings such as lack of proper Service, lack of

proper Jurisdiction over myself personally, lack of jurisdictionally proper Complaints filed, expiration of the statute of limitations for the foreclosure, failure to properly serve and join indispensable parties BFR, LLC and my adult sons Joshua and Jacob Bernstein improperly named as minors when being adults well before the action commenced who are indispensable parties as Members and Owners of BFR, LLC through their Trusts and the Operating Agreement of BFR, LLC, and improper service against my son Daniel Bernstein due to potential conflicts of interest and not properly naming his status in the complaint as a Member and Owner of BFR, LLC and all other defenses, I make this Suggestion of Death of Plaintiff Walter Sahm on the Record.

3. The Suggestion of Death on the Record of Plaintiff Walter Sahm is made under Fla. R. Civ. P. 1.260 based upon Internet articles dated in January 2021 although no formal Obituary is found by Internet search.
4. It is presumed that both the Plaintiff Patricia Sahm who was married to Plaintiff Walter Sahm and Counsel Robert Sweetapple have knowledge of the death of Plaintiff Walter Sahm which according to some Internet articles occurred on January 5, 2021. See, <https://www.indystar.com/story/sports/high-school/2021/01/13/indiana-basketball-hall-famer-walt-sahm-dies-78/4144880001/> and

<https://und.com/irish-legend-walt-sahm-passes-away/>. See Attached

Exhibits.

5. **It is undisputed that Counsel Robert Sweetapple for the Plaintiffs never notified us in writing or filed anything in the Court to Suggest the Death of his Client Walter Sahm on the Record and file a Motion for Substitution** to name a Personal Representative or other proper legal party upon death **which is over 14 months now according to the Internet articles.**
6. Plaintiff Walter Sahm is an indispensable party not only for being a Plaintiff but also for being a signing party to the involved Deed transfer, HUD Statements at Closing, being a direct party to the Note and Mortgage and Amended Note and Mortgage transactions with Simon Bernstein and BFR, LLC and further by Handwritten Letters from himself and Pat Sham in June of 2013 to one Ted Bernstein and then to myself and my husband Eliot Bernstein in Sept. of 2013 which were Entered into the Record before Judge Martin Colin in October of 2013 by my husband Eliot Bernstein and now entered into this Record as Exhibits.
7. Plaintiff Walter Sahm is further indispensable by his knowledge of Ted Bernstein and the facts surrounding who was “Managing” BFR, LLC after the passing of my Father-in-Law Simon Bernstein also involving Robert Spallina and Donald Tescher and in particular by his Statement made by

handwritten letter to Ted Bernstein in June of 2013 referencing a dedicated revenue stream of my in-laws Simon and Shirley Bernstein to payoff the Note and Mortgage and acknowledging the interest of myself and Defendant wife Candice Bernstein in the home by handwritten letter of Sept. of 2013 referencing the \$90,000.00 of monies from my 3 sons Trust accounts used for improvements made to the home by my mother-in-law Shirley Bernstein before she passed and *also by his written email with Pat Sahm in 2018 to my husband Eliot Bernstein acknowledging that at least my oldest son Joshua Bernstein was of the Age of Majority at that time nearly a year before Counsel Sweetapple filed a Third Amended Complaint in 2019 the day before the expiration of the 5 year Statute of Limitation on the Amended Note which falsely named my sons Joshua and Jacob Bernstein as “minors”.* See Email Exhibit already entered into the record.

8. Walt Sahm is further indispensable as to the knowledge of the identities of my sons Joshua, Jacob and Daniel Bernstein as the sole and only Member of BFR, LLC through their Trusts dating back to the time of the transaction in 2008 and also due to his knowledge of my husband Eliot Bernstein's extensive efforts to seek proper justice and accountancy in the Courts so the Plaintiff Sahms could be satisfied.

9. The 4th DCA in 2020 said, **"If an indispens[a]ble party to an action dies, 'the action abates until the deceased party's estate, or other appropriate legal representative, has been substituted pursuant to [R]ule 1.260(a)(1).'"** Schaeffler , 38 So. 3d at 799 (quoting Cope v. Waugh , 627 So. 2d 136, 136 (Fla. 1st DCA 1993) ). **Moreover, the "[f]ailure to substitute the proper representative or guardian nullifies subsequent proceedings."** Id. at 800 ; see also Ballard v. Wood , 863 So. 2d 1246, 1249 (Fla. 5th DCA 2004) (finding that a failure to substitute pursuant to Rule 1.260(a)(1) nullified the subsequent proceedings). See, 4th DCA De La Riva v. Chavez 303 So. 3d 955, 958 (Fla. Dist. Ct. App. 2020).
10. "[I]t is well-settled that 'an "[e]state" is not an entity that can be a party to litigation. It is the personal representative of the estate, in a representative capacity, that is the proper party.' " Spradley v. Spradley , 213 So. 3d 1042, 1045 (Fla. 2d DCA 2017) (quoting Ganske v. Spence , 129 S.W.3d 701, 704 n.1 (Tex. App. 2004) ). "[O]nly when the proper party is in existence may it then be properly served and substituted ...." Stern v. Horwitz , 249 So. 3d 688, 691 (Fla. 2d DCA 2018) (citations omitted) (emphasis added).
11. The 4th DCA also said in 2020, "Here, Plaintiff initially complied with the procedures of Rule 1.260(a)(1) by contacting opposing counsel and requesting information regarding the opening of the decedent's estate. See

Vera v. Adeland, 881 So. 2d 707, 710 (Fla. 3d DCA 2004). **Error occurred, however, when Plaintiff elected to actively continue the litigation, pursuant to his complaint filed against the fictitious "John Doe," commenced when no estate had been opened and no personal representative appointed.** See In re Marriage of Kirby , 280 So. 3d 98, 100 (Fla. 4th DCA 2019) ; Adeland, 881 So. 2d at 710 ("If no estate has been opened, then another appropriate representative, such as a guardian ad litem, will need to be substituted."); see also Mattick v. Lisch , — So.3d —, 43 Fla. L. Weekly D2467 (Fla. 2d DCA Nov. 2, 2018). **Proper procedure required the abatement of the proceedings until such time as a personal representative of the estate could be (and actually had been) substituted as party** defendant and served with the complaint. See In re Marriage of Kirby , 280 So. 3d at 100.” See See, De La Riva v. Chavez 303 So. 3d 955, 958 (Fla. Dist. Ct. App. 2020).

12. In 2019, the 4th DCA said, “The trial court correctly vacated the order granting attorney's fees to the former husband. **Obviously, upon the former wife's death, she ceased to be present before the court. Additionally, absent a valid order substituting the estate, the estate was not before the court on June 19, 2017, either. It is error to enter judgment against a non-present party.** Floyd v. Wallace , 339 So. 2d 653, 654 (Fla. 1976)

**(finding cause of action abated upon death of indispensable party and court erred in "adjudicating the rights of the parties without having all of them actually or constructively before it" before properly substituting party in deceased respondent's case).**” See, In re Marriage of Kirby 280 So. 3d 98 (Fla. Dist. Ct. App. 2019).

13. **Plaintiff Counsel Robert Sweetapple’s right to represent Walter Sahm terminated upon his death alleged in January 5 of 2021 who was “no longer before the Court” and thus the Notice of Final Summary Judgment, Summary Judgment hearing and submission of Final Judgment in the name of Walter Sahm is void and a nullity and must now be vacated.** See, Wallace v. Keldie 249 So. 3d 747, 751 (Fla. Dist. Ct. App. 2018) **“(“[D]eceased persons cannot be parties to a judicial ... proceeding.”), nor could her attorney represent her interests,** see Rogers v. Concrete Sciences., Inc. , 394 So.2d 212, 213 (Fla. 1st DCA 1981) **(“The death of a client terminates the relationship between the attorney and client and the attorney’s authority to act by virtue thereof is extinguished.”).**”

14. **The Notice of Summary Judgment and Summary Judgment proceedings were thus a nullity as was the submission of the Final Judgment since Counsel Sweetapple had no proper legal authority to act**

**or file for deceased Walter Sahm who could not be before the Court as a deceased person and therefore the Summary Judgment and Final Judgment must now be vacated.**

15. **The statute of limitations expired nearly 3 years ago now on June 19, 2019 upon the 5 year date after Maturity of the Note and therefore this action should be dismissed with prejudice.**

16. Alternatively this action must now be Abated and proper representative party substituted for Plaintiff Walter Sahm as Counterclaims against his Estate are present.

**WHEREFORE** it is respectfully prayed for an Order Vacating the final judgment and dismissing the action with prejudice or alternatively Abating the action until a proper motion is filed by Plaintiffs for Substitution based upon a Suggestion of Death and Abatement until the proper status of Bernstein Family Realty, LLC is determined and for such other relief as is just and proper.

**/s/Candice Bernstein**

Candice Bernstein

2753 NW 34th St

Boca Raton, FL 33434

561-245-8588



tourcandy@gmail.com

**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 April, 2022.

**/s/Candice Bernstein**

Candice Bernstein

2753 NW 34th St

Boca Raton, FL 33434

561-245-8588

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**EXHIBIT SUGGESTION OF DEATH OF PLAINTIFF WALTER SAHM  
SUPPLEMENT 1.530 REHEARING**

CASE NO.: 50-2018-CA-002317

Sahm Foreclosure v BFR, LLC et al

1. <https://www.indystar.com/story/sports/high-school/2021/01/13/indiana-basketball-hall-famer-walt-sahm-dies-78/4144880001/> and  
<https://und.com/irish-legend-walt-sahm-passes-away/>.

**HIGH SCHOOL**

# Indiana Basketball Hall of Famer Walt Sahm, former Cathedral and Notre Dame star, dies at 78



**Kyle Neddenriep**  
Indianapolis Star

Published 1:03 p.m. ET Jan. 13, 2021 | Updated 3:09 p.m. ET Jan. 13, 2021

Over nearly 70 years of friendship, Tom McGinty has enough stories about Walt Sahm that he could probably write a book.

“Walt had a photographic memory,” McGinty said Wednesday. “The guys at NBC Sports used to call him regularly because he knew all the statistics and which team beat that team. Then when Google took over, I told him it kind of put him out of business. It’s hard to compete with Google.”

Sahm, 78, died on Jan. 5 after battling complications from COVID-19. The 6-foot-9 Sahm, who was living in The Villages in Central Florida with his wife, Patricia, was an Indiana All-Star basketball player at Cathedral in 1961 and went on to star at Notre Dame, where he scored 1,077 points and still holds the career record for rebounds per game (16.9).

Sahm was inducted into the Indiana Basketball Hall of Fame in 2011.

“I hit the parent lottery,” said daughter Joanna Sahm, who was a standout volleyball player at North Carolina who won four state championships in high school at Cardinal Gibbons in Fort Lauderdale, Florida. “My dad was a very good Christian man and a wonderful father. He was very caring and supportive when my sister (Patricia) and I played sports. He was very passionate and enthusiastic, which I think some people might have thought was living vicariously through us. But he had already achieved his own athletic accomplishments.”

Sahm came to Cathedral from South Bend before his sophomore year, but had already become friends with McGinty years earlier. Sahm’s older brother, Bill Sahm, was the director of the city’s Catholic Youth Organization from 1954 until his death in 1973 at age 45.

“(Bill Sahm) would bring Walt over to play basketball with me starting in seventh grade,” McGinty said. “Back then we were about the same size. Then he moved down to Indianapolis permanently for his sophomore year, close to where I lived. We went in the same car to Cathedral every day. When he moved to Florida (in 1977), it broke my heart. We followed them down there three years later. Then they moved up to The Villages and we followed them up there, too. He was a great guy to be around and a very devout family man.”

Sahm was the centerpiece of an excellent Cathedral team as a senior in 1960-61 that knocked off Manual and co-IndyStar Mr. Basketball winners Tom and Dick Van Arsdale early in the season and upset undefeated and top-ranked Crispus Attucks in February in front of a paid attendance of 13,723 at Hinkle Fieldhouse. It was Cathedral’s first win over Attucks in 13 years and the nightcap of a doubleheader that also featured Broad Ripple and Shortridge.

“The fieldhouse just rocked for those two games,” said Roy Smith, Sahm’s teammate and classmate. “Those were great teams and great games to watch and be a part of.”

Attucks returned the favor in the sectional championship game, knocking off 20-win and second-ranked Cathedral 68-61. The Irish, who also had standout players in Garry Donna, Mel Blaylock and Ronnie Keller that season, would not win their first sectional title for another decade.

“Walt was a hard worker,” Smith said. “The coaches brought him along. He wasn’t the fastest guy in the middle, but he worked on it. Two years running we beat the Van Arsdales, which was something that Walt really took pride in. He was a fun guy to be around.”

Sahm went on to star at Notre Dame, where he was a co-captain and three-year starter. He ranked in the top-10 in the country in rebounding all three of his seasons and helped Notre Dame to two NCAA tournament appearances. Sahm was named to Notre Dame’s all-century team as the second of five Irish players to reach 1,000 points and 1,000 rebounds for his career.

“We used to go to a lot of NCAA tournaments together,” McGinty said. “We were in St. Louis (in 1973) for the Final Four and John Wooden was sitting behind us. He hit me in the ribs and said, ‘I’ve never asked anybody for an autograph, but I’m getting one from John Wooden.’”

Sahm worked in the insurance industry for many years. His daughter, Joanna, said her father had heart surgery 20 years ago. Sahm suffered two heart attacks after he was admitted to the hospital for COVID-19.

“He was almost back to 100% after the ninth day,” Joanna said. “But after he had a heart attack, there were complications. I know he didn’t want to be on a ventilator, which I’m glad he wasn’t.”

McGinty will miss his friend. They were baseball players together at Cathedral, where Sahm was a pitcher and McGinty played catcher. More than 60 years later, they were still sharing stories.

“I’m going to miss the guy,” McGinty said. “He had a really good gift that he never met a stranger. He loved to hold court and pick the other side of a discussion to stir you up. But you could convince him to come over to your side. He had a big bark with no bite. Deep down, he was a big softie. I could tell you a thousand stories about Walt Sahm. He was a good friend.”

*Call Star reporter Kyle Neddenriep at 317-444-6649.*



JANUARY 14, 2021

## IRISH LEGEND WALT SAHM PASSES AWAY

**W**alt Sahm, a member of Notre Dame Men's Basketball All-Century Team and Indiana Basketball Hall of Famer, passed away January 5, 2021, due to complications from COVID-19.

Still atop the all-time Notre Dame career rebounding chart with a 16.9 average, Sahm is one of just two Irish players to finish their careers averaging over 15 points and 15 rebounds per game.

An Indiana high school basketball star, Sahm was one of 25 players named to Notre Dame's All-Century Team during the 2004-05 season. To honor the Irish legend, here is the full feature to accompany his All-Century Team honor from 2004:

## REBOUNDING MACHINE

*When it came to acing college boards, Walt Sahm passed with flying colors.*

What Austin Carr was to scoring at Notre Dame, Walt Sahm was to rebounding.

Just as Carr's marks in career scoring (34.6), single-season scoring (38.1) and single-game production (61) will likely never be eclipsed, neither will Sahm's career standard in rebounds (16.9 per contest) and boards in one contest (30).

The only player with a better single-season rebounding record at Notre Dame is Ron Reed (17.7), who enrolled with Sahm in 1961.

Since Sahm's graduation in 1965, the closest any Irish player has come to the 16.9 career standard is Bob Whitmore at 12.4, and the highest one-season average was 13.1 in 1971 by Collis Jones (whom Sham refers to as "the most unsung player in Notre Dame basketball history").

Sahm was often overlooked, too, because of his blue-collar forte.

"Very few players today take pride in rebounding and it's something few want to do," said Sahm, who has his own insurance agency in Boca Raton, Florida. "The opportunities are not as many today with the way the game has changed. Rebounding is hard work and something you have to commit yourself to totally."

It wasn't until 1956-57, after Bill Russell led the San Francisco Dons to consecutive national titles with his defensive prowess and control of the backboards, that rebounding statistics were regularly kept. The competitive and cerebral Russell was the player Sahm strove to emulate.

"I studied everything Bill Russell said about rebounding," Sahm said. "For example, 75 to 80 percent of all shots at one side of the basket would come out on the other side. I anticipated and worked to get to the spot first, and I was coached very well in high school in the rebounding aspect."

***"I studied everything Bill Russell said about rebounding. For example, 75 to 80 percent of all shots at one side of the basket would come out on the other side. I anticipated and worked to get to the spot first, and I was coached very well in high school in the rebounding aspect."***

After a stellar career at Indianapolis Cathedral High, the 6-9 Sham was recruited nationally and nearly fell to the lure of temptation.

"I passed up a lot of money from a lot of schools," Sahm said. "To receive \$700 a month in 1961 was a lot, I don't think my dad made that kind of money. But I went to Notre Dame based on principles and religious aspects."

Enrolling with Sahm were Reed and Larry Sheffield, the first recruiting haul at Notre Dame with three players that would surpass 1,000 points in their careers. A fourth classmate, the late Jay Miller, scored 988 and had the longest stint among them in the NBA.

The Irish made the 25- and 23-team NCAA Tournament in two of their three varsity seasons (1963 and 1965). Among Sahm's favorite memories was Creighton's Paul Silas - one of the premier rebounding forwards in NBA history - lauding the Irish big man for outplaying him in a head-to-head duel.

Sham averaged double-doubles all three seasons and he and Tom Hawkins are the lone Notre Dame players who averaged at least 15 points and 15 rebounds per game during their careers.

In the two seasons prior to Sahm's first season of varsity eligibility in 1962, Notre Dame finished 12-14 and 7-16. The year after Sham and his classmates graduated, the Irish were 5-21.

With Sahm in the lineup from 1962-65, though, Notre Dame was truly on the rebound.

## MORE ARTICLES

APRIL 04

**MEN'S BASKETBALL** **INSIDE NOTRE DAME MEN'S BASKETBALL - EPISODE #10**

MARCH 20

**MEN'S BASKETBALL** **IRISH BATTLE TO THE BITTER END, FALL IN ROUND OF 32**



MARCH 19

**MEN'S BASKETBALL IRISH AND RED RAIDERS MEET FOR A  
SPOT IN SWEET 16**

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