

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

PROBATE DIVISION

CASE NO. 502012CP004391XXXXSB

IN RE: ESTATE OF SIMON L. BERNSTEIN  
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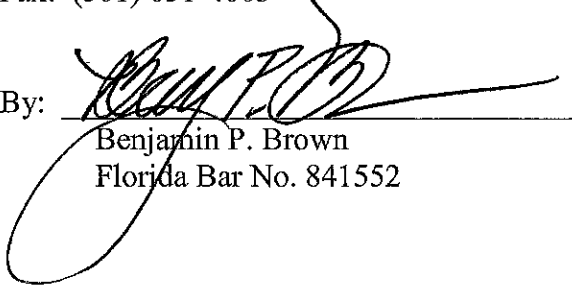
**NOTICE OF FILING**

Curator, Benjamin P. Brown, hereby gives notice of filing the complete transcript of the hearing<sup>1</sup> on June 12, 2014, attached hereto as Exhibit A.

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served by e-mail upon the parties on the attached service list this 23 day of June, 2014.

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By: \_\_\_\_\_

  
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<sup>1</sup> Transcript also includes the hearing on a motion in *In re: Estate of Shirley Bernstein*, Palm Beach County Case No. 502011CP000653XXXXSB.

**EMAIL SERVICE LIST**

Estate of Simon L. Bernstein

Palm Beach County Case No. 502012CP004391XXXXSB

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

CASE NO.: 502012CP004391XXXXSB

IN RE:  
ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

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ELIOT IVAN BERNSTEIN, PRO SE

Petitioner(s),

vs.

TESCHER & SPALLINA, P.A., (and all  
parties associated and of counsel);  
ROBERT L. SPALLINA (both personally  
and professionally); DONALD R. TESCHER  
(both personally and professionally);  
THEODORE STUART BERNSTEIN (as alleged  
personal representative, trustee, successor  
trustee) (both personally and professionally);  
et al.,

Respondent(s).

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TRANSCRIPT OF PROCEEDINGS BEFORE  
HONORABLE MARTIN COLIN

DATE: June 12, 2014  
TIME: 9:50 a.m. - 10:35 a.m.

1 APPEARING ON BEHALF OF WILLIAM E. STANSBURY:

2 PETER M. FEAMAN, P.A.  
3 3615 W. BOYNTON BEACH BOULEVARD  
4 BOYNTON BEACH, FL 33436  
5 By: PETER M. FEAMAN, ESQ.

6 APPEARING ON BEHALF OF TED BERNSTEIN:

7 PAGE, MRACHEK, FITZGERALD ROSE  
8 KONOPKA & DOW, P.A.  
9 505 SOUTH FLAGLER DRIVE, SUITE 600  
10 WEST PALM BEACH, FL 33401  
11 By: ALAN B. ROSE, ESQ.

12 MATWICZYK & BROWN  
13 625 N. FLALGER DRIVE, SUITE 401  
14 WEST PALM BEACH, FL 33401  
15 By: BENJAMIN P. BROWN, ESQ. (CURATOR)

16 JOHN P. MORRISSEY, ESQ.  
17 330 CLEMATIS STREET, SUITE 213  
18 WEST PALM BEACH, FL 33401

19 ELIOT I. BERNSTEIN, Pro se

20

21

22 BE IT REMEMBERED, that the following

23 proceedings were taken in the above-styled cause before  
24 the Honorable MARTIN COLIN, at the Palm Beach County  
25 Courthouse, 200 West Atlantic Avenue, Room 8, in the City  
of Delray Beach, County of Palm Beach, State of Florida,  
on June 12, 2014, to wit:

26

27

28

1 P-R-O-C-E-E-D-I-N-G-S

2 \* \* \* \*

3 MR. ROSE: Good morning, Your Honor. There  
4 is a number of matters in the Simon Bernstein, but  
5 there is only one in the Shirley Bernstein, can we  
6 do that first?

7 THE COURT: Okay.

8 MR. ROSE: We have a motion to compel. May I  
9 approach?

10 THE COURT: Yeah. Sure.

11 MR. ROSE: This is just a very simple motion  
12 to compel. Prior to my involvement, predecessor  
13 counsel served a request to produce on Elliot  
14 Bernstein, December 19th. Mr. Bernstein has not  
15 responded and has indicated he doesn't believe  
16 that he -- he's indicated to me he doesn't believe  
17 he should have to provide us with any discovery.

18 THE COURT: All right. Let me take a look.

19 Where's Elliot?

20 MR. ELLIOT BERNSTEIN: Hi.

21 THE COURT: So you got a request to produce  
22 in Shirley's estate, correct?

23 MR. ELLIOT BERNSTEIN: Correct.

24 THE COURT: And haven't responded or done  
25 anything?

1           MR. ELLIOT BERNSTEIN: Well, I think you are  
2 aware of the last counsel fled town under -- with  
3 the other counsel. And we've put in motions that  
4 Ted should not be the PR, even though you ordered  
5 that, it was -- he's got too many conflicts now  
6 with the fraudulent documents, changing  
7 beneficiaries, all that.

8           THE COURT: But you still have to do a  
9 written response on discovery.

10          MR. ELLIOT BERNSTEIN: Oh, I didn't know  
11 because Manseri left. That was filed by Manseri  
12 and to send things to Manseri would have been kind  
13 of crazy because he was resigning because all of  
14 that crazy.

15          THE COURT: Okay. All right. So what's the  
16 relief you're requesting on this motion?

17          MR. ROSE: Compel him to --

18          THE COURT: File a response?

19          MR. ROSE: Produce the documents.

20          THE COURT: You don't produce -- I don't ever  
21 do -- the key is not the production, that's part  
22 two. Part one is the response. You need a  
23 response so that you know what you're going to get  
24 in production.

25          MR. ROSE: If you're going to rule that he

1           hasn't waived his objection by not filing the  
2           response, I would be fine giving him ten days to  
3           file a written response.

4           THE COURT: How much time -- you have to file  
5           a written response to the request.

6           MR. ELLIOT BERNSTEIN: Okay.

7           THE COURT: How much time do you need?

8           MR. ELLIOT BERNSTEIN: Well, 30 days.

9           THE COURT: Why not? It's going to be  
10          response -- and then when you file your response,  
11          it has to be a line item response. And then you  
12          have to produce that which you say is in your  
13          documents in your possession and control.

14          MR. ELLIOT BERNSTEIN: Unless I don't want to  
15          produce them to them.

16          THE COURT: No. No, there is no such thing  
17          you don't want to.

18          MR. ELLIOT BERNSTEIN: Here's the problem. I  
19          feel that right now, for example, here in this  
20          court, we're allowing people to act in fiduciary  
21          capacities that they don't have. You're about to  
22          see that their legal strategy is to harass me.  
23          And that's the document that they're trying to  
24          keep privileged --

25          THE COURT: Hold on one second.

1           MR. ELLIOT BERNSTEIN: And they are asking  
2           for very sensitive information that's involved in  
3           RICO cases both in Nevada and the U.S. District  
4           Court in New York.

5           THE COURT: Tell you what I'm going to do.  
6           Listen carefully. Here's how I'm handling this.  
7           I don't want you to give me speaking objections to  
8           discovery. Okay. I'm going to change my order a  
9           little bit around. I'm moving the time frame up.  
10          You have 20 days from today to file a response.  
11          The response has to be line item. Pay attention  
12          to that. The rule requires that. Understand that  
13          part so far?

14          MR. ELLIOT BERNSTEIN: Address each thing in  
15          their thing?

16          THE COURT: Yeah, line item.

17          MR. ELLIOT BERNSTEIN: Got it.

18          THE COURT: Even though your time has passed,  
19          I'm going to allow you still to be able to make it  
20          a legal objection. But understand, this is not a  
21          speaking objection. These aren't stories. These  
22          aren't long -- objections are, for example,  
23          someone would write -- doesn't apply to you --  
24          attorney-client privilege. Work product. Okay.  
25          A legally recognized objection. Because otherwise



1           discovery takes place under Florida law.

2           MR. ELLIOT BERNSTEIN: Okay.

3           THE COURT: Okay. Write the order up on  
4           that.

5           MR. ELLIOT BERNSTEIN: Your Honor, I think,  
6           though --

7           THE COURT: So if you have a legally  
8           recognizable objection, you have to put that in  
9           writing. And then he knows what that is. I know  
10          what it is. We're not guessing. So I'm giving  
11          you a right to assert an objection, even though  
12          it's late, you just have to do it in writing.

13          MR. ELLIOT BERNSTEIN: I get that. And  
14          appreciate that. My biggest concern is that I've  
15          put in motion after motion to get rid of the PR  
16          for all kinds of violations of fiduciaries, et  
17          cetera. I don't mind giving discovery to a guy  
18          like Ben Brown, who's honorable in doing things  
19          that I can't find anything wrong with. But when I  
20          find a litany of things that I've submitted to  
21          Your Honor that, you know, when we've got a  
22          hearing coming up to get rid of Ted in all these  
23          crazy capacities that he's assuming, and some of  
24          them are literally crazy, trustees have lost  
25          trusts, starting federal insurance cases, et

1           cetera. So, you know, I don't want to be giving  
2           this guy who's got a plan to attack my children's  
3           school records in this and all kinds of --

4           THE COURT: I don't know what discovery is,  
5           but Florida works it this way. You got discovery  
6           requests. If you have a legal objection, make it.

7           MR. ELLIOT BERNSTEIN: But doesn't it have to  
8           be that you're giving discovery to somebody who's  
9           qualified to be --

10          THE COURT: No. Right now, as long as they  
11          are a party -- this is -- Ted is currently right  
12          now successor PR of Shirley's estate?

13          MR. ROSE: Yes, sir.

14          MR. ELLIOT BERNSTEIN: Well, he's given no  
15          notice to anybody, no accountings were turned over  
16          by the last PR.

17          THE COURT: Doesn't mean discovery can't --  
18          you know, I'll deal with that which is before me.  
19          Okay.

20          MR. ELLIOT BERNSTEIN: Well, I put my stuff  
21          before you a long time ago and --

22          THE COURT: There is nothing that I have that  
23          I don't hear. I mean, I hear stuff you bring to  
24          me.

25          MR. ELLIOT BERNSTEIN: I've got a ton of

1 motions that haven't been heard since May.

2 THE COURT: Have you done a notice of  
3 hearing?

4 MR. ELLIOT BERNSTEIN: I have. I'm trying to  
5 do one, but this guy won't schedule anything  
6 unless I depose and all kinds of crazy conditions.  
7 He's running around wasting everybody's time,  
8 money, et cetera.

9 THE COURT: Well, try to coordinate hearings.

10 MR. ELLIOT BERNSTEIN: I've been trying for  
11 days.

12 THE COURT: Sit in the back and try to  
13 coordinate dates -- does he have matters pending  
14 that he's trying to get you to have hearings for?

15 MR. ROSE: I think there is some hearings  
16 coming up in July. All I said, we'd like to get  
17 the discovery and his deposition before we have  
18 the motion on the hearing he has pending.

19 THE COURT: If the motion --

20 MR. ELLIOT BERNSTEIN: Conditions.

21 THE COURT: Okay. Just trying to figure out  
22 what happened to my trial. Okay. So -- all  
23 right. You know, everyone has a duty to  
24 coordinate hearings. Okay. So let's make sure we  
25 do that. I'll have -- you write up the order I

1 just mentioned on this one.

2 MR. ROSE: I have a --

3 THE COURT: Did you write it up?

4 MR. ROSE: I wrote up an order --

5 THE COURT: Write what I said about  
6 objections, write that out, spell that out. Legal  
7 objections only.

8 MR. ROSE: I'll type an order and submit it  
9 after sending it to Mr. Bernstein or do you want  
10 me to do it right now?

11 THE COURT: Do it right now. Do it before  
12 you leave today. Now I have time.

13 MR. ELLIOT BERNSTEIN: Are you Ted's counsel  
14 as the PR of the estate? Am I correct on that,  
15 Alan? Are you, Alan? See, here we go. Are you  
16 Ted's counsel? He's filed no notices of  
17 appearance.

18 THE COURT: He filed a pleading here. I have  
19 it.

20 MR. ELLIOT BERNSTEIN: But not the original  
21 pleading. I'm sure the law says something about  
22 that.

23 THE COURT: Now everything is e-filed, so I  
24 don't know what's original and what's not.

25 MR. ELLIOT BERNSTEIN: Well, he's a

1 replacement counsel.

2 THE COURT: Okay. Good.

3 MR. ELLIOT BERNSTEIN: Without an original  
4 pleading -- he's filed no notice of appearance in  
5 any matter.

6 THE COURT: A pleading like this -- he says  
7 Ted Bernstein, I'm his lawyer. That's what he  
8 said. Okay.

9 MR. ELLIOT BERNSTEIN: He hasn't addressed  
10 that. He didn't say he's Ted Bernstein's counsel  
11 as PR yet. I just asked him that.

12 THE COURT: Are you Ted Bernstein's lawyer?

13 MR. ROSE: Yes, sir.

14 MR. ELLIOT BERNSTEIN: As PR to the Shirley  
15 estate?

16 THE COURT: Yeah.

17 MR. ELLIOT BERNSTEIN: Wait. Wait. Don't  
18 answer that for him.

19 THE COURT: Estate of Shirley Bernstein,  
20 correct?

21 MR. ROSE: Yes, sir.

22 MR. ELLIOT BERNSTEIN: Okay.

23 THE COURT: Okay. All right. What's next?  
24 Now, we're going to the other estate.

25 MR. BROWN: Simon. I have a second petition

1           for payment of curator's fees, and this would be  
2           for April.

3           I don't know if there is any objection.

4           THE COURT: Any objection?

5           MR. BROWN: The order is substantially  
6           similar to the first one, just changes the  
7           numbers.

8           THE COURT: Okay.

9           MR. ROSE: May I be heard on his petition?

10          THE COURT: Yeah.

11          MR. ROSE: We have no objection to his fees,  
12          but I do think it's important to point out to the  
13          court -- and it's going to be related to the next  
14          motion that we have. Ms. Eliot Bernstein sent the  
15          e-mails to Ben Brown and when we end up with, you  
16          know, a petition for instructions, we had two of  
17          them on May 23rd, and you instructed everyone that  
18          he should not be Elliot's lawyer. And Eliot  
19          responded he doesn't have to just, you know, jump  
20          through hoops. Ben is concerned that he, you  
21          know, fulfill his duties and not run afoul of  
22          Eliot, but we've got two or three more petitions.  
23          And the fees, I think, so far, approaching \$50,000  
24          for the curator.

25          THE COURT: Well, the way it works is pretty

1           simple. I mean, you know, if Mr. Brown is getting  
2           bombarded by a party, and, you know, I mean, he's  
3           concerned that it may not be necessary and  
4           reasonable, then he, you know, he deals with that  
5           and causes himself not to have wasted time, but he  
6           knows how to handle that.

7           MR. ROSE: We have no objection to Mr. Brown.  
8           It's not his -- the issue is not really with him,  
9           but I think the curator needs some protection from  
10          constantly being bombarded --

11          THE COURT: He can protect himself.

12          MR. ELLIOT BERNSTEIN: Are you his attorney  
13          too?

14          THE COURT: Eliot, no, no. Don't do that.

15          MR. BROWN: Actually, Judge, this kind of  
16          dovetails into what happened on February 23rd. I  
17          did have the two motions for instruction, one of  
18          them was when Eliot asked me --

19          MR. FEAMAN: May 23rd.

20          MR. BROWN: May 23rd. Asked me to look into  
21          44 different subcategories of documents and kind  
22          of take the lead on objecting to the Tescher  
23          Spallina accounting. The other one is with regard  
24          to the will, the 2012 will. And I have the pages  
25          of the transcript of what Your Honor said. And,

1           essentially, I said it's not the curator's role to  
2           take the lead on objecting to the accounting.

3           It's not the curator's role to --

4           THE COURT: Hold on one second.

5           MR. BROWN: It's not the curator's role to  
6           challenge or even investigate the circumstances of  
7           the 2012 will. Your Honor --

8           THE COURT: You know, but here's the thing,  
9           if I said that and you then are being asked to do  
10          something that you don't think is within the scope  
11          of the curatorship, then you make a decision based  
12          upon that.

13          MR. BROWN: Well, Your Honor, sometimes it's  
14          not necessarily all that clear.

15          THE COURT: That's why you use discretion and  
16          you decide what to get involved with and whatnot,  
17          and, then depending on that, I may hear from  
18          someone else who likes that idea or not.

19          MR. BROWN: What Your Honor said -- actually  
20          what Your Honor said on the 23rd was that you  
21          said, stop, you don't have to go further. That's  
22          the position. That's law. You don't do that. If  
23          there is an accounting, there is a rule on  
24          objections. The parties object, they don't use  
25          you. You don't work for them, which is true, I'm



1 no one's here attorney.

2 THE COURT: Right.

3 MR. BROWN: You work for the court, that's  
4 what you said. You said, you are not an advocate.  
5 You only investigate things that the parties may  
6 be interested in. They can do that -- do what  
7 they think they need to do based on the rules of  
8 procedure and the statutes.

9 THE COURT: All right. So if someone asked  
10 to do something you think is outside the scope of  
11 what I ordered, what I mentioned in the hearings,  
12 then don't do it.

13 MR. BROWN: Your Honor, you also didn't enter  
14 an order on those motions on May 23rd.

15 THE COURT: Well, someone has to submit them  
16 to me.

17 MR. BROWN: I did, Your Honor. I  
18 submitted -- I submitted them to all the parties.  
19 Mr. Rose had some changes.

20 THE COURT: Okay.

21 MR. BROWN: I then -- you then went on  
22 vacation and then, unfortunately, got ill. I sent  
23 you a letter that said here are the competing  
24 orders, and here's what you said.

25 THE COURT: I didn't see the competing

1 orders.

2 MR. BROWN: That's the order. Now, Mr. Eliot  
3 Bernstein, he had an objection because he said  
4 that all of the minor beneficiaries didn't  
5 necessarily receive notice of the May 23rd  
6 hearing. But, in fact, based on the e-mail  
7 report, I believe that everyone has received -- I  
8 mean, here's how long the e-mail service list is.  
9 Everybody received notice of everything.

10 THE COURT: What's the -- what's the dispute  
11 now with the form of these orders?

12 MR. BROWN: Well, the dispute was -- Mr. Rose  
13 had some changes to what I submitted.

14 THE COURT: So you folks did -- did you agree  
15 upon the final form?

16 MR. BROWN: He's got handwritten -- we didn't  
17 agree on a final form because I think, and I don't  
18 want to put words in Elliot's mouth, Eliot said I  
19 don't agree to either orders because there are  
20 minor beneficiaries of the trust, the pour-over  
21 trust, who weren't here on the 23rd, or didn't get  
22 notice. And this is the notice -- service list.  
23 I mean, this is everybody.

24 THE COURT: Let's put the notice aside. Is  
25 there any other -- have you guys agreed upon the

1 form of the order now, or you didn't notice this?

2 MR. ROSE: I think that my comments are  
3 minor. I think Mr. Brown approved them. So I  
4 have no objection to the order.

5 THE COURT: In this packet, give me a clean  
6 order, Mr. Brown.

7 MR. BROWN: All right. I didn't have a  
8 problem with -- it's not necessarily a clean  
9 order, Your Honor, itself an order.

10 THE COURT: One that I can sign, I mean.  
11 This has Mr. Rose's changes that he has written  
12 in.

13 MR. ELLIOT BERNSTEIN: Can I -- do we all  
14 have copies of Roses' things?

15 THE COURT: Let me see what --

16 MR. BROWN: Mr. Rose e-mailed them to  
17 everybody. But they are attached to that May 30th  
18 letter.

19 THE COURT: I'll give you a copy of it. Any  
20 reason not to sign this based upon that hearing  
21 that I had.

22 MR. ELLIOT BERNSTEIN: Are you saying he's  
23 not authorized, as the estate, if he finds missing  
24 items, or whatever, to challenge the accounting as  
25 the --

1 THE COURT: He's not -- he's not filing  
2 objections to the accounting, the parties are.  
3 You're not, correct?

4 MR. ELLIOT BERNSTEIN: But he's the estate,  
5 isn't he? Isn't he a party known as the estate?

6 THE COURT: Yeah, but he's a curator, that's  
7 different.

8 MR. BROWN: I'm essentially a caretaker  
9 until --

10 MR. ELLIOT BERNSTEIN: Well, wouldn't the  
11 PR --

12 THE COURT: Let me ask you this --

13 MR. ELLIOT BERNSTEIN: If you got -- if  
14 you're the PR and you got an accounting that's  
15 fraudulent in front of you, don't you have a duty  
16 to challenge that and --

17 THE COURT: Maybe so, but that's up to  
18 everybody --

19 MR. ELLIOT BERNSTEIN: But you're saying he's  
20 not authorized.

21 THE COURT: He's not.

22 MR. ELLIOT BERNSTEIN: You're precluding him.

23 THE COURT: He is not.

24 MR. ELLIOT BERNSTEIN: Well, he's the PR  
25 tech --

1 MR. BROWN: No, I'm not the personal  
2 representative, and I have declined to serve.

3 THE COURT: He's the curator, it's a  
4 different role.

5 MR. BROWN: In fact, Your Honor, I was  
6 supposed to be the curator for just a couple of  
7 months.

8 THE COURT: Right.

9 MR. BROWN: We don't even have a hearing set.

10 THE COURT: Yeah, the parties have to do the  
11 objections to the accounting.

12 MR. ELLIOT BERNSTEIN: Okay.

13 MR. BROWN: Your Honor, it's not anything  
14 that's teed up today, is that we don't have a  
15 hearing set --

16 THE COURT: What do you mean, a hearing on --

17 MR. BROWN: -- to get a personal  
18 representative.

19 THE COURT: You know, I can't deal with  
20 getting hearing dates. Is there a problem with  
21 getting hearing dates?

22 MR. BROWN: There's not a problem with  
23 getting hearing dates. It's a problem with  
24 getting anybody to move to appoint -- thank you --  
25 to appoint a personal representative. And --

1 THE COURT: Well, I thought the hearing was  
2 on the objections on the accounting.

3 MR. BROWN: This is the other one, Your  
4 Honor.

5 THE COURT: Oh.

6 MR. BROWN: There is a motion objecting to  
7 the accountings, but there is no hearing set to  
8 appoint a personal representative. And I'm -- you  
9 know, frankly, I'm the curator. I'm --

10 THE COURT: Well, at some point if no one  
11 wants to be PR, you know, I'll discharge you and  
12 the estate will be closed. Just close the estate.

13 MR. BROWN: I think that's the case right  
14 now, nobody wants to be a PR.

15 MR. ELLIOT BERNSTEIN: Well, that's not true.

16 THE COURT: Well, someone has to file a  
17 petition, though.

18 MR. ELLIOT BERNSTEIN: Well, I'm -- I got a  
19 ton of petitions in that I'm trying to get  
20 hearings. Like I said, they are blocking and  
21 trying to get this case closed.

22 I mean, he just said are you having  
23 problems scheduling hearings. I want hearings  
24 since, you know, May.

25 THE COURT: Hold on. Let me take a look at

1           this one.

2           Okay. All right. So I'm going to order  
3 everyone cooperate in coordinating hearings.  
4 That's a silly thing to have difficulty with.

5           MR. ELLIOT BERNSTEIN: Am I forced to take a  
6 deposition before I schedule a hearing with you on  
7 an unrelated --

8           THE COURT: You can schedule a hearing. Then  
9 you get a hearing date from me.

10          MR. ELLIOT BERNSTEIN: He won't schedule a  
11 hearing until I take a deposition.

12          THE COURT: Okay. Here's the way it works.  
13 Scheduling is one thing.

14          MR. ELLIOT BERNSTEIN: Right.

15          THE COURT: Discovery is another thing.

16          MR. ELLIOT BERNSTEIN: That's right.

17          THE COURT: You try to do your discovery  
18 based upon hearing dates coming up. So if you get  
19 a hearing date within 30 days, then that tells you  
20 you have to have discovery sooner. If you have a  
21 hearing in six months, unlikely in my division,  
22 then, you know, you could spread out your  
23 discovery requests, but they're separate and  
24 apart.

25          MR. ELLIOT BERNSTEIN: No, but I'm trying to

1           schedule a hearing and he's refusing unless I  
2           take --

3           THE COURT: You get a hearing. And then  
4           depending upon what the nature is that's going to  
5           be heard, if discovery is necessary, you do  
6           discovery. They're two independent items.

7           MR. ELLIOT BERNSTEIN: But your secretary or  
8           your clerk has told us that we have to coordinate  
9           our hearings with these guys, doesn't seem they  
10          have to do that with us, since none of this is  
11          scheduled with our knowledge. But nonetheless, if  
12          I want to schedule a hearing, I got to get  
13          approval from nine guys, three of them won't  
14          respond at all. Alan Rose says you better take a  
15          deposition or I'm not scheduling hearings. And,  
16          you know, they are trying to delay it so they can  
17          get in all these hearings while a bunch of  
18          criminals sit around --

19          THE COURT: All right. I'll have my  
20          assistant come out and see you folks when you're  
21          done here, before you all leave, and she'll  
22          coordinate hearings with you.

23          MR. ELLIOT BERNSTEIN: Well, I can't do that.  
24          I got to --

25          THE COURT: Why?



1 MR. ELLIOT BERNSTEIN: -- go back and check  
2 my schedules. Can I call in?

3 THE COURT: You want quick service and I'm  
4 going to give you --

5 MR. ELLIOT BERNSTEIN: I appreciate that. I  
6 greatly appreciate that.

7 THE COURT: So there's a rule there that says  
8 if you ask for something and I give it to you,  
9 like that --

10 MR. ELLIOT BERNSTEIN: I didn't bring a cell  
11 phone, I don't have my schedule, I got doctors --  
12 that's the biggest concern -- and if I'm free on  
13 those days they want to schedule them, great. I  
14 already gave them a date, you know, July 14th.

15 THE COURT: Try to work it out, we'll get  
16 there.

17 MR. ELLIOT BERNSTEIN: Your secretary has  
18 been holding it.

19 MR. BROWN: Judge, the problem with  
20 appointing a personal representative is not that  
21 nobody is -- there is no hearing date -- because  
22 nobody has actually filed a motion to appoint a  
23 personal representative.

24 THE COURT: But Eliot says he has.

25 MR. ROSE: There's two motions pending.

1           There's a petition by Ted to be the personal  
2           representative. I think Eliot may have filed a  
3           petition to be the personal representative. We  
4           need to set those for a contested hearing.

5           THE COURT: So, Mr. Brown, there are two.

6           MR. ELLIOT BERNSTEIN: He denied Ted's  
7           motion.

8           MR. ROSE: I'll set them.

9           MR. ELLIOT BERNSTEIN: Ted already filed a  
10          motion to be PR and you denied it.

11          THE COURT: Go ahead.

12          MR. ROSE: We had a motion pending, Your  
13          Honor, and you appointed a curator.

14          THE COURT: Right.

15          MR. ROSE: In the meantime, to avoid what's  
16          going to be a very expensive and costly battle,  
17          I've been having discussions with Mr. Brown as  
18          curator, a number of discussions of a way to try  
19          to streamline -- Mr. Brown can confirm that's the  
20          goal.

21          THE COURT: Sure.

22          MR. ROSE: Just had those discussions. I've  
23          tried to have discussions with some of the other  
24          beneficiaries to see if we can at least get a  
25          consensus. I thought that was a worthwhile

1 exercise before we have what's going to be a half  
2 day or day contested trial on who should be the  
3 PR. One of the motions dovetails into that -- I  
4 have two motions pending today. One is a motion  
5 to compel Eliot to appear for deposition and  
6 comply with the privilege rule. We had a hearing  
7 you may recall on May 23rd with inadvertent  
8 privilege. I have that motion. I also have a  
9 motion that relates to Mr. Brown, if you want to  
10 do that motion first, in case Mr. Brown wanted to  
11 leave. We filed a petition -- a motion for --

12 MR. ELLIOT BERNSTEIN: I'd like to do the  
13 privilege because if we get through this, we'll  
14 find out that he might not even be here in a  
15 minute.

16 MR. BROWN: I'd actually prefer to do --

17 MR. ROSE: Do whatever Mr. Brown likes.

18 MR. BROWN: I don't know that I like it, but  
19 I don't have any opposition to it.

20 MR. ROSE: It's the one about the mortgage.

21 MR. BROWN: Okay.

22 THE COURT: Let me see.

23 MR. ROSE: This is a motion -- this is kind  
24 of in line with Your Honor's instructions. Ted  
25 Bernstein, as successor trustee of the Simon

1           Bernstein trust, has asked the curator to take  
2           action with regard to an asset of the estate.  
3           Mr. Brown has indicated, consistent with your  
4           ruling, that's not his job. So we have filed a  
5           motion seeking instructions. And we are before  
6           you addressing one -- there is only a real handful  
7           of assets in the estate. One of the assets in the  
8           estate of Simon Bernstein is a second mortgage  
9           that the estate holds on a piece of property. The  
10          property is owned by an entity called Bernstein  
11          Family Realty, LLC. That's an entity that was  
12          created by Simon while he was alive. And while he  
13          was alive, Simon was the manager of that entity.  
14          This Bernstein Family Realty, which owns this  
15          house, there is also a first mortgage on the house  
16          held by the seller back when the house was sold in  
17          2008. So there is a first mortgage of \$110,000.

18                 THE COURT: Purchase money mortgage?

19                 MR. ROSE: Purchase money mortgage. That  
20          mortgage matured, technically, a few years ago and  
21          they did an amendment, and they extended the term  
22          for three years. The lease matures on June 19th,  
23          which is in about seven days. Next week. The  
24          first mortgage, not the lease, the first mortgage  
25          matures. They are owed \$110,000, plus interest.

1       The mortgage is held by a gentleman named Walter  
2       Somm. There is unpaid taxes for 2013. We're told  
3       that the house is not insured. Okay. That's the  
4       starting point. What the estate has, which  
5       Mr. Brown is in possession of, is the estate has a  
6       second mortgage on that property. There's a  
7       second mortgage holder on property when there is a  
8       first, unpaid taxes, no insurance, you would want  
9       to take action to try to protect whatever equity  
10      is in the property. The current occupant of the  
11      house -- and just so I can assure you -- we're  
12      going to hear it in a minute -- this is no way to  
13      try to harm Eliot. This is trying to protect the  
14      assets that are in the estate, and try to protect  
15      the value of it. But the tenant of the property  
16      is Eliot Bernstein and his family. They live in  
17      there rent free. They don't pay taxes. I don't  
18      have all the information other than that.

19             And just if you indulge me for a little  
20      background. I think Simon bought the house for  
21      Eliot. He put the ownership, though, in an  
22      entity called Bernstein Family Realty. It's  
23      encumbered by two mortgages. And the mortgages  
24      exceed the value of the property. I don't know  
25      what it's exactly worth. I attached a Zillow,

1           which is not an appraisal.

2           THE COURT: What's the issue, though?

3           MR. ROSE: The issue is, someone's got to  
4 administer the second mortgage. It's in default  
5 and no one has been administering it. And --

6           THE COURT: You say administering it, seek  
7 collection of its payment.

8           MR. ROSE: Potentially. Or do something to  
9 protect the asset. And in addition, we've asked  
10 permission to have the estate potentially pay the  
11 first -- buy the first mortgage. Because if we  
12 don't take care of the first mortgage on June 19,  
13 what's going to happen is that Mr. Somm is going  
14 to hire legal counsel.

15          THE COURT: When you say Simon held a note  
16 and mortgage, second mortgage?

17          MR. ROSE: Right.

18          THE COURT: Who was -- who's the mortgagor?

19          MR. ROSE: Bernstein Family Realty.

20          THE COURT: I thought they owned the  
21 property.

22          MR. ROSE: They own the property. They are  
23 the title owner. They are the mortgage -- they  
24 are the mortgagee of the property.

25          THE COURT: Okay. But who's the mortgagor?

1           MR. ROSE: Of the second mortgage, Simon  
2           Bernstein, while he was alive. So now it's the  
3           estate of Simon Bernstein.

4           THE COURT: So he owed the money. He's the  
5           debtor on the debtor/creditor part of the  
6           mortgage, Simon was the debtor?

7           MR. ROSE: No, Simon was the creditor.

8           THE COURT: Who's the debtor?

9           MR. ROSE: Bernstein Family Realty, an entity  
10          that owns the house.

11          THE COURT: Okay. I'm not -- I thought --  
12          they own the house and Bernstein Family Realty  
13          borrowed \$360,000, or whatever, the amount of the  
14          second mortgage is?

15          MR. ROSE: Correct. Bernstein Family Realty  
16          potentially owns \$110,000, plus interest, to  
17          Walter Somm. He's the first mortgage holder. And  
18          Bernstein Family Realty also owes 365,000, plus  
19          interest, to the estate of Simon Bernstein.

20          THE COURT: Which -- that transaction, how  
21          did that second mortgage come about?

22          MR. ROSE: Simon put -- I think Simon put up  
23          all the money for the house and the renovations.  
24          And so in order to --

25          THE COURT: So he had the owner give him a

1 second mortgage back.

2 MR. ROSE: Correct. He was the manager of  
3 the ownership entity. Simon structured this  
4 through Bernstein Family Realty. Bernstein Family  
5 Realty, after Simon passed away, the new manager  
6 of Bernstein Family Realty is Oppenheimer. And I  
7 believe the equity -- the owners of the equity of  
8 Bernstein Family Realty are three trusts created  
9 for Elliot's three children. No one is disputing  
10 that. But the house is clearly upside down,  
11 unless it's worth more than \$500,000, which it  
12 doesn't appear to be worth more than \$500,000. If  
13 it is, that's great because that's better for the  
14 estate. The concern here for Ted as the fiduciary  
15 for the trust is that we have an asset. It's the  
16 mortgage. It's not fully secured. It's probably  
17 mostly secured, if you know what I mean, partially  
18 secured. There is equity in the property over and  
19 above the first mortgage and the taxes, but  
20 there's not enough to pay it off in full. And so  
21 the concern is that Walter Somm, a third party,  
22 innocent guy, will have to file a lawsuit to  
23 foreclose his mortgage. Eliot is potentially  
24 going to be a party to that lawsuit because he's a  
25 tenant. Mr. Somm will probably spend a hundred or



1           \$200,000 in legal fees fighting with Eliot  
2           Bernstein. And then at the end of the day, poof,  
3           there is nothing left. And the estate's \$365,000  
4           mortgage is worth nothing.

5           We've raised the issue with Mr. Brown. We  
6           have worked very closely with him.

7           THE COURT: I understand.

8           What do you say Eliot?

9           MR. ELLIOT BERNSTEIN: Well, to deconstruct  
10          all those lies -- you really want me to start --  
11          my father bought a house for my children. It  
12          wasn't an asset of the estate till suddenly the  
13          guys who altered the estate documents put it on an  
14          amended inventory, right after the long arm of the  
15          law knocked on their door and said come to the  
16          sheriff's office. This is part of an extortion.  
17          I put it in motion to you. I asked for emergency  
18          hearings. And what they have done is beyond  
19          criminal. First of all, my -- the company, BFR,  
20          is owned by my three kids entirely. The house --  
21          trust owned the house. Okay. My brother and  
22          Oppenheimer conspired -- and I got a whole bunch  
23          of stuff showing what's happened here -- to take  
24          over the management position of BFR. When my  
25          father died there was supposed to be vote by the

1 members, my three minor children, which could be,  
2 or my wife, as guardians, to elect a new member.  
3 Instead, Spallina anointed Janet Craig of  
4 Oppenheimer to self-anoint herself as manager of  
5 BFR. Then after they misuse all these funds,  
6 telling us, oh, we're going to use the kids'  
7 education funds to pay your house expenses, when  
8 there is all these other entities that have been  
9 paying for the house for years, my brother --  
10 Janet Craig of Oppenheimer says, oh, I'm turning  
11 over the management to Ted. She hands him all my  
12 personal files, my kids, all our statements,  
13 bills, everything, which I don't even get the  
14 bills. They've been going through BFR --

15 THE COURT: Okay. I got your position. Let  
16 me ask you this. What's the relief that you're  
17 asking for, though?

18 Hold on.

19 I don't know what the relief is, that's  
20 what I'm trying to figure out.

21 MR. ROSE: The relief is for first -- at the  
22 request of the curator, the curator would like to  
23 transfer the asset to the trustee of Simon's  
24 revocable trust.

25 THE COURT: The property that is owned by

1           Bernstein Family Realty, LLC?

2           MR. ROSE: No, technically, the asset is just  
3           the mortgage.

4           THE COURT: Is the mortgage.

5           MR. ROSE: Yeah, you know, the tangible --

6           THE COURT: That's owned by the estate right  
7           now.

8           MR. ROSE: It's owned by the estate and under  
9           the control of Mr. Brown.

10          THE COURT: And you --

11          MR. ROSE: They would remain liable for --  
12          the trustees of the revocable trust is liable for  
13          the debts of a creditor. So, you know,  
14          Mr. Stansbury's counsel is here and he would be  
15          someone that might object to it. We're not asking  
16          to transfer it, other than to have someone other  
17          than Mr. Brown, who's not prepared to administer  
18          the asset, to administer the asset. In fact, in  
19          discussions I've had with Mr. Brown, I mean,  
20          his -- one of Mr. Brown's discussions with me was  
21          he could transfer all the assets in the estate to  
22          the revocable trust. If the trustee of the  
23          revocable trust could administer the assets, he  
24          would still be liable to Mr. Stansbury for any  
25          claims. And, you know, you could have Mr. Brown

1 as a curator take a very nominal role so we don't  
2 have to incur as much money. Alternatively, we  
3 could have the PR hearing which --

4 THE COURT: That's what we need to do. We  
5 need to have the PR hearing.

6 MR. ELLIOT BERNSTEIN: We need to have an  
7 evidentiary hearing on this, don't we, Your Honor?

8 MR. ROSE: But in the short --

9 THE COURT: Go ahead.

10 MR. ROSE: In the short term, if you look at  
11 the exhibit we attached.

12 THE COURT: Yeah, go ahead.

13 MR. ROSE: The second mortgage. It's the  
14 Exhibit A. I don't have tabs, I apologize, but if  
15 you flip through --

16 THE COURT: I see it.

17 MR. ROSE: So there is a promissory note.  
18 It's signed by Simon Bernstein. I mean, I don't  
19 think there is any question that that's Simon's  
20 signature. And he did it in July of 2008. And if  
21 you go to the next page, which is the actual  
22 second mortgage, it's recorded in the public  
23 records of this county, on September the 4th,  
24 2008.

25 MR. ELLIOT BERNSTEIN: Missing the promissory

1 note, which was supposed to be attached, but it's  
2 not.

3 MR. ROSE: I didn't think -- I would request  
4 that Mr. Bernstein not comment when I'm speaking.

5 THE COURT: Yeah, true.

6 MR. ROSE: So we have a mortgage, the second  
7 mortgage. It's signed by Simon Bernstein. He set  
8 up the structure with Bernstein Family Realty. I  
9 don't care about the structure. We don't control  
10 Bernstein Family Realty. We have nothing to do  
11 with it. Our concern is very simply: If you ask  
12 Eliot Bernstein what are you going to do when  
13 Walter Somm files a foreclosure action, he's going  
14 to tell you, I'm going to make Walter Somm spend  
15 every penny he's got to try to foreclose the  
16 mortgage on Bernstein Family Realty. And we're  
17 going to be back here in two years, or whatever,  
18 saying the mortgage is worthless because it's all  
19 been burned away in fees. But at the same time, I  
20 don't think it's appropriate for Mr. Brown or the  
21 estate to buy the mortgage if -- until we take the  
22 deposition of Mr. Bernstein and find out if he has  
23 any issues with regard to the mortgage or the  
24 structure. I mean, other, you know, everything,  
25 you know, is a conspiracy.

1 THE COURT: I got it. All right.

2 MR. ELLIOT BERNSTEIN: Okay. I got more.

3 MR. FEAMAN: May it please the court.

4 THE COURT: Yeah.

5 MR. FEAMAN: Peter Feaman on behalf of

6 Mr. Stansbury, about the largest and only creditor  
7 of the estate, sizeable amount, in a litigation  
8 that's pending before Judge Blanc.

9 Mr. Stansbury's interest obviously is to preserve  
10 or protect the assets of the estate in the event  
11 that he's successful in his litigation. We've  
12 been in touch with Mr. Somm. Mr. Stansbury  
13 actually knows Mr. Somm, the first mortgage  
14 holder. And it's a possibility that we can get  
15 him to forebear for a little while until we get  
16 this straightened out.

17 THE COURT: Why don't you try to do that.  
18 Because I'd really like to get passed the PR stage  
19 because that would clear the way to have things  
20 done in the ordinary course here.

21 MR. FEAMAN: Right. So we think we can do  
22 that.

23 THE COURT: Okay.

24 MR. FEAMAN: And he told me he won't do  
25 anything precipitous. He knows -- he knew

1 Mr. Bernstein, he knows Mr. Stansbury, and --

2 THE COURT: All right.

3 MR. ELLIOT BERNSTEIN: Your Honor, one  
4 last --

5 THE COURT: Okay. Hold on. No. No, I'm  
6 deferring on the motion for instruction in this  
7 matter.

8 MR. BROWN: Judge, on the PR thing just --  
9 I'm going to go ahead and seek dates in early  
10 August.

11 THE COURT: All right.

12 MR. BROWN: Because we have notices of  
13 unavailability for July.

14 THE COURT: Okay.

15 MR. BROWN: And frankly, between now and  
16 early August, I can minimize my fees by just  
17 hanging on to what the estate's got.

18 THE COURT: If you guys will coordinate those  
19 hearings.

20 MR. ELLIOT BERNSTEIN: I've never not  
21 coordinated a hearing.

22 THE COURT: Okay. All right. What's next,  
23 the last one.

24 MR. ROSE: Last one. Two motions to compel.

25 MR. BROWN: Actually, may I be excused?

1 THE COURT: Sure.

2 MR. ROSE: On the motion we just heard, Your  
3 Honor, I'll send in an order that says the motion  
4 is deferred. Mr. Stansbury will work with  
5 Mr. Somm and report to the parties.

6 THE COURT: Exactly.

7 \* \* \* \*

8

9 ^ \* \* \* \*

10 MR. ROSE: We've got two motions to compel,  
11 one is very simple. One is more complicated.  
12 They are in the same document. The first one is  
13 just a deposition. I've asked Mr. Bernstein if I  
14 could take his deposition, get some dates. He  
15 indicated that he would not appear for deposition  
16 for whatever reason. And I just think we need an  
17 order compelling him to appear for deposition  
18 within 20 days or something to that effect.

19 THE COURT: Okay. And the matters you want  
20 to depose him on are what?

21 MR. ROSE: There are a number of pending  
22 petitions. So -- they're set for evidentiary  
23 hearing. Some of them involve things he wants the  
24 trustee or the personal representative to do for  
25 him and --



1           THE COURT: Hold on. Elliot, do you have  
2 pending petitions?

3           MR. ELLIOT BERNSTEIN: I do.

4           THE COURT: Okay. And you want hearing dates  
5 on those, correct?

6           MR. ELLIOT BERNSTEIN: All of them.

7           THE COURT: Okay. So two things are going to  
8 happen. You're going to get hearing dates and  
9 you're going to sit for deposition.

10          MR. ELLIOT BERNSTEIN: I never said I  
11 wouldn't sit for a deposition.

12          THE COURT: He just said you wouldn't.

13          MR. ELLIOT BERNSTEIN: He says things for me  
14 that are just completely untrue, like the last  
15 whole litany of things he said I said about Walt  
16 Somm. By the way, I got a letter from Walt Somm  
17 that addresses -- that he's mortified what they're  
18 doing.

19          THE COURT: Okay. So the answer is -- I want  
20 to you sit for deposition. They are entitled to  
21 depose you on the outstanding --

22          MR. ELLIOT BERNSTEIN: Maybe.

23          THE COURT: And I want hearing dates.

24          MR. ELLIOT BERNSTEIN: Okay.

25          THE COURT: I want the deposition to take

1 place before the hearing dates.

2 MR. ELLIOT BERNSTEIN: Well, I need to have  
3 the hearings if they're qualified to be PR, as my  
4 brother's saying he's successor trustee here  
5 before you today. He's never sent out notice.  
6 The guys you threw out of here that were acting  
7 that way, haven't noticed anybody that they  
8 transferred it to Ted, that he's accepted,  
9 accountings haven't been sent out, no  
10 procedural -- in fact, you appointed my brother on  
11 my mom's estate, God knows how long ago, no  
12 accountings. We have three years, no accountings  
13 in my mother's estate or trust. There is robbery  
14 and fraud going on right before your nose every  
15 day because these two clowns continue to  
16 represent --

17 THE COURT: Cool it. Cool it. We don't --

18 MR. ELLIOT BERNSTEIN: Okay. Whatever.

19 THE COURT: No. No. Stop.

20 MR. ELLIOT BERNSTEIN: Okay. These two  
21 people are not following any rules or procedures  
22 and we keep having hearings that are hurting my  
23 family with people who are working to hurt me and  
24 haven't followed a single rule of things. He  
25 hasn't notified anybody.

1           THE COURT:  You're going to schedule your  
2           hearings.  You'll call up and my assistant will  
3           give you three or four hearing dates.  You'll  
4           call, you'll coordinate, and, you know what, if  
5           you're getting -- if you say -- if you say that  
6           they are not cooperating, pick a date.

7           MR. ELLIOT BERNSTEIN:  Okay.

8           THE COURT:  Pick a date.  If you say that --  
9           and that's the rule that applies.

10          MR. ELLIOT BERNSTEIN:  Okay.  Perfect.

11          THE COURT:  If one side says the other side  
12          is not cooperating, pick a date, and then I'll  
13          determine whether there is in-proprity.

14          MR. ELLIOT BERNSTEIN:  Okay.  And I don't  
15          want to be deposed before I have those hearings to  
16          see if they are qualified to depose me.  
17          Because --

18          THE COURT:  No, I'm letting them take your  
19          deposition on your pending petitions.  Okay.  On  
20          your petitions that you're going to get hearing  
21          dates on, they can take discovery.

22          MR. ELLIOT BERNSTEIN:  Oh, just on that.

23          THE COURT:  On those matters, yeah.  That's  
24          what he's asking for to be able to take your  
25          deposition.

1 MR. ELLIOT BERNSTEIN: That's fine. Okay.

2 MR. ROSE: There is a hearing currently set  
3 for July 12th. It's an hour hearing on some  
4 objections to accountings.

5 THE COURT: Okay.

6 MR. ROSE: On behalf of the trustee, we got  
7 an extension to file objections to accountings.  
8 Mr. Block, who represents Tescher & Spallina, is  
9 here, he wasn't in the loop for that. So we have  
10 an hour of your time reserved for -- I would  
11 suggest it might be appropriate to have a status  
12 conference. We can have the status conference  
13 before the August evidentiary hearing on all the  
14 pending matters, where everyone can come in and  
15 actually go over the pending matters, see what  
16 issues could be resolved and what issues are open,  
17 because we have an hour of your time, which is  
18 valuable.

19 THE COURT: Okay. Fine.

20 MR. ROSE: That's good. Then the last motion  
21 we have is the second half of this, we've  
22 addressed this issue once. This is the e-mail  
23 that my client inadvertently sent to Elliot  
24 Bernstein.

25 THE COURT: I thought I dealt with this

1           already.

2           MR. ROSE: You did deal with it. You dealt  
3 with it in sort of an informal way, if you recall.  
4 It happened on Thursday night, we were here Friday  
5 morning. I raised it because I was concerned that  
6 I wanted it to be dealt with immediately.

7           THE COURT: This is the inadvertent  
8 disclosure?

9           MR. ROSE: Yes, sir. And Mr. Bernstein said  
10 he would comply with what Your Honor said. We  
11 have a transcript of the hearing.

12          MR. ELLIOT BERNSTEIN: You told me to go home  
13 and read the rule --

14          THE COURT: There is a rule that says --

15          MR. ELLIOT BERNSTEIN: I read it. It's not  
16 privileged. It's a letter from my brother to me,  
17 there is no attorney involved. I don't know what  
18 they're talking about. This is more of this  
19 harassment. And when you read this letter, the  
20 reason why they want to hide this letter between  
21 my brother and me --

22          THE COURT: But it's you -- put the letter  
23 aside for a moment. If there is a claim of  
24 inadvertent disclosure -- which is what they made,  
25 right?

1 MR. ELLIOT BERNSTEIN: Correct.

2 THE COURT: Then under the rule, you do what  
3 you're supposed to do.

4 MR. ELLIOT BERNSTEIN: Okay. Let's say that  
5 my brother inadvertently sent me an e-mail saying,  
6 hey, let's murder my brother, which is basically  
7 what this says. And then all of a sudden they  
8 want to retract it and pull it back, hide it from  
9 the world. They've gotten a levied threat across.  
10 Now, I sent this letter, as I told you, the minute  
11 I read it to everybody who's named in it. And  
12 I've already had two people call saying they are  
13 afraid of my brother being crazy and starting to  
14 harass them based on this letter.

15 THE COURT: We're getting far afield.

16 MR. ELLIOT BERNSTEIN: Okay.

17 THE COURT: Did you respond pursuant to the  
18 rule?

19 MR. ELLIOT BERNSTEIN: Yeah, I told him I  
20 don't believe so, let's set a hearing.

21 MR. ROSE: At the hearing on the date Elliot  
22 said he'll do all that, he'll do what you told him  
23 to do. And then he e-mailed me --

24 MR. ELLIOT BERNSTEIN: Yeah, and he --

25 MR. ROSE: Can I, sir, please speak?

1 MR. ELLIOT BERNSTEIN: Yeah. Yeah.

2 THE COURT: Okay.

3 MR. ROSE: So I got an e-mail from Elliot  
4 after the hearing that says I just got back and  
5 will definitely delete and destroy the e-mail in  
6 accordance with the law. That's the first e-mail  
7 from Eliot. That was at 1:05 on the day of the  
8 hearing. And then I got -- at 3:30 an e-mail from  
9 his colleague, Crystal Cox, who's the woman that  
10 blogs things, basically using expletives against  
11 me. And then Ms. Cox has taken the letter that  
12 was privileged and has republished it, e-mailing  
13 it to lawyers in the case, and putting it on the  
14 Internet. And then I got an e-mail from Elliot  
15 telling me he will not comply with the issue and  
16 he wants to challenge the assertion of the  
17 privilege. So I realize this was an 8:45 and I,  
18 you know, would -- might need to be set for an  
19 evidentiary hearing -- but we're here and we could  
20 do an evidentiary hearing to decide this privilege  
21 issue.

22 MR. ELLIOT BERNSTEIN: Yeah, I'd like to do  
23 that.

24 THE COURT: Hold on. After Elliot got the  
25 notice of inadvertent disclosure, did he file a

1 response, Mr. Rose?

2 MR. ROSE: He has not filed a response in the  
3 court.

4 THE COURT: To you, though?

5 MR. ROSE: He did respond to me.

6 THE COURT: Let me read this. Did he say  
7 that -- did he do what the rule says, party  
8 receiving a notice of inadvertent disclosure  
9 either destroys the matters and says that, you  
10 know, they've taken care of it and nothing is  
11 being disclosed, disseminated, or they can  
12 actually --

13 MR. ELLIOT BERNSTEIN: It's not an  
14 inadvertent disclosure --

15 THE COURT: But they've made that claim it  
16 is, though.

17 MR. ELLIOT BERNSTEIN: Okay.

18 THE COURT: The rule says, if you want to  
19 challenge that, you have to do that in writing.

20 MR. ELLIOT BERNSTEIN: I did. I told him,  
21 I'm challenging it, let's have a hearing.

22 THE COURT: Okay. All right. So then he  
23 said a challenge, he said it wasn't privileged.  
24 That's one of the grounds.

25 MR. ROSE: In an e-mail he's taken the



1 position that it's not privileged, it was intended  
2 for him.

3 THE COURT: That's one of the rule-related  
4 items you can mention.

5 MR. ROSE: During -- in the intervening time  
6 he's not allowed to be sending it out to --

7 MR. ELLIOT BERNSTEIN: I haven't sent it to a  
8 single person that didn't already get it before I  
9 came to this court. I contacted all those people  
10 out of respect to Your Honor. And what my word  
11 was, and I said, hey, guys, here's a rule, you're  
12 supposed to destroy this possibly, contact your  
13 lawyer. Whatever. Crystal Cox said to him, screw  
14 you. I don't control her. She's a blogger.  
15 Nobody seems to be able to control her, but that's  
16 her. And he's --

17 THE COURT: Okay. All right.

18 MR. ROSE: This is one of the --

19 THE COURT: You can set that for hearing.

20 MR. ROSE: There's one other part of our  
21 motion, we asked for an injunction. He did say he  
22 can't control Crystal Cox. He sends her  
23 everything in this case. He sends her every  
24 pleading, every order. He sent her my privileged  
25 e-mail. Her e-mail to me says, I cordially invite

1           you to go blank yourself. And then she goes out  
2           on me. And then she sends the e-mail, the same  
3           e-mail, this privileged e-mail, she sends to every  
4           counsel and party in the case twice already. He  
5           should be enjoined from communicating with her.

6           THE COURT: So he's already made a statement  
7           on the record, that is Elliot, that since the time  
8           that he got the notice of inadvertent disclosure,  
9           he has made no new disclosure to anyone, true?

10          MR. ELLIOT BERNSTEIN: True.

11          THE COURT: Okay.

12          MR. ROSE: So --

13          MR. ELLIOT BERNSTEIN: I did everything else  
14          just to be safe.

15          THE COURT: Set it for hearing.

16          MR. ROSE: An evidentiary hearing?

17          THE COURT: Yes.

18          MR. ROSE: Okay.

19          THE COURT: On whether it's privileged  
20          because that's what the rule says.

21          Go ahead, folks. Thanks.

22          MR. ROSE: Do you want the order from the  
23          first or you want me to just mail them in?

24          THE COURT: You can mail it in.

25          I got a 9:30 still to do.

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(Thereupon, the proceedings were

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concluded at 10:35 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA  
COUNTY OF PALM BEACH.

I, DAVID L. MARSAA, Professional Reporter,  
State of Florida at large, certify that I was  
authorized to and did stenographically report the  
foregoing proceedings and that the transcript is a  
true and complete record of my stenographic notes.

Dated this 15th day of June, 2014.

\_\_\_\_\_  
DAVID L. MARSAA, COURT REPORTER

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