**From the Desk of Eliot Ivan Bernstein**

Sent Via Certified Mail and Email:

Monday, November 10, 2014

**TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**RE: Waiver of service CASE of process case NO. TBD IN the CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA**

Please find enclosed a copy of an answer and counter complaint that was filed on DATE in the IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA as CASE NO. TBD.

You are named as a party in this suit as a Defendant.

Why are you getting this?

This is not a summons, or an official notice from the court. It is a request under Florida Rules of Civil Procedure P.1.070, see <http://phonl.com/fl_law/rules/frcp/frcp1070.htm> that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within the required time as stated on the form. Two copies of the waiver form are enclosed and a copy of the Answer and Counter Complaint, along with a stamped self-addressed envelope or other prepaid means for returning one copy of the Waiver of Process. You may keep the other copy.

What happens next?

If you return the signed waiver within 20 days from receipt, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date you received this notice to answer the complaint.

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And the court will require you to pay the expenses of making service. I certify that this request is being sent to you on the date above.

Enclosures – WAIVER OF SERVICE OF PROCESS
 COMPLAINT

Respectfully Yours,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Eliot I. Bernstein
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Boca Raton, FL 33434
(561) 245-8588
iviewit@iviewit.tv

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

CASE no. TBD

HON. JUDGE MARTIN H. COLIN

SIMON L. BERNSTEIN TRUST

AGREEMENT dated May 20, 2008,

as alleged amended and restated,

SIMON L. BERNSTEIN AMENDED

AND RESTATED TRUST AGREEMENT

dated July 25, 2012

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/

ELIOT BERNSTEIN, individually;

Eliot Bernstein, as beneficiary of the

simon L. bernstein trust agreement

dated May 20, 2008; ELIOT BERNSTEIN,

as Trustee of the ELIOT BERNSTEIN

FAMILY TRUST dated May 20, 2008;

and

ELIOT BERNSTEIN, as alleged Trustee f/b/o D.B.,

Ja. B. and Jo. B. under the SIMON L. BERNSTEIN

TRUST AGREEMENT dated May 20, 2008, as

alleged amended and restated, SIMON L. BERNSTEIN

amended and restated TRUST AGREEMENT

dated July 25, 2012,

Plaintiff,

v.

THEODORE STUART BERNSTEIN, individually;

THEODORE STUART BERNSTEIN, as alleged Successor

Trustee of the 2008 SIMON L. BERNSTEIN

TRUST AGREEMENT, as alleged amended and restated,

SIMON L. BERNSTEIN AMENDED AND RESTATED

TRUST AGREEMENT dated July 25, 2012;

ROBERT L. SPALLINA, ESQ., individually;

robert l. spallina, esq., as former

Co-Trustee;

robert l. spallina, esq., as former counsel

to the former Co-Trustees;

DONALD R. TESCHER, ESQ., individually;

donald r. tescher, esq., as former

Co-Trustee;

TESCHER & SPALLINA, P.A., (and all Partners,

Associates, Of Counsel and Employees);

JOHN AND JANE DOE’S (1-5000),

Defendants[[1]](#footnote-1).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/

COMPLAINT

COMES NOW, Eliot Ivan Bernstein ("Eliot" or “Plaintiff”), beneficiary of the alleged SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008 and Eliot Bernstein as alleged Trustee F/B/O his three minor children under the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008, as alleged amended and restated, SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT dated July 25, 2012 (together the two trusts hereinafter referred to as "Simon Trust"), and pursuant to §736.0706, Fla. Stat. (2013), files this “**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE”**, and in support states, on information and belief, as follows:

# FACTS COMMON TO ALL COUNTS

1. Plaintiff, Eliot Ivan Bernstein, is over the age of 18, a resident of Palm Beach County, Florida and is a Beneficiary of the alleged Simon Trusts.
2. Plaintiff, Eliot Ivan Bernstein, is over the age of 18, a resident of Palm Beach County, Florida and is Eliot Bernstein as Trustee F/B/O his three minor children under the alleged SIMON L. BERNSTEIN TRUST DTD 9/13/12 (see footnote 1), who are also Beneficiaries under the alleged Simon Trust.
3. Eliot has standing to seek removal of the trustee. The provisions of §736.0706(1), §736.0103, and §733.707(3), Fla. Stats. (2014) govern the issue of who has standing to seek removal of a trustee. Section 736.0706(1) Fla. Stat. (2014) states:

*(1) The settlor, a cotrustee, or a* ***beneficiary*** *[****emphasis added]*** *may request the court to remove a trustee, or a trustee may be removed by the court on the court's own initiative.*

§736.0103, Fla. Stat. (2014), defines a "beneficiary":

*(4) "Beneficiary" means a person who has* ***a present or future beneficial interest in a trust, vested or contingent,*** *[****emphasis added]*** *or who holds a power of appointment over trust property in a capacity other than that of trustee.*

1. Eliot has legal standing on two legs. First, in his individual capacity, as he is named beneficiary in the Simon L. Bernstein Trust Agreement dated May 20, 2008, as alleged amended and restated, Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012.
2. Eliot also has standing in his capacity as Natural Guardian for his children who are alleged to be beneficiaries of the Simon Trust.
3. This is an action for removal of an alleged Trustee under F.S. §736.
4. Venue of this proceeding is proper in this Court under F.S. §736.
5. Under Florida law, this Court has broad authority to affect trust administration. Under §736.0201, Fla. Stat. (2014), the Court has the following power:

**736.0201. Role of court in trust proceedings**

(4) A judicial proceeding involving a trust may relate to the validity, administration, or distribution of a trust, including proceedings to:

(a) Determine the validity of all or part of a trust;

(b) **Appoint or remove a trustee** **[emphasis added]**;

(c) Review trustees' fees;

(d) Review and settle interim or final accounts;

(e) Ascertain beneficiaries; determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; instruct trustees; and determine the existence or nonexistence of any immunity, power, privilege, duty or right;

(f) Obtain a declaration of rights;

(g) Determine any other matters involving trustees and beneficiaries.

1. That there exists a Legal Standard for Removal of Trustee. When removal of a trustee is at issue, the following statutory provisions of §736.0706, Fla. Stat. (2014) are to be considered:

**736.0706. Removal of trustee**

(2) **The court may remove a trustee** if:

(a) **The trustee has committed a serious breach of trust**;

(b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;

(c**) Due to unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries**; or

(d) **There has been a substantial change of circumstances** or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

1. TED's removal is warranted by Subsections (2) (a), (c) and/or (d). Additionally, §736.0802, Fla. Stat. (2014) describes the primary duty of a trustee:

**736.0802. Duty of loyalty**

(1) As between a trustee and the beneficiaries, a trustee shall administer the trust **solely** in interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided ins. 736.1016 a ... transaction ...which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction ... (emphasis added)

*See Aiello v. Hyland,* 793 So. 2d 1150, 1152 (Fla. 4th DCA 2001) (removal of trustee was required where trustee had a conflict of interest with interests of the trust; the conflict of interest made the trustee unable to properly carry out his duty of loyalty to the trust).

## BREACH OF TRUST – VIOLATION OF TERMS OF TRUST

1. That TED is NOT eligible to serve as a Successor Trustee under the very terms of the alleged Simon Trust, which means he is "unfit" under §736.0706(2)(c) and has breached the Simon Trust.
2. That TED is a "related party" and therefore not eligible to serve under the language regarding successors trustees in the alleged 2012 Simon Trust.
3. That the previous Co-Trustees of the alleged 2012 Simon Trust were TESCHER and SPALLINA by virtue of the Successor Trustee provision set forth in Article IV, Section C of the alleged 2012 Simon Trust.
4. That by a letter dated January 14, 2014 addressed to the five children of Simon Bernstein, TESCHER and SPALLINA resigned as,
	1. Co-Trustees of Simon’s alleged 2012 trust,
	2. Co-Personal Representatives/Executors to the Simon Estate,
	3. Counsel to themselves as Co-Trustees and Co-Personal Representatives,
	4. Counsel to TED as alleged Trustee of the Shirley trust (for irreconcilable differences),
	5. Counsel to TED as Personal Representative of the Shirley Estate, and,
	6. Counsel in all other fiducial and legal capacities they were acting in for any Bernstein family related matters.
5. That upon resignation and amidst admissions by SPALLINA that their law firm fraudulently altered and disseminated fraudulent trust documents, TESCHER stated, "If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity."
6. That TESCHER made the appointment of TED after claiming he learned that **his law firm**, Tescher & Spallina, PA, had intentionally fraudulently altered and disseminated a Shirley trust document to attempt to fraudulently change beneficiaries to benefit his friend and legal client TED.
7. That TED made knowingly illegal distributions in Shirley’s Trust under the fraudulent beneficiary scheme to improper beneficiaries including his own children, against the advice of counsel SPALLINA according to Palm Beach County Sheriff reports.
8. That SPALLINA stated to Palm Beach County Sheriff Investigators that he told TED not to take the illegal distributions, as Shirley’s beneficiaries could not be altered from Eliot, Jill and Lisa.
9. SPALLINA failed to report TED for taking the improper distributions to the proper authorities and this Court and instead further aided and abetted the scheme in attempts to cover up until he was summoned to the Palm Beach County Sherriff regarding his involvement in the criminal activities alleged.
10. That the alleged change of successorship from TESCHER and SPALLINA to their business associate and legal client TED was done without sending notice to beneficiaries that they had done this alleged illegal transfer of successorship and despite TED being prohibited from successorship by the very terms of the trust.
11. The document transferring trusteeship was allegedly notarized by the already convicted Felon for fraudulent notarizations in these matters, TESCHER and SPALLINA’s legal assistant and Notary Public, Kimberly Moran (“MORAN”), who no longer is a credible witness.
12. That TED accepted the alleged successor trusteeship without sending notice to beneficiaries according to Probate and Trust Rules and Statutes.
13. That SPALLINA and TESCHER ceded the trusteeship to TED without notice to the beneficiaries.
14. That if TED has become alleged successor trustee of the alleged Simon Trust he should be removed instantly, as he is ineligible under the very terms of the Simon Trust to serve as successor trustee.

Article IV, Section C.(3) (Page 16) of the Simon trust states:

C. Appointment of Successor Trustee

3. . .. A successor Trustee appointed under this subparagraph shall **not** be a Related or Subordinate Party of the trust. (**emphasis added**)

Under Article III, Subsection E(7), A "Related or Subordinate Party" is defined in the alleged Simon Trust as follows:

**ARTICLE III. GENERAL**

**E. Definitions.** In this Agreement,

7. Related or Subordinate Party. A *"Related or Subordinate Party"* to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672( c ).

That the "Code" is defined as "the Internal Revenue Code of 1986 ... "

A "Related or subordinate party" under the Code means any nonadverse party who is " ... (2) any one of the following: The Grantor's father, mother, issue, brother or sister ... "

1. That TED is the son, or an "issue" of the Grantor, SIMON BERNSTEIN, and a related party (father) to alleged beneficiaries, TED's sons and daughter, SIMON's grandchildren. Therefore, TED is ineligible as a Related or Subordinate Party and is therefore again unfit to serve as a successor trustee under §736.0706(2)( c ).
2. That TED has hijacked the position of Successor Trustee despite the fact that TESCHER and SPALLINA who drafted the Simon Trust knew of the prohibitive language precluding TED from acting as trustee.
3. That TESCHER and SPALLINA knew that transferring the trusteeship to their former client (who their crimes directly benefited) was not proper. This transfer is especially egregious as TESCHER and SPALLINA were resigning and being removed from these proceedings in the wake of massive frauds being uncovered that they are directly implicated in and have admitted to conspiring to commit in part.
4. That TED was specifically disqualified to be a successor trustee by the terms of the Simon Trust in another provision of the Trust that also disqualifies TED under,

Article III E (l) which states:

Notwithstanding the foregoing, **for all purposes of this Trust and the dispositions made hereunder**, my children, **TED S. BERNSTEIN**, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, **shall be deemed to have predeceased me ...** " (**emphasis added**)

1. That the prior 2008 Simon Trust was alleged to be amended by Simon 48 days prior to his sudden and unexpected death and also disqualifies TED, which states:

Article III E (1)

E. **Definitions**. In this Agreement,

1. **Children. Lineal Descendants**.

…Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, **for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM''), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me…**(**emphasis added**)

1. Therefore, by the very language of the Simon Trusts, including the 2008 Simon Trust done with Shirley[[2]](#footnote-2), TED, in every beneficiary scenario is wholly disinherited, considered legally predeceased and further disqualified by the provisions of the alleged trusts to serve as a successor trustee in both the Simon Trust and Shirley trusts.
2. That TED was not a named successor trustee in the Simon Trust.
3. That the illegal successorship from TESCHER and SPALLINA to TED was done by intentionally breaching the terms of the Simon Trusts.
4. This illegal seizure of fiduciary roles by violation of the terms of the Simon Trust is Prima Facie evidence of an ILLEGAL SEIZURE OF DOMINION AND CONTROL of the fiducial capacities in the alleged Simon Trust.
5. This violation of the terms of the Simon Trust should be enough evidence to compel this Court to act on its own motion to instantly remove TED to protect the trust assets and interests of the beneficiaries and others from an unqualified and fraudulent successorship by TED acting as an imposter trustee.
6. That this improper, highly unethical and illegal transfer of trusteeship in violation of the terms of the Simon Trust was to aid and abet the crimes and attempt to keep information from the beneficiaries in effort to continue to cover up the crimes.
7. That this fraudulent transfer of fiduciary power and trusteeship was to retain the illegally gained Dominion and Control of the Estates and Trusts that TED, TESCHER and SPALLINA gained through fraudulent documents and thereby maintain a criminal succession of trusteeship that would stymie and delay the administration and block efforts to investigate and prosecute the parties by the Estate and Trusts.
8. TED was directly involved in advancing the fraudulent schemes and benefited directly from them and therefore TED should have been removed along with his former Attorneys at Law TESCHER and SPALLINA.
9. That since alleging to be successor trustee, TED has prevented beneficiaries complete access to Estate and Trust information, continuing the pattern and practice of breaches of fiduciary duties, exactly as his predecessors and former counsel, TESCHER and SPALLINA had done in the Simon Estate and Simon Trust while they were acting as fiduciaries.
10. This criminal successor trusteeship has led to a continuation of alleged ongoing criminal acts and an every growing attempt to Cover Up the crimes through continued breaches of fiduciary duties, continued Fraud on this Court, continued Fraud on the Beneficiaries and more.
11. That TED has a duty as a fiduciary once he became aware of the Frauds committed to report the criminal acts to the proper authorities, including regarding crimes where his name was forged, yet for months he did nothing until investigators arrived at his door and for this failure of duty TED should also be removed.
12. That if the Court finds that TED should be removed based solely on the fact that he is prohibited by the terms of the Simon Trusts, the remainder of this pleading may be skipped and the Court can move to Count 1 to continue. The remaining issues are a part of additional reasons for the removal of TED in both Simon and Shirley’s Estate and Trusts, each constituting independent legal grounds for TED’s removal.

## FAILURE TO STATUTORILY ACCOUNT UNDER FLORIDA STATUTE 736.0813 AND 736,08135 DUTY TO INFORM AND ACCOUNT

**A TRUSTEE HAS A DUTY TO INFORM AND TO ACCOUNT**

1. The law of trusts has always imposed a duty on the trustee to keep the beneficiary informed as to the administration of the trust and to account to the beneficiary for all actions taken by the trustee. Without a proper accounting disclosing how the trustee has handled the trust affairs, there is little chance of a trustee being held accountable and therefore, the trustee’s duties could be breached at will without any means of redress.
2. The burden of proof is on the fiduciary to show that he has fully performed his duties, and the means for such proof is by providing a sufficient and proper accounting.

In Frethey v. Durant, 48 N.Y.S. 839 (N.Y.A.D. 1 Dept. 1897), it was held that “when a fiduciary relation is shown to exist, and property or property interests have been entrusted to an agent or

trustee, the burden is thrown upon such agent entrusted to render an account, and to show that all his trust duties have been fully performed, and the manner in which they have been performed. It is assumed that the agent or trustee has means of knowing, and does know, what the principal or cestui que trust, cannot know, and is bound to reveal the entire truth”. This duty to account has been codified in Florida as Florida Statute 736.0813.

**736.0813 Duty to inform and account.**—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee’s duty to inform and account includes, but is not limited to, the following:

1. Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust and the full name and address of the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust’s existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, and the right to accountings under this section.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or on change of the trustee.

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

(2) A qualified beneficiary may waive the trustee’s duty to account under paragraph (1) (d) A qualified beneficiary may withdraw a waiver previously given. Waivers and withdrawals of prior waivers under this subsection must be in writing. Withdrawals of prior waivers are effective only with respect to accountings for future periods.

1. Not only does a beneficiary have standing to seek an accounting, but the trustee is also under an affirmative duty to provide an accounting. As set forth in Florida Statute 736.0813(1) (d) a trustee of an irrevocable trust shall **provide a trust accounting to each qualified beneficiary annually and on termination of the trust or on change of the trustee**. TED has provided NO accountings for the estate and trusts of Simon and Shirley, annually or upon the change of trustee and therefore this Court should remove TED.
2. The duty to account is so fundamental to the law of trusts that this duty cannot be diminished by the trust itself. The trust instrument may provide that a trustee need not account or only account informally to a beneficiary, but according to the Florida Trust Code, any such limiting provisions are ineffectual and cannot relieve the trustee of his or her duty to account fully to a qualified beneficiary. See: Florida Statute. 736.0105(2) (s).

## FAILURE TO ACCOUNT IN THE SIMON ESTATE AND TRUSTS

1. That Ted currently acting as successor trustee in Simon’s Trusts has provided NO accountings statutorily required despite repeated requests by beneficiaries and despite changes in fiduciaries when TED’s former counsel and fiduciaries for the Simon Trusts, TESCHER and SPALLINA were removed.
2. That between TED and his former counsel there has been NO accounting for over two years of the Simon Trusts in violation of probate and trust rules and statutes.
3. That it is believed that Simon while living and PR of Shirley’s Estate prepared an accounting for the Shirley Estate but it is believed to be suppressed and denied by TED, TESCHER and SPALLINA.
4. That in Simon’s estate, an accounting was done by Court Order upon the removal of TESCHER and SPALLINA and it has been challenged on virtually every line by the former Curator Benjamin Brown, Esq., the new PR, Brian O’Connell, Esq. and Eliot.
5. That no backup data for the accounting to verify its accuracy was attached to the final accounting or provided in TESCHER and SPALLINA’S Court Ordered production, in violation of probate rules and statutes and in utter disregard for generally accepted accounting principles.

## FAILURE TO ACCOUNT IN THE SHIRLEY ESTATE AND TRUSTS

1. That since Ted was appointed Personal Representative in Shirley’s Estate, after it was reopened due to the fraud and forgeries committed by TED’s former counsel Tescher & Spallina, PA closed the estate of Shirley using Simon’s identity when he was dead to do so and electing no successor due to the fraud, NO statutorily required accounting has been timely filed with beneficiaries despite repeated requests by beneficiaries and despite the change in fiduciaries when the Estate was reopened, for over a year in violation of probate and trust rules and statutes.
2. That since becoming alleged Successor Trustee of Shirley’s 2008 Shirley Bernstein Trust Agreement on September 13, 2012 Ted has failed to provide a full copy of Shirley’s Trusts with all Schedules and Addendums (as required by statute to account for the Trust Corpus/Trust Res) and has provided no statutorily required accountings.
3. Keep in mind that the function of a fiduciary accounting is two-fold. It is to ensure the beneficiary is fully informed as to what the trustee has done with the trust assets for the accounting period. And, it is to serve as a vehicle for relieving the trustee from further liability for his past actions as trustee. This is the traditional concept of discharge accounting. Both functions are premised on full disclosure by the fiduciary.

In Van Dusen v. Southeast First National Bank of Miami, 478 So.2d 82 (Fla. 3d DCA 1985) the personal representative was under a duty to make a full and fair disclosure of all estate property and a breach of that duty constituted fraudulent concealment. Even though the personal representative had been discharged it had not disclosed all of the estate assets would not be relieved of liability. The court stated that “the price of immunity is disclosure.”

1. Moreover, a trustee cannot fulfill his duty to account by merely turning over to the beneficiary the check register of the trust bank account, a list of checks, bank statements, copies of bills and receipts. It is the duty of the trustee to provide a proper and sufficient accounting.
2. That TED’s failure to account in the Shirley Estate, the Shirley trusts and the Simon Trust is cause for this Court to remove TED as a fiduciary in both the Estates and Trusts of Simon and Shirley Bernstein.

## FAILURE TO INFORM – SHIRLEY AND SIMON ESTATES AND TRUSTS

1. That the attachments to the dispositive documents in Simon and Shirley’s estates and trusts, including but not limited to, Addendums, Schedules, Codicils, prior Wills and Trusts, have been denied and/or concealed from beneficiaries so as to make it impossible to determine the value of estate corpuses and trust res’, in violation of probate and trust rules and statutes.
2. That since becoming alleged successor trustee in the alleged Simon Trust, TED has failed to provide a full copy of the Trusts with all Schedules, Codicils, Attachments and Addendums (as required by statute to account for the Estate Corpuses and Trust Corpuses/Trust Res’).
3. That since TED was appointed by this Court in October 2013 as PR of Shirley’s Estate he has failed to provide a full copy of the Shirley Will with all Schedules, Memorandums, Codicils and Addendums (as required by statute to account for the Trust Corpus/Trust Res) and has provided no statutorily required accountings.
4. That for TED’s failure to inform in the Shirley and Simon Estates and Trusts, TED should be removed by this Court as fiduciary.

## FELONY MISCONDUCT WITH THE DISPOSITIVE DOCUMENTS IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

A TRUSTEE IS UNDER A DUTY TO KEEP ACCURATE RECORDS

1. TED as a trustee has a duty to maintain clear, complete, and accurate books and records regarding the trust. It is important for the trustee to keep clear and complete records so that the beneficiary can tell whether the trustee has acted with prudence, loyalty, and impartiality and whether the costs of administration have been reasonable and appropriate.
2. The common law as developed through the courts of equity have held that when one becomes a trustee, he must maintain records of his transactions so complete and accurate that he can show by them his faithfulness to the trust. It is not enough for the trustee to know that he is honestly performing his duty.

In the case of Wood v. Honeyman, 169 P.2d 131 (Or. 1946), the beneficiaries sued the trustee for an accounting, to recover amounts converted. The trial court removed the trustee and entered a money judgment against him. On appeal, the decision was affirmed. This case held in part that “It must be apparent that when one becomes a trustee and thus undertakes to administer an estate for the benefit of another, he must maintain records of his transactions so complete and accurate that he can show by them his faithfulness to his trust. It is not enough for him to know that he is honestly performing his duty. Since, generally, the burden of proof rests upon him to prove his fidelity; he must be able to sustain his position by honest records.”

1. In Florida the Florida Trust Code explicitly states that a trustee shall keep clear, distinct and accurate records of the administration of the trust.

**736.0810 Recordkeeping and identification of trust property.**

(1) A trustee shall keep clear, distinct, and accurate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee’s own property.

(3) Except as otherwise provided in subsection

(4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(5) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

1. That throughout this complaint and due to the already discovered fraudulent and forged documents, admitted Fraud on this Court and other frauds and torts in the Estates and Trusts of Simon and Shirley, committed in conspiratorial efforts by the former fiduciaries and attorneys at law involved in these matters, **all documents referred to herein are only copies of alleged dispositive documents and beneficiaries have never seen or been provided access to the original signed documents despite repeated requests**.
2. **That all dispositive documents and any estate and trust documents of Simon and Shirley referenced herein contain only ALLEGED LANGUAGE and shall be considered for all purposes to be construed as ALLEGED** only, until such time that the original signed and executed documents are presented to beneficiaries who then have a right to have them forensically inspected to see if the copies and signatures are legally valid and if they have been tampered with.
3. That due to the proven frauds, forgeries and concealment of documents and those criminal acts alleged involving the dispositive documents that remain under ongoing investigations, all fiduciary parties may be acting under fraudulent documents.
4. That due to the already proven and admitted document FRAUDS and FORGERIES, Eliot has the right to demand inspection of all original documents to validate their legal existence, especially where multiple document tampering and fraudulent creations have been proven in the estates and trusts of Simon and Shirley already.
5. That TESCHER and SPALLINA were ordered to turn over all their records and properties in their possession to the Curator, Benjamin Brown, Esq. and whereby no original signed and executed Trusts for Simon and Shirley were turned over to him and in fact no originally signed dispositive documents were presented at all.
6. That at this time NO ORIGINAL SIGNED and legally executed originals exist of the Simon Trusts and the Shirley trusts and Beneficiaries have been denied seeing them for over two years and where there has already been a plethora of felony document tampering, original documents are essential to review and for a legal determination by the this Court as to their validity and construction.
7. The former removed fiduciaries of the Estate of Simon, TESCHER and SPALLINA, upon termination as Co-Trustees, Co-Personal Representatives, Counsel to themselves as fiduciaries in Simon’s estate and Trusts and simultaneously acting as Counsel to TED, have produced NO ORIGINAL DISPOSITIVE DOCUMENTS to the former Curator, Benjamin Brown, Esq., despite the Court’s Order to turn over all records and properties in their possession to the former Curator.
8. That in Eliot’s deposition on September 22, 2014, it was learned that TED and his counsel Alan B. Rose, Esq. also do not have possession of the original signed and executed Simon Trust and Shirley trusts that TED is operating as a fiduciary under. (See YouTube video of Eliot’s September 22, 2014 deposition @ <http://youtu.be/NawfOrynRVY> at timeline time of (2:49:00 – 2:52:30), and the entire video is hereby incorporated by reference in entirety herein.).
9. That in the production documents turned over by TESCHER and SPALLINA in 2014 there were found secreted copies of insurance trust documents in efforts to change beneficiaries on an insurance policy and according to the parole evidence found in the production this trust document suppression was done with intent to defraud the true and proper beneficiaries, insurance company, this Court and a Federal Court.
10. That from the conception of the May 20, 2008 Simon L. Bernstein Trust Agreement to only 48 days prior to Simon’s death when the alleged July 25, 2012 Simon L. Bernstein Amended and Restated Trust Agreement was allegedly executed, Eliot was a beneficiary of both the Simon and Shirley Bernstein Estates and Trusts.
11. That SIMON was suffering at the time the documents were allegedly signed on July 25, 2012 from a number of physical and mental stresses that were causing hallucinations and more and was under physical and mental health treatment for a variety of unexplained symptoms.
12. That 48 days prior to his death Simon was suffering from severe headaches that caused him to go for a brain scan and other medical tests at a number of doctors and suddenly believed he had tumors in his brain, causing severe headaches and then hallucinations. During this time Simon lost all decisional capacity, was incapable of understanding the nature and effect of all financial transactions, including gifting, investing, withdrawal of funds, transfer of funds between accounts, etc.
13. That weeks after allegedly after signing the documents SIMON died unexpectedly and it was alleged by TED and others that he was poisoned and murdered.
14. That TED instituted a Sheriff Investigation and an Autopsy.
15. That the alleged July 25, 2012 Simon Amended and Restated Trust has been challenged and is alleged wholly fraudulent and forged and constructed with intent to commit fraud.
16. That the alleged July 25, 2012 Simon Amended and Restated Trust and July 25, 2012 alleged Simon Will have already been confirmed by Governor Rick Scott’s Notary Public Division to have been improperly notarized.
17. That the improper notarization of the July 25, 2012 Simon Amended and Restated Trust makes it impossible to know if Simon even appeared before the Notary, Lindsay Baxley who is TED’S personal assistant on the alleged day of signing.
18. That documents have already been proven to be POST MORTEM forged, fraudulently altered and fraudulently notarized in the Estates and Trusts of Simon and Shirley.
19. That the only witnesses to the alleged 2012 Simon Amended and Restated Trust are SPALLINA and MORAN both of whom have already confessed to Felony criminal document tampering in the estates and trusts, including but not limited to,
	1. Forgery (including Post Mortem forgery of Simon’s signature and forgery of Eliot and TED’s name by Moran, a Notary Public / Legal Assistant of Tescher & Spallina, PA),
	2. Fraudulent Notarizations (MORAN was arrested and convicted for this crime and her Notary License Revoked),
	3. Fraud on the Court by Tescher & Spallina, PA who posited a series of false instruments with the Court, and,
	4. Fraudulent Alteration and Dissemination of a Shirley Bernstein Trust document. The Fraud was committed and then later admitted to by Attorney at Law SPALLINA to Palm Beach County Sheriff Investigators. The document benefiting TED’s family was then disseminated with fraudulent intent by Tescher & Spallina PA to third parties, while SPALLINA was simultaneously representing TED as the alleged fiduciary for Shirley’s trusts).
20. That MORAN and SPALLINA’S statements or any past actions they allege to have participated in regarding the dispositive documents cannot be relied on, nor trusted, especially for any verification of documents that they have alleged to have witnessed or executed.
21. That the alleged 2012 Simon Amended and Restated Trust was created by TESCHER and SPALLINA to knowingly and fraudulently attempt to alter Shirley’s already established irrevocable Beneficiary Class in the 2008 Shirley Bernstein Trust Agreement.
22. That the alleged 2012 Simon Trust was created by TESCHER and SPALLINA to knowingly and fraudulently attempt to alter Simon’s already established Beneficiary Class and the Fiduciaries in the 2008 Simon L. Bernstein Trust Agreement.
23. That the 2008 Shirley Bernstein Trust Agreement became irrevocable on her date of death on December 08, 2010 and the attempt to change this was through an alleged fraudulent use of a Power of Appointment that Simon is alleged to have exercised through the unlawfully drafted and alleged executed 2012 amended and restated Simon Trust.
24. That the 2012 Simon Amended and Restated Trust was also used to illegally seize dominion and control of the Estates and Trusts of Simon and Shirley by inserting fraudulent fiduciaries, attorneys at law TESCHER and SPALLINA, in Simon’s estate and trusts and TED in Shirley’s estate and trusts, who either inserted themselves into the documents or whole cloth fraudulently created the documents and replaced fiduciaries who were long in place in the 2008 Shirley and Simon dispositive documents.
25. That the alleged 2008 Trust and Will of Simon turned over recently by Court Order that had been secreted from the beneficiaries by TESCHER and SPALLINA have the creditor William Stansbury and NOT TED as trustee. TED is considered predeceased for all purposes of the disposition of the alleged 2008 Simon Trust and 2012 amended and restated Simon Trust.
26. That the alleged 2008 Shirley Trust is alleged to name TED as a successor trustee and not William Stansbury like in the Simon Trust and no original signed and executed Shirley Trust document has been produced to prove this and beneficiaries have been denied requests to produce the original documents since Simon passed away.
27. That the alleged 2008 Shirley Trust is alleged to name TED as successor trustee despite the fact that the Shirley Trust considers TED predeceased for all purposes of disposition of the trust.
28. That nothing Simon is alleged to have done or intended to do via his alleged 2012 Amended and Restated Trust, could have legally altered the beneficiary class of Shirley by adding or subtracting new beneficiaries of the 2008 Shirley irrevocable trusts once she passed away.
29. That Eliot is designated in Shirley’s beneficiary class as a 1/3rd beneficiary of Shirley’s irrevocable trusts since Shirley died on December 08, 2010.
30. The Court must take note that the fraudulent document crimes were **committed and then promulgated by TED and his FORMER ATTORNEYS AT LAW, TESCHER and SPALLINA, who were all Fiduciaries AND/or COUNSEL involved directly in the estates and trusts of both simon and shirleY**.
31. That the fraudulent documents are in part created to change beneficiaries illegally in the Estates and Trusts of Simon and Shirley but also are part of an effort to seize dominion and control over the estates and trusts by TED and his attorneys at law, TESCHER and SPALLINA.
32. That once dominion and control was illegally gained by TED and his attorneys at law TESCHER and SPALLINA using the fraudulent documents, together they began to loot the estates and trusts through a series of fraudulent acts that are under a series of ongoing state and federal, civil and criminal actions.
33. That once dominion and control was illegally gained by TED and his minion of attorneys at law they began recklessly billing outrageous, unaccounted for and non-Court approved legal and fiduciary fees.
34. That once dominion and control was illegally gained by TED and his minion of attorneys at law they began concealing, altering and destroying records and precluding beneficiaries from any financial information or access to the dispositive documents.
35. That the estates and trusts have been paying and continue to pay legal fees for the creation and dissemination of fraudulent legal documents, costly legal bills for Court time to advance the frauds and now the Court is allowing estate and trust assets to be used in the defense of the crimes by TED.
36. Legal and fiduciary fees were paid to SPALLINA, TESCHER and TED, who misused estates and trusts assets of the beneficiaries to pay for the legal fees to commit crimes against the beneficiaries.
37. That these fees illegally engrossed and enriched TED and his Attorneys at Law.
38. That legal and fiduciary fee meters have run rampant with often 6-7 attorneys attending each hearing since the September 13, 2013 hearing before this Court when the felonies of the Fiduciaries and Counsel were first discovered by this Court.
39. Subsequent to discovering the initial felonies, lies were told for months on end by TESCHER, SPALLINA, TED and MANCERI to this Court and the beneficiaries regarding the extent of the criminal acts, misleading the Court and the Beneficiaries from the truth, in efforts to cover up and conceal the crimes and wasting everyone’s time, effort and money.
40. That after the initial crimes of Moran were discovered, TESCHER and SPALLINA claimed these were the only crimes they were aware of in the estates and trusts and propounded months of continued lies to the Court denying knowledge of any other criminal acts.
41. That only upon the expenditure of city and state funds to investigate TESCHER, SPALLINA, MANCERI, MORAN, TED and others, were admissions of new crimes confessed to the Sheriff Investigators, including ATTORNEY AT LAW SPALLINA’S confession that he personally altered Shirley trust documents and distributed them via wire and mail to perpetrate a fraud on Beneficiaries.
42. That even the confessions of MORAN and SPALLINA appear to now have problems as they appear perjurious and several of the conspirators’ statements appear contradictory to their earlier statements and those of others involved.
43. That there is an Illinois insurance litigation underway, again with TED at the helm claiming to be a “Trustee” of a lost trust that no executed copies exist for.
44. That the Illinois insurance litigation has been another huge waste of time and money only to reveal an alleged fraud on a federal court, fraud on this Court, insurance fraud, bank fraud and more.
45. That TED’s Attorneys at Law, TESCHER and SPALLINA, are found fraudulently aiding and abetting TED and his sister PAMELA in the Illinois Insurance Litigation in efforts to convert estate assets from the beneficiaries to themselves.
46. That in September of 2013, Eliot’s initial Petition was finally heard in part and in Court it was admitted that there was fraudulent notarizations and further Fraud Upon the Court was discovered by Judge Martin Colin when he discovered misuse of Simon’s identity after he was dead, acting as PR while dead and filing documents dead, which was part of the elaborate fraud to seize Dominion and Control of the estates and trusts and then alter beneficiaries to favor TED and PAMELA’S families.
47. That despite knowing of document fraud and forgery, including done in their own names, TED, PAMELA, JILL and LISA, acting as alleged Trustees for their children did nothing to report the crimes.
48. While knowing of the forged and fraudulent documents in their names, TED, PAMELA, JILL and LISA concealed the information and instead began to steal off assets of the estates and trusts to unjustly enrich themselves at the expense of their own children and other minor children, who they allege are the beneficiaries.
49. That with TED as a fiduciary, beneficiaries of insurance policies, IRA accounts, bank accounts and trusts are now missing, assets are missing (including millions of dollars in Furniture, Jewelry, Art, etc. now reported stolen and under investigation).
50. During the time TED had knowledge of fraud that called the dispositive documents of Simon and Shirley, he sold real estate at fire sale prices and distributions were made to knowingly improper parties by TED, including to his family members.
51. That the Attorneys at Law recruited by TED, TESCHER and SPALLINA that acted as TED’S counsel in these matters should ALL be removed, reported to the proper authorities by this Court and sanctioned for their direct involvement in the advancement of fraudulent schemes in the estates and trusts of Simon and Shirley.
52. That the Attorneys at Law who were recruited by TED, TESCHER and SPALLINA and alleged to be involved in conspiring with TESCHER, SPALLINA, MORAN and TED to commit various of the fraudulent acts and cover them up, include but are not limited to; (i) TESCHER who was removed as a fiduciary from the estate and trusts of Simon and resigned as TED’S Counsel; (ii) SPALLINA who was removed as a fiduciary from the estate and trusts of Simon and resigned as TED’S Counsel; (iii) Rutherford Mulhall whose firm was shut down, represented TED individually and NOT Simon in the Stansbury Creditor Lawsuit (Simon was never represented by counsel in the action instituted months before his death); (iv) Greenberg Traurig – replaced Rutherford Mulhall and resigned for conflicts in creditor Stansbury Litigation; (v) Mark R. Manceri, Esq. – replaced Greenberg Traurig and resigned after being threatened by Judge Colin in a September 13, 2013 hearing with having his Miranda Rights read to him; (vi) John Pankauski, Esq., – resigned as TED’S counsel in a variety of capacities; (vii) John Morrissey, Esq. – allegedly representing TED and PAMELA’s children; (viii) Adam Simon, Esq. (IL Insurance Litigation) – representing TED personally and as the alleged successor trustee of a legally nonexistent trust defined further herein; (ix) David B. Simon, Esq. (IL Insurance Litigation) – brother in law to TED and husband to PAMELA, representing TED personally and as the alleged successor trustee of a legally nonexistent trust defined further herein and (x) Alan B. Rose, Esq. – the last lawyer standing in the Florida Probate for TED.
53. That additional expense in legal fees arising from the frauds and breaches thus far to other parties, include but are not limited to, (i) Peter Feaman, Esq. as counsel for Creditor William Stansbury, (ii) Christine C. Yates, Esq., as counsel for Eliot and Eliot’s children, (iii) Brandon Pratt, Esq., as counsel for Eliot and Candice Bernstein, (iv) Benjamin Brown, Esq. as Curator to replace TESCHER and SPALLINA in the Simon Estate, (v) Benjamin Brown, Esq., as Administrator Ad Litem in the Illinois Insurance Litigation, (vi) Brian O’Connell, Esq., as Personal Representative/Executor of the Simon Estate, and (vii) James Stamos, Esq., as Counsel for the federal court insurance litigation.
54. That all the lawyers who have been retained are due to the fraudulent activity and breaches upon breaches of fiduciary duties of the fiduciaries and counsel, all were retained or involved with TED as his counsel or business associates.
55. A trustee who, after being requested to do so, refuses to provide a beneficiary with relevant information about the assets of the trust, how the trust is being administered or other material information being considered by the trustee in the discharge of his duties or who refuses to provide an accounting when required, has breached his fiduciary duty owing to the beneficiary. TED has failed to provide any information about the assets of the trusts and therefore should be removed for Breach.

## CONFLICTS OF INTEREST

## ILLINOIS INSURANCE LITIGATION CONFLICT OF INTEREST

1. That at the time of SIMON'S death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 (the "Insurance Trust)[[3]](#footnote-3) as beneficiary, a trust that **no legally valid copy of an executed trust exists** for to this day.
2. That shortly after SIMON's death in 2012, SPALLINA submitted a claim form to Heritage Union Life on behalf of a legally nonexistent alleged Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, that SPALLINA signed as acting “Trustee” of the legally nonexistent trust, in efforts to make the insurance proceeds payable to his law firm trust account and distribute the proceeds outside the Simon Estate and Simon Trust that he was Co-Trustee and Co-Personal Representative of and to the detriment of the Estate and Simon Trust beneficiaries and to the benefit of his business associate and legal client TED.
3. That SPALLINA did this for the benefit of the grown children of Simon Bernstein (excluding Eliot), including directly paid to TED and his sister PAMELA, who were considered predeceased under the estate plans and in detriment to the Simon Estate and Simon Trust beneficiaries who would receive the benefits if no legally valid beneficiary existed at the time of death.
4. That at the time of filing the alleged fraudulent insurance claim, Co-Personal Representatives and Co-Trustees, TESCHER and SPALLINA had in their possession at the time a 2000 insurance trust done by Proskauer Rose, LLP that recent documents submitted in their Court Ordered production upon removal reveal, which they intentionally secreted with TED and PAM to alter beneficiaries of the insurance policy.
5. That SPALLINA submitted this death benefit claim despite having informed Heritage by letter shortly thereafter that he was "unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995" that he was allegedly acting under.
6. That under Florida law, if it is determined that no Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 existed at the time of SIMON'S death or currently, the insurance proceeds are payable to the Estate of Simon and then pour over into trusts.
7. The insurance benefits may possibly be used to satisfy Creditor claims.
8. That in no scenario would TED or PAMELA receive any proceeds if they flowed into the Estate and Trusts of Simon and thus TED and PAMELA have conflicting interests with their children in seeking the insurance proceeds, as they allege their adult children to be beneficiaries of Simon’s Estate and Trusts who would receive the proceeds instead.
9. Where TED and PAMELA are both acting as trustees for their adult children under the Simon Trust and both have competing personal interests with their children to get the proceeds to themselves through the missing and lost, legally nonexistent, trust scheme.
10. That no legally executed insurance trust instrument was produced by SPALLINA to prove a beneficial interest and Heritage refused to pay the life insurance proceeds to anyone without an order from this Court and so Heritage DENIED the claim[[4]](#footnote-4).
11. To this date, almost two years later, no legally executed Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 has been tendered in the federal Illinois insurance litigation, to the beneficiaries or to this Court.
12. That after SPALLINA’S claim was denied by Heritage, TED without any transfer of trusteeship, replaces SPALLINA as alleged “Trustee” of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 that TED also claims to have never seen or possessed.
13. TED then filed an Illinois circuit court breach of contract lawsuit, which was then transferred to federal court in the United States District Court for the Northern District of Illinois in Chicago, under the tutelage of the Honorable Amy St. Eve., claiming Heritage had failed to pay the claim to SPALLINA.
14. TED’s counsel when he files the lawsuit is the law firm of Tescher & Spallina, PA, with TESCHER and SPALLINA being the same attorneys at law that are simultaneously representing the Simon Estate and alleged 2012 Simon Trust.
15. That SPALLINA and TESCHER act against the beneficiaries of the Simon Estate and Simon Trust interests they are supposed to be protecting and instead act in favor of their client, business associate and bedfellow TED and his sister PAMELA.
16. As fiduciaries of the Simon Estate and Simon Trust, TESCHER and SPALLINA in fact make efforts to block the Simon Estate, Simon Trust and the beneficiaries from pursuing their interests in the proceeds.
17. That the Estate of Simon filed a Motion to Intervene in the Illinois life insurance litigation to assert the Estate's interest in the life insurance proceeds after TESCHER and SPALLINA were removed and the Curator retained counsel with the approval of this Court.
18. That the Estate of Simon filed a Motion to Intervene in the Illinois life insurance litigation to assert the Estate's interest in the life insurance proceeds and TED filed objections to prevent the Estate from pursuing its rights to the proceeds.
19. The Plaintiffs of the Illinois life insurance litigation, include TED acting as “Trustee” of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 filed a Memorandum of Law in Opposition to the Estate's Motion to Intervene (the "Opposition Memorandum").
20. That the opening paragraph of the Opposition Memorandum states as follows:

**NOW COMES** Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by **TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually,** PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN. (**emphasis added**)

1. That TED stands to benefit personally if the claim by the Simon Bernstein Estate to the life insurance proceeds is defeated because TED and his siblings (**other than Eliot**) have taken the position that they are the beneficiaries of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 and not their children.
2. That TED, PAMELA, JILL and LISA have provided no counsel to represent their children’s interests as benefactors of the Estate of Simon in the Illinois action, despite claiming to act as Trustees for them.
3. That despite the opposition of TED BERNSTEIN, PAMELA, JILL and LISA to the Intervention, the federal court has granted the Estate's Motion to Intervene.
4. That TED is now an opposing party of record to the Estate's interest in the Illinois life insurance litigation.
5. That TED, individually and as the alleged trustee of the alleged legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, has placed his personal interests above the interests of the alleged 2012 Simon Trust beneficiaries, who TED claims are the grandchildren of SIMON, including his own children.
6. That through TED's open, notorious and public opposition to the Estate's intervention in the Illinois life insurance litigation, an inherent conflict of interest is displayed where TED is blocking the interests of his children and other beneficiaries while acting as Trustee of the Simon Trust, so that he may directly convert the monies to his own pocket and that of his sister PAMELA.
7. Production documents of TESCHER and SPALLINA turned over by Court Order reveal that prior insurance trusts that were executed AFTER 1995 in 2001 were purposely secreted by TESCHER, SPALLINA, PAMELA and TED from the this Court, the Federal court and the insurance carrier to fraudulently convert the insurance proceeds to favor TED and PAMELA at the detriment of other beneficiaries.
8. That TED, as alleged Successor Trustee of the alleged 2012 Simon trust, owes a duty of loyalty under §736.0706(1), Fla. Stat. (2014) to the alleged trust beneficiaries, to administer the trust solely in their interest and his conflicted actions in the Illinois insurance litigation have violated that duty.
9. This means TED acting as a fiduciary to the Trust must support, or at the least not obstruct, the efforts of the Estate and Simon Trust to attempt to recover an additional alleged $1.7 million in life insurance benefits[[5]](#footnote-5), especially where TED benefits directly from his obstruction and TED has been found to have acted in efforts to obstruct the Estate’s and the alleged 2012 Simon Trust from asserting their interests through breaching his fiduciary duties.
10. That if the insurance is recovered to the Estate this would dramatically increase the Estate assets that Eliot and/or his children will receive.
11. That this attempt to convert the insurance through a lost insurance trust scheme and missing and suppressed documents have caused intentional interferences and delays with expectancies, further damaging the Estate and Simon Trust beneficiaries.
12. That by opposing intervention by the Estate TED's actions exposed the estate/trust assets to liability.
13. That the need to have this Court Order intervention on behalf of the Estate of Simon was due to the fact that TED’S counsel and the prior Co-Personal Representatives/Executors and Co-Trustees SPALLINA and TESCHER to the estate, failed to file any intervener action on behalf of the estate and in fact aided and abetted TED’S efforts to convert the asset of the estate to TED and his sister PAMELA by TESCHER and SPALLINA’S by first filing the alleged Fraudulent Insurance Claim to benefit their client TED and then filing the fraudulent breach of contract litigation.
14. That TESCHER and SPALLINA blocked the Simon Estate and the alleged 2012 Simon Trust while acting as fiduciaries from retaining representation in the Illinois insurance litigation.
15. That TESCHER, SPALLINA, TED, PAMELA, JILL and LISA blocked the grandchildren, including minor children, from their interests being represented by counsel in the Simon Estate and Simon Trust acting as their trustees and then further precluded them from representation in the Illinois insurance litigation as well, leaving the grandchildren’s interests wholly unprotected while trying to secure the benefits for themselves.
16. That SPALLINA actually acted as the “Trustee” of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 that he claims never to have seen or possessed and also simultaneously fraudulently acted as the “Trustee” of the primary beneficiary of the Heritage Policy, LaSalle National Trust, NA, according to letters discovered from Heritage in TESCHER and SPALLINA’s court ordered production.
17. SPALLINA is addressed in months of correspondences as the Trustee of “LaSalle National Trust NA” in mail sent to his business address in efforts to secure the proceeds to his law firm trust account.
18. That both TED and SPALLINA have made statements that they have never seen or possessed legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 and yet both claim to be “Trustee” of this legally nonextant trust in pursuing their fraudulent attempts to collect and convert the proceeds outside the Simon Estate and Simon Trust to improper parties through alleged; insurance fraud, institutional trust company fraud, mail and wire fraud, fraud on a federal court, fraud on this Court and Fraud on the true and proper beneficiaries.
19. That the Estate is now represented in the Illinois insurance litigation thanks to the efforts of, (i) this Court for allowing the Estate to retain counsel to intervene, (ii) William Stansbury who has financed the counsel for the Illinois insurance litigation to this point on his own dime to protect his interests of himself as a Creditor and the beneficiaries of the Simon Estate and Simon Trust, (iii) Stansbury’s counsel Peter Feaman, Esq. for preparing the court filings to get independent representation, (iv) Benjamin Brown, Esq. for acting as Curator and Administrator Ad Litem to get independent representation to represent in the federal court and Brian O’Connell, Esq. who has taken over the as Personal Representative, the Estate is now finally after two years represented by counsel, James J. Stamos, Esq. in the federal insurance litigation.
20. That while the Estate is now represented in the Illinois Litigation, none of the grandchildren have independent counsel representing them and their interests.
21. That the grandchildren’s interests are not being represented because it would be opposite their parents’ interests in that litigation, a beyond obvious and non waivable conflict and so Eliot is unsure if the grandchildren are even aware they have interests.
22. That it should be noted that TED’s children’s ALLEGED counsel, John P. Morrissey, Esq., also argued against the interests of his alleged clients to receive the benefits, in efforts to block the Estate beneficiaries, his clients, from representation in the Illinois insurance litigations.
23. That Morrissey was questioned about this conflict by Judge Colin in a hearing as to why he was arguing against the interests of his alleged clients. Morrissey stated he had not talked to his clients about waiving their interests in the policy, while having already argued against their interests. This indicates that Morrissey may in fact be working for TED’s best interest and not his children.
24. That the Court realizing that Morrissey was representing against the interests of his clients catches him in the act in a hearing as the following hearing excerpt exhibits;

|  |  |
| --- | --- |
| 2 THE COURT: You represent, Mr. Morrissey,3 who?4 MR. MORRISSEY: I represent the fourgrandchildren.6 THE COURT: Who, according to Mr. Feaman,7 may benefit if this money comes to the estate?8 MR. MORRISSEY: Correct.9 THE COURT: So the way the case is beinglitigated now –is the only plaintiff the11 Simon Bernstein Irrevocable Insurance Trust vs.12 the life insurance company?13 MR. MORRISSEY: Well –14 THE COURT: That's the way the style ofthe case is. Are there more plaintiffs than16 that?17 MR. FEAMAN: They amended subsequently and18 joined the adult four of the five of the19 adult children were joined as plaintiffs.THE COURT: And who is representing them?21 MR. FEAMAN: Somebody up in Chicago in22 that action.23 THE COURT: Okay.24 MR. ROSE: I think technically the lawsuitwas started by the trust against the insurance1 company. The insurance company filed an2 interpleaded, probably by counterclaim. My3 understanding is, subject to someone correcting | 4 me, the insurance company was grantedinterpleader. They put the funds in the6 registry of the court. The insurance company7 is out of the case and even though you have the8 original style what's left is people asserting9 a claim to the proceeds.Eliot is there, I think, advocating the11 claim on behalf of the estate12 THE COURT: Eliot is prose. I want -we13 recognize that. From Mr. Morrissey’s point of14 view, do you take a position that your clients,the grandchildren, may have an interest in16 these monies?17 MR. MORRISSEY: No -well,our position18 is the following19 THE COURT: That question first.MR. MORRISSEY: our position -no,on21 behalf of the four grandchildren.22 THE COURT: You waive any -onbehalf of23 those children you waive any claim to that24 money?25 MR. MORRISSEY: I'm not going to waive on1 the record.**2 THE COURT: You have to stand on one side****3 of the fence or the other on that.****4 MR. MORRISSEY: Quite honestly, I haven't****asked them that question. I can't waive****6 something on behalf of my clients when I****7 haven't asked them that question point blank.** |

1. That once TESCHER and SPALLINA were removed from these matters the Estate was able, by Order of the Court, to retain counsel to intervene in the Federal action to protect the beneficiaries.
2. That the Federal court has now allowed that intervention on behalf of the Estate of Simon and the Estate is represented for the first time in almost two years, despite the best efforts to block the Estate from entry by SPALLINA, TESCHER, TED, ROSE and MORRISSEY.
3. More importantly, TED'S efforts in the Illinois life insurance litigation are designed to keep the alleged $1.7 million out of the estate and trust and to redirect the money to him and his siblings (excluding Eliot).
4. That in fact, TED and his siblings attempted to convert the insurance proceeds without telling Eliot and in fact told Eliot they were seeking an order from this Court to determine the beneficiaries, while simultaneously trying to move it out the back door secretly.
5. That as a consequence of the foregoing conflict of interest in the Illinois insurance litigation, TED is in breach of his fiduciary duty to the beneficiaries of the 2012 Simon Trust by opposing efforts to make the Estate and Simon Trusts more solvent, which in tum exposes the Estate and Simon Trusts to increased liability, and warrants his removal under §736.0706(2)(a).
6. That TED’s continued interference is an attempt to redirect these estate assets to himself personally and would further damage the estate beneficiaries, as TED’S interference and obstruction has already caused un-necessary and costly legal fees to the Estate and Simon Trusts beneficiaries, this Court, the Creditor and others, as these efforts to fraudulently move the insurance proceeds and obstruct and interfere with the Estate and Trusts interest and representation were all billed to the Estate and Simon Trusts.
7. Additionally, TED’S inherent and irreparable conflict of interest is a breach of his duty of loyalty and warrants removal under *Aiello, supra,* 793 So. 2d at 1152. *See also Brigham v. Brigham,* 11 9 So. 3d 374, 386 (Fla. 3d DCA 2009); *McCormick v. Cox,* 118 So. 3d 980, 987-88 (Fla. 3d DCA 2013) (removal of trustee was warranted where trustee had a conflict of interest and breach his fiduciary duties; trial court properly exercised its authority to remove trustee).

## TED IS CONFLICTED WITH BENEFICIARIES

1. That allegedly until 48 days prior to Simon’s death, Eliot, Jill and Lisa were the only beneficiaries of the Estates and Trusts of both Simon and Shirley.
2. That the beneficiary class of the Shirley trusts was irrevocable at the time of her death on December 08, 2010 as Eliot, Jill and Lisa as the only beneficiaries and could not thereafter be altered to add or subtract beneficiaries.
3. That TED and his attorneys have attempted to claim that Shirley’s beneficiaries have been altered two years after her death allegedly by Simon to include the children of TED and his sister PAMELA, to the disadvantage of Eliot, Jill and Lisa.
4. That TED and his attorneys have attempted to claim that Simon amended and restated his 2008 Simon L. Bernstein Trust Agreement on July 25, 2012, days before he died, to change the beneficiaries to Simon’s grandchildren.
5. That since the beneficiaries are now in dispute, whereby TED and his family may receive nothing in either the Simon and Shirley estates or their trusts, TED is now absolutely conflicted with beneficiaries and his actions cannot be seen as impartial due to this conflict of interest and therefore he should be removed by this Court.

## TED IS CONFLICTED WITH HIS FORMER COUNSEL AND HIMSELF

1. That TED will not prosecute as alleged Successor Trustee his friends and former counsel TESCHER and SPALLINA, although that would be in the Simon Trust’s best interest, as they all participated in the criminal misconduct to benefit TED and therefore this conflict is further cause for removal of TED.
2. That TED will not prosecute as alleged Successor Trustee his friends and former counsel TESCHER and SPALLINA, although it is in the Simon Trust’s best interest, as this could lead to further implications of TED’S involvement in the alleged crimes and civil torts discussed herein.
3. That TED will not prosecute as alleged Successor Trustee himself, either personally or as alleged Successor Trustee, although it is in the Simon Trust’s best interest, as this could lead to further revelations into TED’S involvement in the alleged crimes and civil torts discussed herein.

## ADVERSE INTERESTS WITH BENEFICIARIES

## TED’S ADVERSE INTEREST WITH ELIOT

1. That TED and his attorneys at law have adverse interests to Eliot and in fact are hostile towards Eliot and his minor children, due to the fact that Eliot is the one who has uncovered their frauds, exposed them to criminal and civil authorities and is still pursuing them in state and federal, civil and criminal legal actions.
2. That since Eliot has uncovered these crimes and alleged many others, TED and his lawyers have moved to Extort Eliot through a number of extortion type schemes to get Eliot to participate in the criminal misconduct and give them an implied consent release or else shut his family off their inheritances through intentional interference with expectancy.
3. That TED and his attorneys at law have conspired to use a strategy of FORCE and AGGRESSION on Eliot, conducting unbecoming a fiduciary to a beneficiary, which was discovered in an email TED sent to Eliot describing TED and ALAN ROSE, ESQ. tactics to use against Eliot that the Court has ruled as Privileged and secreted from the record. However, TED has stated under oath at a hearing on July 11, 2014 his intents when he stated,
4. BY MR. ELIOT BERNSTEIN
5. **Q Did you use the words force and aggression**
6. **to -- to invoke a strategy of force and aggression**
7. **against Eliot Bernstein? [Emphasis Added]**
8. [TED] A I don't know. Can I see the e-mail, please?
9. THE COURT: That's fair.
10. MR. ELIOT BERNSTEIN: Sure.
11. THE COURT: He's showing him a document.
12. MR. ROSE: I was just cautioning him not to
13. publish the --
14. THE COURT: It's still ID only. Go ahead.
15. So you've shown him, Eliot, the document. What's
16. your question?
17. BY MR. ELIOT BERNSTEIN
18. Q Did you say you were -- that you suggested
19. using force and aggression with Eliot?
20. MR. ROSE: Object to the form.
21. THE COURT: Overruled.
22. THE WITNESS: No.
23. BY MR. ELIOT BERNSTEIN
24. Q Can you read that section into --
25. MR. ROSE: Objection to him reading it.
26. THE COURT: Well --
27. MR. ROSE: He can read it to himself.
28. THE COURT: Yeah, you can read it to yourself
29. and then ask a question. But you also need to
30. tell me what part you're reading.
31. MR. ELIOT BERNSTEIN: Him being aggressive
32. and forceful.
33. THE COURT: Where -- what paragraph should I
34. read?
35. MR. ELIOT BERNSTEIN: Like the fifth line --
36. the first one, two, three, four --
37. THE COURT: Okay. Let me read it.
38. MR. ELIOT BERNSTEIN: -- sixth line where it
39. starts --
40. THE COURT: Give me a chance. Ted and I will
41. read at the same time.
42. Okay. I read it. Go ahead.
43. THE WITNESS: I've read it too.
44. BY MR. ELIOT BERNSTEIN
45. Q Does that refresh your memory? Did you use --
46. if you used the words --
47. A My answer is still no.
48. Q -- to be forceful and aggressive with Eliot?
49. A You asked if I used the words force and
50. aggression.
51. Q Okay. I'll ask it again. Did you use the
52. words being aggressive and forceful?
53. **A Yes, I did. [Emphasis added]**
54. That this transcript admission by TED, that he and his attorney at law, Alan Rose, Esq. conspired to use force and aggression upon Eliot, a beneficiary, who is trying to expose their crimes and this behavior irrefutably exposes their adverse interests to Eliot and further conflict TED.

## TED’S ADVERSE INTEREST HAVE CAUSED HARM TO MINOR CHILDREN BENEFICIARIES

1. That this Court Ordered on \_\_\_\_\_\_\_\_\_\_\_\_date, that tuition for Saint Andrews school, including past due balances, be paid for Eliot’s three minor children for the 2014-2015 school year.
2. That TED intentionally failed to make the Court Ordered payment, resulting in all three children being removed from school on the second day of school and forced them to attend new schools.
3. That this has caused long term damages to the minor children emotionally and scholastically.
4. That from Conflicts of Interest and Adverse Interests with these minor children beneficiaries and his own interests, TED has failed to maintain a Duty of Impartiality owed to the Beneficiaries and should therefore be removed.

## CRIMINAL MISCONDUCT IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY AND CONSTRUCTIVE FRAUD[[6]](#footnote-6)

## PROVEN FELONY CRIMINAL MISCONDUCT

1. That there has been Criminal Misconduct in the Shirley and Simon Bernstein Estate and Trusts committed by TED and his former and current Attorneys at Law, and where each proven and alleged crime has been to the benefit TED.
2. There are serious proven and admitted felony crimes and further allegations of fraud, forgery and fraudulently altered trust documents in the Shirley Bernstein Estate and Shirley Bernstein trust, where Ted Bernstein is the Personal Representative of the Estate of Shirley, the alleged Successor Trustee of Shirley’s trusts and the alleged Successor Trustee of Simon’s Trusts and all of the criminal acts and civil torts have taken place on his watch as a fiduciary with his friends and counsel TESCHER and SPALLINA and he has done nothing to rectify or investigate the crimes and torts on behalf of the estate of Shirley and Simon and Shirley trusts.
3. That documents were submitted to the Court bearing notarized signatures of Simon Bernstein on a date after he had passed away that were used to illegally close Shirley’s Estate that TED at the time claimed he was the Successor Personal Representative of Shirley’s estate.
4. That it was learned that Simon closed the estate of Shirley while dead and no successor personal representative was elected due to the fraud.
5. That signatures were admitted to be FORGED for six parties, including one for Simon done Post Mortem, one for Eliot, TED, PAMELA, JILL and LISA used to close the estate of Shirley and posited by Tescher & Spallina PA with this Court on behalf of their client Simon who they knew was deceased.
6. That in addition to the forged and fraudulently notarized waivers, the following documents were posited for Simon as PR while dead constituting further fraudulent documents in these matters, Fraud on the Court and Fraud on the Beneficiaries. From the Shirley Bernstein docket:

Note Simon is Deceased on September 13, 2012 so how is he filing these while Dead = Fraud on the Court and Beneficiaries

14 ASNA - AFFIDAVIT/STMNT RE: CREDITORS

Filing Date: 24-OCT-2012

Filing Party: **BERNSTEIN, SIMON L**

Disposition Amount:

Docket Text: none.

NOTES: Allegedly Signed April 09. 2012 and Filed by Simon as PR while Dead October 24, 2012. Attorneys Robert Spallina and Donald Tescher fail to Notify Court of Simon Death and Simon is attesting in present in October when he affirms to Court.

15 PDCH - PETITION FOR DISCHARGE

Filing Date: 24-OCT-2012

Filing Party: **BERNSTEIN, SIMON L**

Disposition Amount:

Docket Text: none.

22 NTCT - NON-TAX CERT/RCPT/AFFIDAVIT

Filing Date: 24-OCT-2012

Filing Party: **BERNSTEIN, SIMON L**

Disposition Amount:

Docket Text: none.

23 PBCK - PROBATE CHECKLIST

Filing Date: 24-OCT-2012

Filing Party: **BERNSTEIN, SIMON L**

Disposition Amount:

Docket Text: none.

24 EXPM - EXPARTE CLERKS MEMO

Filing Date: 06-NOV-2012

Filing Party: COLIN, JUDGE MARTIN H

Disposition Amount:

Docket Text: none.

25 WAIV - WAIVER

Filing Date: 19-NOV-2012

Filing Party: **BERNSTEIN, SIMON L**

Disposition Amount:

Docket Text: OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE

Admitted Created Whole Cloth and Forged and Fraudulently Notarized by Kimberly Moran, Legal Asst & Notary Public for Tescher & Spallina, P.A. who has been ARRESTED BY PALM BEACH COUNTY SHERIFF and GOVERNOR RICK SCOTT NOTARY DIVISION SUSPENSION OF LICENSE. FORGED AND CREATED POST MORTEM FOR SIMON. THEN TESCHER & SPALLINA POSITED WITH COURT POST MORTEM WITH SIMON ACTING AS PERSONAL REP AS IF ALIVE!!!!!!!!!!!!!!!!!

1. That upon learning of the forged and fraudulent documents, TED acting as the alleged fiduciary did nothing to protect the beneficiaries of the Estate of Shirley and failed intentionally to report the criminal misconduct to this Court or the authorities until months after learning of the crimes when the Sheriff’s office contacted him.
2. That these six documents and OTHER documents were then posited with the Court by TESCHER and SPALLINA through their law firm Tescher & Spallina P.A. on behalf of Simon acting as the PR/Executor while DEAD in a bizarre FRAUD ON THIS COURT to close the estate of Shirley using Simon while dead.
3. That Simon was DEAD and yet acted as PR/Executor for months after he passed and where TESCHER and SPALLINA failed to notify the Court of his death and elect a successor to properly and legally close Shirley’s Estate, instead using Simon to close the Estate for four months after he had passed away.
4. That during the time Simon acted as PR while dead to close Shirley’s estate, TED was also acting as PR of her estate to effectuate other transactions necessary to convert assets, despite the fact that Simon closed the Estate while dead and TED was never elected Successor due to the fraud.
5. That the Court did not appoint TED as Successor Personal Representative/Executor for Shirley’s Estate until ONE YEAR after Simon’s death, when the Court Ordered the Estate of Shirley to be reopened due to the frauds.
6. That this Fraud on the Court to close Shirley’s estate was done as part of a larger fraud in efforts to change beneficiaries of Shirley’s irrevocable trust’s beneficiary class, so that it would appear Simon was living at the closing of Shirley’s Estate so that they could then make it appear that Simon made changes to Shirley’s estate and trusts while he was alive.
7. Shirley’s Estate and Trust assets would not have passed to Simon until her estate was officially closed and thus he would not have been able to exercise his alleged Power of Appointment if he were dead and so they used a deceased Simon to close the Estate and then claim that after he closed the Estate of Shirley he exercised his Power of Appointment while alive.
8. That even if Simon had exercised his Power of Appointment he could not have legally changed the beneficiary class of Shirley’s estate and trusts.
9. That the most important part of the fraudulent and improper documents was not about changing the beneficiaries but about seizing Dominion and Control of the Estate and Trusts by TESCHER, SPALLINA and TED who inserted themselves into the documents as Fiduciaries and gained control of the assets and allowed them to begin looting and robbing the Estates and Trusts of both Simon and Shirley with unchecked fiducial powers.
10. That it is not very important who the beneficiaries ultimately are if the assets have been stolen off with by the alleged fiduciaries and attorneys at law involved and there is nothing left for the beneficiaries whoever they are.
11. Further, SPALLINA while representing TED as Personal Representative of the Estate of Shirley has now admitted to fraudulently altering provisions of the Shirley Bernstein trust to Palm Beach County Sheriff Investigators.[[7]](#footnote-7)
12. This fraudulent altercation had the effect of benefitting TED’S family primarily by fraudulently and knowingly allowing conversion of assets to TED’s family from the Shirley trust.
13. That TED advanced the fraudulent beneficiary scheme to change Shirley’s beneficiaries of her irrevocable beneficiary class with TESCHER and SPALLINA to benefit himself in self-dealing transactions.
14. That no successor was appointed until this Court reopened the Estate of Shirley due to the fact that Simon closed the Estate as Personal Representative/Executor while dead, yet TED acted as PR in multiple transactions during that time in order to begin selling assets of the estate and trusts of Shirley and converting them illegally to his family.
15. The crimes proven and admitted to this point, include but are not limited to,
	1. six admitted instances of forgery (including Post Mortem for Simon),
	2. a proven felony conviction rendered for an admitted six fraudulent notarizations (including Post Mortem for Simon),
	3. an admitted fraudulent alteration of a Shirley’s Trust document admitted to by SPALLINA to Palm Beach County Sheriff Financial Crime Unit Investigators,
	4. Fraud on the Court through fraudulent and false instruments posited in the Court by Officers of the Court and the Tescher & Spallina, PA law firm, acting on behalf of a DEAD Personal Representative Simon to close the Estate of Shirley, and,
	5. the Governor Rick Scott’s Notary Public Division’s findings of improper notarizations on Simon’s alleged 2012 Will and Amended and Restated Simon Bernstein Trust done 48 days before his death. The legally invalid notarizations leave it unknown if Simon was present on the day of signing the documents and the only witnesses to the alleged signing of the document have already admitted to fraud, SPALLINA and MORAN.

## ONGOING ALLEGED CRIMINAL MISCONDUCT

1. There are multiple ongoing criminal investigations into further criminal misconduct that TED and his Attorneys at Law are accused central parties in involving the Estates and Trusts of Simon and Shirley, with both state and federal, civil and criminal authorities, which include but are not limited to,

PBSO AND CORONER REPORTS @ [http://www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff%20Reports.pdf)

Palm Beach County Sheriff Report – Case No. 12121312 – Alleged Murder of Simon Bernstein filed by Theodore Bernstein on the day Simon died.

Florida Medical Examiner – Autopsy Case No. 12-0913 – Filed by Theodore Bernstein Palm Beach County alleging Murder of Simon Bernstein ordered on the day Simon died.

Sheriff Report – Case No. 13097087 - Forgery and Fraudulent Notarizations

Palm Beach County Sheriff Report – Case No. 13159967 - Theft of Assets of Estates

Palm Beach County Sheriff Report – Case No. 14029489 - Continuation of Fraud, Extortion and more.

State Attorney FL – - Case No. 13CF010745 - Forgery and Fraudulent Notarizations

Jacksonville, IL. Police Department – Case No. #2014000865 – Insurance Fraud - Directed to Federal Authorities.

Case No. 13-cv-03643 United States District Court – Northern District Il.

Florida Probate Simon – Case No. 502012CP004391XXXXSB

Florida Probate Shirley – Case No. 502011CP000653XXXXSB

Florida Trust Shirley – Case No. 502014CP003698XXXXSB

Florida Trust Simon – Case No. TBD

Florida Oppenheimer Trust – Case No. 502011CP00653XXXXSB

Heritage Union Fraud Investigation – Case No. TBD

Governor Rick Scott Notary Public Division – Moran – Case No. Eliot and Simon Bernstein v. Moran

[http://www.iviewit.tv/Simon and Shirley Estate/20131014%20Office%20of%20the%20Governor%20Moran%20Suspension%20of%20Notary.pdf](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131014%20Office%20of%20the%20Governor%20Moran%20Suspension%20of%20Notary.pdf)

Governor Rick Scott Notary Public Division – Baxley – Case No. Eliot and Simon Bernstein v. Baxley

[http://www.iviewit.tv/Simon and Shirley Estate/20140421 Office Of Governor Lindsay Baxley Complaint Misconduct.pdf](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140421%20Office%20Of%20Governor%20Lindsay%20Baxley%20Complaint%20Misconduct.pdf)

1. The felony crimes alleged and under investigation at this time, state and federally, civilly and criminally, include but are not limited to all of the following,
	1. Insurance Fraud,
	2. Fraud on a Federal Court,
	3. Fraud on a State Court,
	4. Fraud on the Beneficiaries,
	5. Illegal distributions of Estate and Trust assets made knowingly to improper parties,
	6. Bank Fraud,
	7. Extortion,
	8. Theft of Property (Art, Jewelry, Furniture, etc.),
	9. Conversion,
	10. Murder of Simon alleged by TED,
	11. Mail and Wire Fraud.
2. That statements made by SPALLINA to Palm Beach Sheriff Investigators reveal that TED took distributions against the advice of his counsel, again making him wholly unfit to continue as a fiduciary in these matters.
3. That TED also claimed to Palm Beach Sheriff Investigators that he had not read all of the trust documents that he was acting as fiduciary under, see the linked PBSO report above and relied only on what his attorneys TESCHER and SPALLINA told him. TED’S failure to read the dispositive documents shows that TED is not qualified to be a fiduciary.
4. That TED’S direct involvement with his former counsel TESCHER and SPALLINA[[8]](#footnote-8) in criminal activity involving the Estate and Trust of Shirley Bernstein should disqualify him from serving as alleged successor trustee of the Simon Trusts or any other fiducial capacities in the Estates and Trusts of Simon and Shirley.
5. There is evidence that the alleged 2012 Amended and Restated Trust of Simon were intentionally improperly and fraudulently constructed to attempt to alter Shirley’s distribution of her property.
6. That the alleged 2008 Simon L. Bernstein Trust Agreement states,

**ALLEGED original 2008 simon L. Bernstein trust AGREEMENT**

**ARTICLE I. DURING MY LIFE AND UPON MY DEATH**

**A. Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise. [emphasis added].

1. That the alleged 2012 Amended and Restated Simon L. Bernstein Trust Agreement states,

**Alleged 2012 AMENDED AND RESTATED Simon L. Bernstein Trust AGREEMENT**

**ARTICLE I. DURING MY LIFE AND UPON MY DEATH**

**A. Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

**[NOTE THE LANGUAGE FROM THE 2008 SIMON TRUST IS REMOVED IN THE ALLEGED 2012 SIMON AMENDED AND RESTATED TRUST, DESPITE ITS REMOVAL BEING PROHIBITED]**

1. That Simon could not by the 2008 Simon Trust revoke this 2008 Simon Trust Agreement in whole or in part and otherwise modify or amend the Simon Trust Agreement after Shirley’s death with respect to property added by Shirley upon Shirley's death by “Will or otherwise.”
2. That through the alleged 2012 Amended and Restated Simon Trust Agreement, knowingly illegal attempts were made to modify and amend the 2008 Simon Trust with respect to disposition of property transferred from Shirley upon her death and in her trust, making the construction of the 2012 Simon Bernstein Amended and Restated Trust Agreement done with knowingly fraudulent intent.
3. That if the alleged 2012 documents do not survive and the 2008 Simon Trust prevails, which there is already evidence of fraud, improper construction, proven improper notarizations and more in the alleged amended trust, including new evidence indicating they were procured to knowingly to commit fraud by the fiduciaries and officers of this Court TESCHER and SPALLINA, all further invalidating them.
4. That if the 2012 alleged Simon Trust and Will fail and are legally invalidated, Eliot is a 1/3rd beneficiary of the Simon Trust and the Shirley Trust both dated May 20, 2008.
5. That if the 2012 alleged Simon Trust and Will fail and are legally invalidated, more important than who the beneficiaries are, Simon’s successor trustee would be William Stansbury as named who will become the Trustee and PR of Simon’s estate and trusts, TED would be removed in this instance as well, as TED was never named in the Simon Trust as a possible successor and in fact specifically precluded.
6. That in addition to the instant pleading, the following filed pleadings in the probate cases of Simon and Shirley, in particularity are the motions and petitions to remove TED filed over the last year, which are hereby be incorporated in entirety with all Exhibits herein, as additional facts and Prima Facie Evidence for the Court to consider in the removal of TED in all fiducial roles in the Estates and Trusts of Simon and Shirley Bernstein;
7. Docket #244 – Simon Estate (see Exhibit G)

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| --- | --- | --- | --- |
|  | MOT – MOTION |  |  |

|  |  |
| --- | --- |
| **Filing Date:** | 28-AUG-2014 |
| **Filing Party:** | BERNSTEIN, ELIOT IVAN |
| **Docket Text:** | (AMENDED) FOR REMOVAL OF PERSONAL REPRESENTATIVE AND TRUSTEE OF THE ESTATES AND TRUST OF SIMON AND SHIRLEY BERNSTEIN IN ALL FIDUCIAL CAPACITIES ON THE COURT'S OWN INITIATIVE UNEXECUTED ORDER ATTACHED EFILED |

1. Docket #215 - Simon Estate (see Exhibit H)

|  |  |  |  |
| --- | --- | --- | --- |
|  | PET – PETITION |  |  |

|  |  |
| --- | --- |
| **Filing Date:** | 29-JUL-2014 |
| **Filing Party:** | STANSBURY, WILLIAM E |
| **Docket Text:** | PETITION TO REMOVE TED BERNSTEIN AS SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE TRUST |

1. Docket #188 - Simon Estate (see Exhibit I)

|  |  |  |  |
| --- | --- | --- | --- |
| 188  | RESP - RESPONSE TO: |  |  |

|  |  |
| --- | --- |
| **Filing Date:** | 27-JUN-2014 |
| **Filing Party:** | STANSBURY, WILLIAM E |
| **Docket Text:** | RESPONSE IN OPPOSITION TO THE APPOINTMENT OF TED BERNSTEIN AS SUCCESSOR PERSONAL REPRESENTATIVE AND MOTION FOR THE APPOINTMENT OF AN INDEPENDENT THIRD PARTY AS BOTH SUCCESSOR PERSONAL REPRESENTATIVE AND TRUSTEE OF THE SIMON BERNSTEIN TRUST AGREEMENT F/B  |

1. Docket #126 - Simon Estate (see Exhibit J)

|  |  |  |  |
| --- | --- | --- | --- |
| 126  | NOF - NOTICE OF FILING |  |  |

|  |  |
| --- | --- |
| **Filing Date:** | 22-MAY-2014 |
| **Filing Party:** | William Stansbury   |
| **Docket Text:** | JOINDER IN PETITION FILED BY ELIOT IVAN BERNSTEIN FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING F/B WILLIAM E. STANSBURY, CREDITOR OF THE E/O SIMON BERNSTEIN E-FILED |

1. Docket # - Simon Estate (see Exhibit K)

|  |  |  |  |
| --- | --- | --- | --- |
| 97  | PET – PETITION |  |  |

|  |  |
| --- | --- |
| **Filing Date:** | 07-APR-2014 |
| **Filing Party:** | Eliot Bernstein   |
| **Docket Text:** | PETITION FOR CONSTRUCTION OF TESTAMENTARY TRUST, FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING BY ELIOT IVAN BERNSTEIN |
|  |  |

## THE COURT HAS REJECTED TED AS A FIDUCIARY IN THE ESTATE OF SIMON FOR GOOD AND JUST CAUSE

1. Theodore’s first Petition denied was to become Curator of Simon’s Estate as Successor to his removed counsel, TESCHER and SPALLINA, upon their termination and this was rejected on February 19th, 2014 by the Court. Where Your Honor stated in the Order, “DENIED, for the reasons stated on the record.”
2. Ted **Withdrew** his second Petition to become Personal Representative of the Estate of Simon and replace the Curator Benjamin Brown, Esq. TED and his Counselors, Alan B. Rose, Esq. and John J. Pankauski, Esq., withdrew TED’S pleading at the time of the Hearing on July 11, 2014 when they were about to present their case and at the Court’s URGING THEM TWICE to reconsider having their pleading heard and face possible sanctions if they lost, as TED did not appear to be fit to be a Successor PR and the pleading appeared frivolous and vexatious and a waste of everyone’s time and money, including Eliot, the Court, the Creditor, the Curator Benjamin Brown, Esq., who all showed up to watch them withdraw their pleading for TED as a suitable successor.
3. The costs for this filing alone to be withdrawn at the final moment, including the time spent on Eliot writing and filing responses, the time reading Eliot’s lengthy Pro Se responses for everyone involved, the time for the Creditor Stansbury personally to appear and pay for his counsel Peter Feaman, Esq. and his assistant Nancy to appear, the costs of the Curator, Benjamin Brown, Esq. to appear, the cost’s billed by Brown’s staff, the Court’s costs, the Bailiff’s costs, TED’S attorneys at law Rose and Pankauski, TED’S alleged children’s counsel Morrissey costs, Lisa and Jill’s Attorneys at Law and more.
4. That Waste, Fraud and Abuse of the Estates and Trusts assets and everyone else’s assets to abandon this pleading for it could not succeed with all the evidence that TED is unfit at this time to have any fiduciary capacities for his breaches of fiduciary duties, grossly negligent, willful, wanton, reckless and alleged felonious conduct and direct involvement in egregious acts of bad faith done with unclean hands. This Court has stated it had enough evidence of fraud to read him Miranda’s twice for his involvement in advancing fraudulent schemes and more.
5. That TED is being sued for breaches of fiduciary duties and more in the estates and trusts cases before this Court.
6. That the Creditor William Stansbury through his counsel Peter Feaman, Esq. has petitioned the Court for the removal of TED but was denied by the Court the ability to argue for TED’s removal despite the serious nature of the claims against TED and Feaman’s duty to the Court as an Attorney at Law to report the misconduct of a fiduciary.
7. That the new Personal Representative of the Simon Estate, Brian O’ Connell, Esq., has made an appearance before the Court and stated on the record that TED was not qualified as a Trustee under the Simon Trust, as he is disqualified under the very terms of the Simon Trust but the Court ignored this fact and continues to let TED operate and refuses to act on its own motion to remove TED as is required by law.

## COUNT I

## REMOVE DEFENDANT TED AS ALLEGED SUCCESSOR TRUSTEE IN THE SIMON TRUST AND THE SHIRLEY ESTATE AND TRUSTS

1. That Paragraphs 1 through 221 are incorporated herein.
2. This is an action to remove Defendant as Successor Trustee of the Simon Trusts.
3. All conditions precedent to this actions have been performed or have occurred WHEREFORE, Plaintiff requests that this Court;
4. remove TED as the alleged successor trustee of the Simon Trust,
5. appoint a successor trustee with no conflicts of interests or affiliation with any of the former fiduciaries or attorneys at law involved in the prior frauds in any way,
6. require the filing of a Trust Accounting.
7. Provide REMEDIES FOR FAILURE TO ACCOUNT OR FOR IMPROPER ACCOUNTING. The failure to account is a breach of fiduciary duty. The failure to keep a true and correct account of all receipts and disbursements made in connection with the administration of the trust is a breach of fiduciary duty. F.S. 736.1001 of the Florida Trust Code has a specific section on remedies for breach of trust. Remedies include the removal of the trustee, reducing or denying compensation to the trustee, requiring the trustee to repay money to the trust or by restoring property to the trust by other means, or any other relief the court deems appropriate.
8. provide under 736.1001 Remedies for breach of trust include,
	1. Compel the trustee to perform the trustee’s duties;
	2. Enjoin the trustee from committing a breach of trust;
	3. Compel the trustee to redress a breach of trust by paying money or restoring property or by other means;
	4. Order a trustee to account;
	5. Appoint a special fiduciary to take possession of the trust property and administer the trust;
	6. Suspend the trustee;
	7. Remove the trustee as provided in s.736.0706;
	8. Reduce or deny compensation to the trustee;
	9. Subject to s. 736.1016, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
	10. Order any other appropriate relief.

Dated, Monday, November 10, 2014.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his minor three children.

 X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CERTIFICATE OF SERVICE**

 I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Monday, November 10, 2014.

Eliot Bernstein, Pro Se, individually and as legal guardian on behalf of his minor three children

 X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SERVICE LIST**

1. That the term “Beneficiary” used for Defendants is not defined yet as the alleged dispositive documents are being challenged due to the already proven and further alleged Frauds that have taken place in the estates and trusts of Simon and Shirley Bernstein and thus the true and proper beneficiaries must be determined by this Court after removal of TED and proper investigation of the dispositive documents. [↑](#footnote-ref-1)
2. The original Simon Trust done in 2008 with Shirley was not turned over to beneficiaries until TESCHER and SPALLINA were ordered by the Court to turn over their records upon their removal in 2014 to the Curator Benjamin Brown, Esq. [↑](#footnote-ref-2)
3. The Court should note that in TESCHER and SPALLINA’s production documents Ordered by this Court to be turned over to the appointed Curator, Benjamin Brown, Esq., turned up a 2000 insurance trust done by Proskauer Rose, LLP. This Proskauer insurance trust specifically mentioned the insurance policy as part of the trust corpus. This trust was discovered with correspondences indicating that it was intentionally secreted from this Court, a US Federal Court and the true and proper beneficiaries with intent and scienter and replaced with a scheme to use a “lost” and “missing” 1995 Insurance Trust that no executed copies exist for or have been produced. See Exhibit F. [↑](#footnote-ref-3)
4. The Court should note that SPALLINA filed the claim acting as the trustee of the lost trust that he claims never to have seen or possessed and attempted to have the monies converted and comingled with his law firm Tescher & Spallina P.A. trust account. The Court should further note that when the Illinois Life Insurance Litigation was filed shortly after SPALLINA’s claim was denied, TED filed the lawsuit as trustee to the lost trust that he too claims never to have seen or possessed an executed copy of, replacing SPALLINA. [↑](#footnote-ref-4)
5. The Court should also note that NO parties in the Insurance Litigation, including the life insurance carriers involved to date have produced a bona fide copy of the executed insurance policy for the Breach of Contract lawsuit that is based upon it and thus no terms, including the beneficiaries and the face are known at this time, making this yet another “Rabbit Hole” of apparent malfeasances. [↑](#footnote-ref-5)
6. “Contrary to the trial court’s conclusion, we believe that a breach of fiduciary duty is “constructive fraud” and thus may form the basis to apply the exception to the homestead protection. As this court explained in First Union National Bank of Florida v. Whitener, 715 So.2d 979, 982 (Fla. 5th DCA 1998):

Constructive fraud is the term typically applied where a duty under a confidential or fiduciary relationship has been abused, or where an unconscionable advantage has been taken. Constructive fraud may be based on misrepresentation or concealment, or the fraud may consist of taking an improper advantage of the fiduciary relationship at the expense of the confiding party.” [↑](#footnote-ref-6)
7. Palm Beach County Sheriff Reports can be found at [www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff%20Reports.pdf) , fully incorporated by reference herein. [↑](#footnote-ref-7)
8. The Court should note that TED’s current counsel, Alan B. Rose, Esq. was also involved in knowingly advancing the fraudulent beneficiary scheme with TESCHER, SPALLINA and TED and continues to advance such fraudulent scheme through continued toxic pleadings with this Court in efforts to now have the Court change Shirley trust documents, four years Post Mortem, in efforts to have the Court, through Fraud on the Court, change the beneficiaries of Shirley’s Irrevocable Beneficiary Class to fit the crimes already committed by TED and his siblings, other than Eliot, when they knowingly took distributions to knowingly improper parties to mainly benefit TED and his sister Pamela Simon who were both disinherited and considered predeceased by both Simon and Shirley, for good and just cause and perhaps this Court is starting to see in part why their parents did not want them involved in the Estates and Trusts in any way, shape or form, as stated, “for all purposes.” [↑](#footnote-ref-8)