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

TED BERNSTEIN, AS TRUSTEE PROBATE DIVISION

OF THE SHIRLEY BERNSTEIN TRUST AGREEMENT CASE NO.: 502014CP003698XXXXSB

DATED MAY 20, 2008, AS AMENDED,

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

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

**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR**

**IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN**

COMES NOW Eliot Bernstein (“Petitioner”) and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.**

1. Judge Martin Colin is a circuit judge in the 15th Judicial Circuit Probate Division.

**Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.**

1. Petitioner, a party to the case moves for mandatory disqualification and to otherwise disqualify trial Judge Colin provided by rules, statute and by the Code of Judicial Conduct.
	1. Judge Colin has violated the following Judicial Canons, including but not limited to,
		1. Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary
		2. Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities
		3. Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

D. Disciplinary Responsibilities.

(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.

(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

F. Remittal of Disqualification.

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

* 1. Judge Colin has violated Statutes related to, including but not limited to,
		1. Fraud on the Court and by the Court – This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and more.
		2. Fraud in the Court
		3. Fraud by the Court
		4. Aiding and Abetting
	2. Judge Colin has violated Probate Statutes and Rules

**Rule 2.330 (c) Motion.**

**A motion to disqualify shall:**

**(1) be in writing.**

1. This Motion is in writing.

**Rule 2.330 (c) Motion**

**(2) allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification.**

1. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

**Rule 2.330 (c) Motion**

 **(3) be sworn to by the party by signing the motion under oath or by a separate affidavit.**

1. Petitioner is acting pro se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

**Rule 2.330 (c) Motion**

**(4) include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions.**

1. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

**Rule 2.330 (c) Motion**

**(4) The attorney for the party shall also separately certify that the motion and the client’s statements are made in good faith. In addition to filing with the clerk, the movant shall immediately serve a copy of the motion on the subject judge as set forth in Florida Rule of Florida Rule of Civil Procedure 1.080.**

1. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se Petitioner has certified that motion and the statements made herein are made in good faith. That Service is proper to Judge Colin under Rule 1.080.

**Rule 2.330 (d) Grounds.**

**A motion to disqualify shall show:**

**(1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.**

1. That Petitioner fears that he will not receive a fair trial or hearing because of the following specifically described prejudices and biases of Judge Colin under Rule 2.330 (d).

**i. Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

**(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**

**(iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

1. Judge Colin’s Court Docket in this case reflects an Entry on Nov. 6, 2012 which is the Filed and Time-Stamped Date by the Court Clerk’s Office of a Memorandum[[1]](#footnote-1) allegedly made by Astride Limouzin, Case Manager which by the express notations on said document was done on behalf of Judge Martin Colin, the Judge in this case at that time.
2. Notwithstanding the fact that this is listed as an Ex Parte communication in the Court’s own Docket which will be addressed later, the Ex Parte communication is addressed to Attorney Robert L. Spallina representing Ted Bernstein at this time as well as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Memorandum document purports to be notifying Attorney Spallina on behalf of Judge Colin that “Receipts for assets from all of the specific beneficiaries were not notarized.” It is important to note that Attorney Spallina is fully aware at this time that Simon Bernstein has passed away on September 13, 2012.
3. However, by the time of this Ex Parte communication which purports to be by Astride Limouzin of Judge Colin’s Court on behalf of Judge Colin to Attorney Spallina dated Nov. 5, 2012 by the express language of the document and is rejecting for filing Waivers not notarized by decedent Shirley’s deceased at the time husband, Simon Bernstein[[2]](#footnote-2), and, Eliot Ivan Bernstein, Jill Bernstein-Iantoni, Pam Bernstein-Simon, Theodore Stuart Bernstein and Lisa Bernstein-Friedstein, as the adult surviving children of Shirley Bernstein in the Shirley Bernstein Estate case, Judge Colin’s Court had already received for filing:
	1. A Petition for Discharge (Full Waiver)[[3]](#footnote-3) (also needing notarization but not notarized) to close Shirley’s Estate allegedly dated April 9th, 2012 and allegedly signed by Simon Bernstein on said date and Subscribed before Attorney Robert Spallina on same date of April 9, 2012, yet which is not Filed until Oct. 24, 2012 with Judge Colin’s Court and time-stamped by the Clerk’s Office on said date, thus meaning Simon Bernstein was acting as Personal Representative/Executor to close Shirley’s Estate a month ***after he was Deceased on Sept. 13 2012; being filed and time-stamped as received by the Court Clerk of Judge Colin’s Court nearly 2 weeks before the Nov. 5, 2012 Ex Parte Memo above;***
	2. A Tax Statement[[4]](#footnote-4) allegedly dated April 9, 2012 and allegedly signed by Simon Bernstein on said date indicating no Florida Estate Tax due yet again this Document was Filed and Time-stamped with Judge Colin’s Court Oct. 24, 2012 nearly 2 weeks before the Ex Parte Memo from Judge Colin to Robert Spallina allegedly made by Judge Colin’s Case Manager Astride Limouzin on Nov. 5, 2012 and again posited with the Court by Simon acting as the Personal Representative/Executor after he is deceased; and
	3. A Probate Checklist[[5]](#footnote-5) dated Feb. 15, 2012 which again references Attorney Robert Spallina as the involved attorney, Simon Bernstein as the Personal Rep of the Estate but which is not only substantially defective in the items it references but again is not filed until Oct. 24, 2012 and time-stamped as received by Judge Colin’s Court Clerks on said date again being filed by Simon acting as Personal Representative/Executor ***nearly a month after Simon Bernstein passed away and was deceased but nearly 2 weeks before the Ex Parte Memo to Attorney Spallina by Judge Colin via Case Manager Astride Limouniz dated Nov. 5, 2012.***
4. Judge Colin is chargeable with knowledge of the documents filed and entered into his Court upon which he is adjudicating and presiding over.
5. Thus, prior to transmitting the Nov. 5th 2012 Ex Parte Memorandum from Judge Colin via his Case Manager Astride Limouzin to Attorney Robert Spallina, Judge Colin’s Court had received multiple filings as referenced above which are not only dated many months prior to the actual filing date but are clearly filed nearly an entire month after Simon Bernstein was deceased and at least one of these documents is Subscribed and witnessed by Attorney Robert Spallina being the Petition to Discharge to close Shirley’s Estate and Judge Colin is now communicating with Attorney Spallina Ex Parte according to the Court’s own Docket.
6. As of this date itself, Nov. 5, 2012, Judge Colin should have been Disqualified under the Rules and Codes and now should be Disqualified under at least 3 separate grounds of the Rules and Codes as an instance in which a Judge’s impartiality may be reasonably questioned, as one with knowledge of disputed evidentiary facts concerning the proceeding and both as a material witness or likely material witness and - or fact witness of disputed and material evidentiary facts in the proceeding.
7. Now, back to the Ex Parte nature of the Nov. 5, 2015 Memo from Judge Colin through Judge Colin’s Caseworker Astride Limouzin to Attorney Robert Spallina who is now shown and presumably already known to Judge Colin and his Court Clerks to have filed with the Court multiple documents on behalf of a Deceased person Simon Bernstein and being filed months and months after allegedly performed and completed, yet secrets this information from the Court presumably.
8. A careful review of the Nov. 5, 2012 Ex Parte Memo shows that while the Memo is dated Nov. 5, 2012 on the face of the document, the document is not time-stamped with the Court Clerk’s for 24 hours or so or at least until sometime the next day Nov. 6, 2012 as shown by the time stamp on the face of the document.
9. Judge Colin’s impartiality can reasonably be questioned by the act of he and his Court Clerk Case Manager Astride Limouzin discovering filings in the Court by Attorney Robert Spallina on Oct. 24, 2012 purporting to act on behalf of a Deceased person Simon Bernstein without any authority demonstrated to act for now Deceased Simon Bernstein and by filing documents purportedly completed nearly 6 months earlier in April 2012, yet instead of Ordering Attorney Spallina for Disciplinary Investigation and to also immediately appear before his Court to Show Cause why said actions should not be immediately referred to Investigative and Prosecutorial authorities, Judge Colin and his Case Manager send an Ex Parte Memo to correct un-notarized Waivers with no mention of the Petition for Discharge now filed on behalf of Deceased Simon Bernstein clearly not able to act on said date.
10. This lack of impartiality by Judge Colin and his Court is further compounded by the facts shown by the face of the Court’s own Docket and files that it took at least overnight to even Docket the Nov. 5, 2012 Ex Parte Memo on Nov. 6th, 2012 which leads right in and goes hand in hand with the other mandatory grounds for Disqualification on his own initiative for now having knowledge of disputed evidentiary facts involving the proceeding and being likely to be called as a material and-or fact witness, as it is unknown:
	1. Were the Oct. 24, 2012 Filings filed in person and if so by whom?;
	2. If filed in person is Case Manager Astride Limouzin the person who “received’ the filings for the Court or is she just the go between with Spallina office and Judge Colin on the Ex Parte Memo?
	3. Who communicated on the file with Judge Colin? Just Limouzin or any other Clerks and Case Managers?
	4. If filed by Mail then by whom and where is the correspondence and envelopes that the filings arrived in to show who signed the correspondence and mailed them if so? ;
	5. If filed by mail then where are the envelopes and correspondence or has this evidence been destroyed?
	6. Why such a long delay between when the Nov. 5th 2012 Ex Parte Memo was created and then Docketed on Nov. 6, 2012?
	7. How was the Memo transmitted to Spallina office? By fax, by mail? Were any phone calls made by the Court or Court Clerks and Case Managers? Any other Ex Parte communications?
	8. Why was the Nov. 5th, 2012 Memo done Ex Parte and not Communicated to all parties with standing in Shirley’s case not only for purposes of avoiding impartiality but also to timely apprise the parties of said filings and defects?
	9. Did Judge Colin review the documents?
	10. Did Judge Colin know if Simon was deceased and when did he know?
11. For purposes of avoiding even the appearance of impropriety, Judge Colin should have Disqualified on Nov. 5, 2012 or at the moment his Court and - or Court Clerk or Case Manager had any involvement in the receipt, handling and processing of any of the filings of Oct. 24, 2012 made on behalf of deceased Simon Bernstein.
12. Judge Colin should have disqualified then and must be disqualified now.
13. Even assuming arguendo that Judge Colin had no actual knowledge of the Oct. 24, 2012 filings attempting to use Deceased Simon Bernstein to close the Estate of Shirley Bernstein and had no actual knowledge of the Nov. 5th 2012 Ex Parte communication on his behalf to Attorney Spallina directly involved in the fraudulent illegal acts of using Deceased Simon Bernstein to close Shirley’s Estate, at that time, clearly by the time Judge Colin issued the Order to Close the Estate in Jan. 2013[[6]](#footnote-6) Judge Colin must be presumed to have read and reviewed the documents and filings upon which he issues and rationally bases his Order closing the Estate in Jan. 2013 upon and thus should have not only not issued such an Order but should have halted, frozen and stayed the case and case files for investigation by this time and then Disqualified himself as clearly at minimum his own Court officers and Case Manager Astride Limouzin had direct involvement and knowledge of material facts.
14. Now if it is assumed arguendo that Judge Colin will somehow claim he had no knowledge of the Court Docket and filings upon which he issued in Jan. 2013 closing Shirley’s Estate upon documents filed by Attorney Spallina which purport to have Simon Bernstein take action as the Personal Representative while deceased because somehow Judge Colin will claim that he had not read the documents upon which he based this Order, then this raises a separate basis of Disqualification under the rule requiring the Judge to diligently ( and competently ) hear cases that are assigned and thus Judge Colin should have been disqualified and must now be disqualified.
15. Yet even if it is assumed arguendo that Judge Colin had no knowledge of these matters as of the date he issues the Jan. 2013 Order to close Shirley’s estate, which of course again raises Disqualification under the rule of “diligently” hearing cases assigned, clearly by the time of May 06, 2013 upon the first filing of Petitioner’s an “EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE”[[7]](#footnote-7) this Court and Attorney Spallina are both put on Notice by Petitioner’s motion of :
	1. The fraud and alleged fraud in the filings directly involving Spallina including but not limited to documents filed to close Shirley’s Estate by Simon Bernstein acting as the Personal Representative of Shirley when Simon Bernstein was already Deceased (Pages 40-43 - Section “IX.FORGED AND FRAUDULENT DOCUMENTS FILED IN THE ESTATE OF SHIRLEY IN THIS COURT BY TESCHER AND SPALLINA CONSTITUTING A FRAUD ON THIS COURT AND THE BENEFICIARIES AND MORE);
	2. That there were improper notarizations in Dispositive Documents including a Will and Trust (Pages 43-45 Section “X. INCOMPLETE NOTARIZATION IN THE ALLEGED 2012 AMENDED TRUST OF SIMON AND MORE” and “XI. INCOMPLETE NOTARIZATION IN THE 2012 WILL OF SIMON AND MORE”)
	3. That Spallina and Tescher had withheld from beneficiaries in violation of Probate Rules and Statutes any documents on Shirley’s Estate and Trusts for approximately 18 months which should have created further bases for this Court to Order investigation and a prompt hearing to determine truth and authenticity in the Trusts and Estate dispositive documents (Pages 37-40 Section “VIII. PETITIONER FORCED TO RETAIN COUNSEL DUE TO PERSONAL REPRESENTATIVES LACK OF DUTY AND CARE, BREACHES OF FIDUCIARY DUTIES AND CONFLICTS OF INTEREST REGARDING MISSING ESTATE ASSETS AND DOCUMENTS AND MORE”);
	4. Of utmost importance should have been information that Ted Bernstein himself reported the possible Murder of he and Petitioner’s Father, which was reported by Ted Bernstein on the date Simon passes away to the Palm Beach County Sheriff and the Coroner and starting two official inquiries into allegations of Murder[[8]](#footnote-8) (Pages 85-86 Section “XVII. ALLEGED MURDER OF SIMON BERNSTEIN”);
	5. That the Court and Spallina are notified of substantial personal property missing (stolen) including jewelry worth millions of dollars and that Shirley’s condominium had already been sold by Ted Bernstein and yet no Determination had been made by this Court regarding the validity of the Trusts and Ted Bernstein’s right to act and dispose of assets (Pages 51-57 “XIV. VANISHING ESTATE ITEMS AND ASSETS”);
	6. That the Court and Spallina are notified of the “Elephant in the Room” being the Iviewit stock and Intellectual Property Interests that Simon Bernstein had, worth an estimated billions of dollars, which is tied into a prior RICO action and a prior car-bombing of Petitioner’s Minivan (see [www.iviewit.tv](http://www.iviewit.tv) for graphic images of the Car Bombing that looks like a scene from a war) that was now relating to the case before this Court (Pages 57-82 Section “XV. THE ELEPHANT IN THE ROOM THE IVIEWIT COMPANIES STOCK AND PATENT INTEREST HOLDINGS OWNED BY SIMON AND SHIRLEY, AS WELL AS, INTERESTS IN A FEDERAL RIC0 ACTION REGARDING THE THEFT OF INTELLECTUAL PROPERTIES AND ONGOING STATE, FEDERAL AND INTERNATIONAL INVESTIGATIONS.”
	7. That the Court is notified of an alleged Life Insurance fraud scheme (Pages 27-37 Sections “VI. MISSING LIFE INSURANCE TRUST AND LIFE INSURANCE POLICY OF SIMON” and “VII. INSURANCE PROCEED DISTRIBUTION SCHEME”);
	8. That other assets were remaining that should have been been frozen such as the St. Andrew’s home recently listed by Petitioner’s father weeks before his passing for over $3 million.
16. Simply reviewing the Hearing Transcript[[9]](#footnote-9) of proceedings before Judge Colin regarding the Emergency Petition filed on May 06, 2013 and heard on September 13, 2013 (held on the anniversary of Simon’s death) shows further clear basis for Disqualification of Judge Colin on numerous grounds including knowledge of disputed evidentiary facts and likelihood of being called as a fact witness premised upon his involvement and knowledge of the Ex Parte Communications with Attorney Spallina on Nov. 5th 2012 after the fraudulent filings of Spallina on Oct. 24, 2012 but also based upon clear bias and prejudice and lack of impartiality as by this date in Sept. 2013 Judge Colin:
	1. knows about Tescher and Spallina using alleged documents of Deceased Simon Bernstein to close Shirley’s Estate filed on Oc. 24, 2012;
	2. knows of the fraudulent Notaries made upon the Waivers that had first been rejected by his Court via the Ex Parte Memo of Nov. 5, 2012 for having no Notaries and then later submitted with the fraudulent Notaries to help close the Estate;
	3. knows that Tescher and Spallina have never been Ordered to Show Cause before his Court about the fraud;
	4. knows he had not referred Tescher and Spallina’s law firm’s conduct for Attorney Discipline investigation;
	5. knows of the claims of substantial personal properties stolen and missing from Shirley’s Estate;
	6. knows of Spallina’s firm withholding any documents on Shirley’s Trusts from beneficiaries for over two years, which should have raised clear red flags particularly in light of the frauds on his own Court by Tescher and Spallina’s firm;
	7. knows of the failure to have any Accounting of Shirley’s Estate with the failure ongoing for years by this time in violation of Probate Rules and Statutes;
	8. knows he has conducted no Hearing to determine the proper construction and meaning of Shirley’s Trusts and Estate, which remains incomplete to this date and determine who the proper Beneficiaries, Trustee and Representatives should be;
	9. knows that Ted Bernstein himself reported possible Murder of Simon Bernstein to police authorities and the state Medical Examiner for autopsy on the date of Simon’s passing[[10]](#footnote-10);
	10. knows of the “elephant in the room”[[11]](#footnote-11) being Iviewit and the Iviewit stock and patents valued in the billions involving Simon Bernstein and now a missing part of the Estates and Trusts and tied into a prior RICO and Antitrust Lawsuit and a car-bombing of Petitioner’s minivan reported and investigated by authorities; and
	11. knows that Petitioner’s minor children have been denied the trust and inheritance funds for their food, shelter, and well being for months and yet Judge Colin wants to talk instead that day for most of the hearing about Petitioner’s getting a job, Dunkin Donuts, Burger King and having Petitioner cut his Court lawn, instead of addressing any of the serious crimes and frauds in his own Court where he and his Court staff are now witnesses and centrally involved in the fraudulent activities.
17. Now perhaps Judge Colin missed lunch and was hungry that first hearing four months after an Emergency Motion was filed by Petitioner and was thinking about Dunkin Donuts and Burger King but there is no way to look at this proceedings and the transcript without not only finding clear bias and prejudice and lack of impartiality in adjudicating rights to such a gross degree as to constitute not only an abdication of Judicial function, duties and responsibility but done in such as way as to be a mockery of the judicial system and process and denying very important rights and claims raised in Petitioner’s filings.
18. Consistent with what has emerged in not only this and other Florida Probate Courts but other Courts in New York and around the nation, a review of the Transcripts of proceedings before Judge Colin shows the standard “M.O.”, modus operandi, used by corrupted and conflicted Courts by neglecting and burying the real issues of fraud and integrity of proceedings and filings and actions of licensed attorneys and instead proceeding to threaten and harass Petitioner as the exposer of fraud with multiple hearings for his alleged Contempt, attempts to have Guardians appointed over his family, threats of sanctions and acts of judicial mockery.
19. Judge Colin falsely claims on this September 13, 2013 date not only that no Emergency issues had been raised in Petitioner’s Emergency Motion but also that no assets were left to freeze as requested in the relief of the Emergency Motion when in fact the St. Andrews’s home that had been listed and valued at over $3 million dollars by Simon Bernstein in the months before his passing still had not been sold and of course there is and was the millions in personal property reported as missing and stolen and the illegal sale of the Beach Condominium (sold for X and where Simon had listed it for Y, weeks before his passing and where Ted Bernstein acted as Successor Personal Representative on Tax Forms filed prior to being granted Letters of Administration and while the Estate of Shirley had been closed by a Deceased Simon and therefore no Successor had been anointed due to the Fraud of Ted’s counsel Tescher and Spallina et al.) all of which can be subject to claw back processes and other injunctive relief while of course the very real emergency issues of actual fraud upon the Court had been shown and involving Judge Colin, the Courts employees and/or its appointed Officers and Fiduciaries and clearly involved Judge Colin, the Court’s employees and its own officers as Fact Witnesses at minimum and thus emergency and related relief could and should have been granted.
20. By the time of this hearing on September 13, 2013, not only did Judge Colin wholly fail to have attorneys Tescher and Spallina Show Cause after the Nov. 5, 2012 Ex Parte Memo and discovery of fraud filings by their office knowingly acting on behalf of deceased Personal Representative/Executor Simon Bernstein to close Shirley’s Estate, Judge Colin also wholly failed to have Attorney Tescher and Spallina and the alleged Fiduciary of Shirley’s Trust Ted Bernstein answer in Court that day, especially after Tescher, Spallina and Ted Bernstein had never even submitted a written answer to Petitioner’s very specific, detailed Emergency Motion filed May 06, 2013 and subsequently filed motions (Non Emergency as Colin had forced Eliot to refile his Emergency Pleading several times before allowing it to be heard) placing Tescher, Spallina and Ted Bernstein on further notice of fraud allegations and more.
21. The date of this Hearing was nearly an entire year after Tescher and Spallina had first submitted the fraudulent filings before Judge Colin’s Court in Oct. 2012 and yet they were not Ordered to answer the Emergency Petition while allowing Shirley’s Estate and Trust to be squandered in fraud and unaccounted for, as Spallina, Tescher and Ted seized Dominion and Control of the Estates and Trusts of both Simon and Shirley Bernstein through a series of fraudulent dispositive documents and refused to give beneficiaries any documents in violation of Probate Statutes and Rules and Colin remained asleep at the wheel.
22. It is respectfully submitted that by this time on September 13, 2013, Judge Colin is engaging in the aiding and abetting of the fraud and attempting to cover up past fraud in, upon and by the Court, by what is known as “Steering” and “Sharp Practices” and orchestrating of the proceedings away from the crimes and criminals and begins a cleverly disguised retaliation against Petitioner that continues to this date.
23. This can be more clearly seen in the subsequent Evidentiary Hearing of Oct 28, 2013[[12]](#footnote-12) when again, Judge Colin at the helm, steers and directs the proceedings to avoid the issues of Fraud upon and before his own Court by limiting the proceeding to testimony about a $25,000 value to Shirley’s Estate Inventory (which was never served to beneficiaries in Violation of Probate Rules and Statutes) and discusses not throwing Spallina’s Legal Assistant and Notary Public, Kimberly Moran “under the bus” who has by this time admitted to the Governor’s Office and West Palm Beach police that she not only falsely Notarized the Waivers, including for a deceased Simon but also forged the signatures for six separate parties, including for the decedent Simon Bernstein Post Mortem, that are ultimately filed before Judge Colin to close the Shirley Estate.
24. Yet, at no time does Judge Colin in an Evidentiary Hearing with Tescher, Spallina and Ted Bernstein present seek to ascertain the truth of the fraud, forgeries and fraud on his Court but more importantly wholly failed to force Spallina or Tescher to Show Cause to explain the acts of their own Legal Assistant and Notary Public Moran and their law firms acts of filing documents with a deceased client acting as a fiduciary while dead and more importantly no investigation into how Spallina’s signature is on the Petition for Discharge also fraudulently filed before Judge Colin, which is Not the subject of any Admissions by his employee Kimberly Moran and where she was not involved in that crime.
25. Judge Colin simply later permits Spallina and Tescher to withdraw as attorneys, instead of removing them instantly and secure their files and the corpus of the Estate and Trusts while the material facts surrounding the fraud that directly involve Spallina by his own Signature on the Petition for Discharge, Judge Colin and his Case Manager Limouzin, by the Nov. 5th 2012 Ex Parte Memo communication remain undetermined and unheard.
26. These are additional grounds for removal in that Judge Colin’s failure to Order attorneys Tescher, Spallina and the fiduciary Ted Bernstein at minimum to Show Cause before the Court on the frauds on the Court and for Discipline having actual knowledge of the substantial likelihood of misconduct by the fraud by presence of Spallina’s own signature on the document purported to be April 9, 2012 Petition for Discharge but not filed with Judge Colin’s Court until Oct. 2012 when Simon Bernstein is Deceased nearly a month is itself a failure to discharge Judicial obligations; and then being further Disqualified for being the necessary fact witness of his own Ex Parte Communication to Spallina as evidenced by the Nov. 5th, 2012 Memo and by prejudice and bias shown by the failure to Order Tescher, Spallina and Ted Bernstein for investigation and discipline and Show Cause before his own Court not only in Nov. 2012 but which has still not happened to this day in May of 2015 some 2.5 years later while permitting Ted Bernstein to act as Trustee and Personal Representative/Executor when Ted Bernstein is directly intertwined, interconnected and involved with his own counsel Spallina and Tescher (as they represented Ted in Shirley’s Estate and Trusts while acting as Co-Personal Representatives and Co-Trustees of Simon’s Estate and Trusts and further representing themselves in their fiducial capacities) as attorneys involved in the fraud that ultimately benefit their client Ted and his lineal descendants who are considered predeceased for all purposes of dispositions of the Shirley Trust and without their fraudulent documents and fraudulent scheme upon the Court remain so.
27. That after reopening the Estate of Shirley in the September 13, 2013 Hearing and immediately prior to the Evidentiary Hearing, Judge Colin, knowing of the fraud and already stating to Ted and his counsel Spallina, Tescher and Manceri that he had enough evidence in the hearing to read them all their Miranda Warnings for two separate crimes identified in the hearing (the Moran fraudulent notarizations and forgeries and Spallina’s using a dead Simon to posit documents with Court to close Shirley’s Estate) then shockingly and appallingly appointed Ted as a Successor Personal Representative to the newly reopened Estate shortly thereafter although Ted was not then qualified to serve under Florida Probate Rules and Statutes..
28. It is noted that while an Attorney was present as Counsel for the Petitioner’s Minor children in the hearing this Court held on or about Oct. 28 2013, the record should reflect that this counsel Brendan Pratt not only failed to inform the Court he was retained to represent Petitioner’s Minor children Josh, Jacob and Danny Bernstein and instead in the hearing misrepresented to the Court he was representing Eliot and Candice despite their opposition to this claim, but said counsel further wholly failed to properly and competently cross examine Spallina, Tescher, Moran and Ted Bernstein and call proper witnesses at this hearing to delve into the criminal and civil torts against the beneficiaries despite advance preparation and planning to the contrary with Eliot and Candice. Pratt claimed he was very close to Judge Colin after the hearing and knew what he wanted.
29. Counsel Pratt failed to examine any of the witnesses about the Tescher and Spallina Petition to Discharge fraud, the fraudulent positing of fraudulent records with the court and failed to examine Ted Bernstein, Spallina and Tescher about known personal property items valued at over $1 million that they were in had custody over as fiduciaries that he knew were alleged stolen and Counsel Pratt was immediately after the hearing withdrawing as counsel but was requested by Petitioner in writing to notify his malpractice carrier of malpractice for his conduct and misrepresentations of this hearing. The Transcript in this regard clearly speaks for itself on what material issues were not only never addressed by Judge Colin but also never asked by Counsel Pratt. See Discharge letter to Counsel Pratt[[13]](#footnote-13).
30. Improper representation by attorney Pratt, likely malpractice itself, does not eliminate Judge Colin’s obligations to address fraud upon his own Court by licensed attorneys and fiduciaries he appointed and in fact the actions of attorney Pratt may likely be part of additional steering and orchestration of the proceedings to cover-up the real fraud and delay and denial to Petitioner, his wife Candice Bernstein, and their Minor children Josh, Jacob and Danny of lawful inheritance and monies due under the Trusts.
31. Pratt seemingly falls out of the sky days before the Hearing and is retained by Eliot and Candice for their children’s representation, it was later learned that Pratt, on information and belief, was close personal friends and business associates with Andrew Shamp, Esq. and where Shamp it was later learned worked directly for Ted Bernstein in the past as an employee.
32. This pattern of aiding, abetting and obfuscation of the fraud and criminal enterprise and pattern of acts at play as seen further in Judge Colin’s continued abdication of judicial functions in duties in relation to the sale of the St. Andrew’s home.
33. This Court’s recent Order on May 06, 2015 (which falls under the 10 day rule for disqualification herein) permitting the Sale of the St. Andrew’s Home shows even further grounds for mandatory Disqualification of Judge Colin (on his own initiative without waiting for Pro Se Petitioner to file a disqualification pleading) although ample grounds have already been established dating back to Nov. 2012.
34. Judge Colin has absolute, unequivocal direct knowledge that no testimony of the alleged “buyer” occurred during the Hearing on the sale of the St. Andrew’s Home and knows Florida law requires no undue influence or pressure must be exerted or buyer or seller for there to be an “arms-length” transaction yet issues an Order May 6, 2015 as if the Buyer provided testimony when in fact the buyer’s identity is not even known.
35. In fact, despite Florida’s rigid Disclosure laws Judge Colin has withheld a lis pendens I attempted to file on the property and still has not let said lis pendens be filed or published to this Buyer or any prospective buyer and has threatened Petitioner that if he disclosed the Lis Penden or the fact that the home was tangled in these litigations he would hold him in contempt.
36. According to the Florida Real Property Appraisal Guidelines Adopted Nov. 26, 2002 by the Florida Department of Revenue Property Tax Administration Program Definitions Section 3.1.8 Arm’s-Length Transaction: “ This means a sale or lease transaction for real property where the parties involved are not affected by undue stimuli from family, business, financial, or personal factors.” See, <http://dor.myflorida.com/dor/property/rp/pdf/FLrpg.pdf>.
37. Yet, not only does Judge Colin have actual knowledge he took no testimony from the Buyer since the Buyer was not only not present in Court but the identity not disclosed, but Judge Colin knows the case is ripe with nothing but pressure and undue influence such that Judge Colin has covered up fraud upon his own Court involving licensed attorneys, failed to discharge Judicial obligations and failed to abide by the Code of Judicial Conduct, knows the Trustee he is permitting to act Ted Bernstein reported a possible murder of Petitioner’s father Simon Bernstein the property owner prior to passing, allowing Ted Bernstein to act despite knowing his attorneys and Ted are involved in fraud on the Court and yet failing to conduct a hearing into the construction and truth of the Trusts even though he says on the Record he knows he has to conduct a hearing and feigned at reading the attorneys Miranda Warnings, has reasons to investigate and suspect these are a continuation of RICO acts tied to a car-bombing, knows or has reason to know the sale is grossly undervalued at $1,100,000.00 as the property was listed for $3,200,000.00 weeks prior to the possible murder of Simon Bernstein, knows he and his own Court staff are at least involved as witnesses if not for the fraud itself and is willing to forego his own Judicial responsibilities which could lead to the end of his Judicial career but issues a false order nonetheless saying an arm’s length transaction to an unknown buyer, possible straw man buyer was made.
38. Judge Colin knows and should know due process is violated by withholding the identity of the alleged buyer and making such person or entity available for cross-examination.
39. This would seem more than reflective of substantial pressure and influence at play and reflective of a fire sale.
40. Last, fair market value has been defined as "the sum arrived at by fair negotiation between an owner willing to sell and a purchaser willing to buy, neither being under pressure to do so." Flagship Bank of Orlando v. Bryan, 384 So.2d 1323 (Fla. 5th DCA 1980). A witness for the appellee admitted at the deficiency hearing that the bank was under pressure to sell the lots and that its bid was lowered because the bank would not be able to sell the lots for what they were worth. The bid price was therefore more an indication of a "quick sale" value than of the property's true fair market value. BARNARD v. FIRST NAT. BK. OF OKALOOSA CTY.482 So.2d 534 (1986) District Court of Appeal of Florida, First District. February 4, 1986.
41. Judge Colin could have Judicially Subpoenaed the Realtor Petitioner had originally spoken to who initially had a far differing opinion of the sales price and value of the home but who then refused to get involved due to the presence of another of Ted Bernstein’s attorneys Alan Rose who, according to his bio at his firm’s website, “Handled securities arbitration for investor in a Madoff feeder fund against major brokerage firm which recommended the investment. confidential terms.” The case was settled on confidential terms.” See, <http://mrachek-law.com/ourteam/alan-b-rose/>.
42. Finally, in his own words in the first day of the hearing to sell the house on DATE, Colin stated:

13 MR. ROSE: We didn't share the appraisal

14 because, frankly, we were concerned it would be

15 public and that would defeat their chance of

16 selling it.

17 THE COURT: I'm not -- look, nothing is easy

18 here. It's not going to get easier until we can

19 get hearings where I can start to knock off some

20 of the issues, which is what I have been saying

21 now like a broken record.

22 At some point, either Eliot is going to be

23 sustained on his positions or he's going to be

24 overruled, but one way or the other, we can put

25 some of this stuff to rest. The problem is we're

1 doing all of this business with some of the metes [matters?]

2 of the case still up in the air where I haven't

3 been able to adjudicate; the claims that Ted

4 should be removed; the claims that there's

5 wrongdoing beyond Spallina and Tescher, the trust

6 is not valid. I mean, give me a chance to rule on

7 that, because once I rule on that, then the matter

8 is over with on those and you'll know one way or

9 the other what to do.

* 1. That from a September 13, 2013 hearing Judge Colin had a duty to disqualify himself on his own initiative, as he became fully cognizant that his Court had become a crime scene involving Fraud on the Court and Fraud in the Court, involving Judge Colin directly, the Officers of his Court, including Attorneys at Law practicing before him, Fiduciaries appointed by him (Personal Representatives and Trustees) and other Court employees.
	2. That once it was determined that crimes had been committed in Judge Colin’s Court constituting Fraud on the Court and Fraud in the Court in which he would be a material and fact witnesses to events in the matter, to avoid the appearance of impropriety and conflicts caused due to his direct involvement as both a material and fact witness, Judge Colin should have voluntarily on his own initiative disqualified himself and distanced himself from the matters, allowing a conflict free adjudicator to replace him who could have investigated the involvement of, the Court, Judge Colin, the Officers of the Court and the Fiduciaries of the Court and this would have eliminated the appearance of impropriety created due to Judge Colin’s direct involvement in the frauds that had occurred.
	3. That failing to disqualify himself on his own initiative for mandated causes by Judicial Canons and Law, Judge Colin has lost jurisdiction in this case and his continued actions are all outside the color of law.
	4. That Judge Colin’s acts forward in these matters from the point that he had knowledge of criminal misconduct in the Court that he would be a material and fact witness constitute Fraud by the Court. It is alleged that Judge Colin began a Pattern and Practice of Fraud by the Court by continuing to rule in a matter where disqualification was mandated on his own initiative and so each judicial ruling and proceeding is therefore void.
	5. That Petitioner fears that Judge Colin’s acts after having cause to disqualify himself have prejudiced and biased the case and continue to prejudice and bias the case, as they are now viewed as part of a Cover Up of the crimes committed in his Court and on his Court by Colin’s court appointed Officers and Fiduciaries.
	6. The crimes Colin became aware of were committed by Officers, Fiduciaries and others he appointed and has oversight of and his maintaining control over the investigatory process necessary of his court and officials, despite obligatory disqualification, Petitioner fears has been to protect his Court from exposure of the crimes.
	7. That Petitioner fears that Judge Colin’s acts outside the color of law after knowing of the causes mandating him to instantly disqualify have been prejudicial to Petitioner and favor those Court officials and fiduciaries that he appointed who committed the criminal acts in and on his Court and these acts have protected himself, his Court appointed officials, fiduciaries and employees who were involved and aid and abet them in evading prosecution and investigation in efforts to cover up criminal acts.
	8. Colin is biased and prejudiced against Petitioner who has exposed the crimes of his Court and those committed in Judge David E. French’s court in the Simon and Shirley Bernstein Estate and Trust cases and the case involving Petitioner’s minor children.
	9. The estate cases of Simon and Shirley Bernstein were improperly merged in violation of Probate Rules and Statutes without separate hearings by both Judges and thus improperly transferred to Colin’s Court. That Petitioner fears that since the crimes were committed in both courts this improper merging of the cases was to cover up and protect Judge French and his court officials from investigation and possible prosecution and remove one of the crime scenes entirely since similar acts of fraud are alleged in Judge French’s court.
	10. Once Colin had evidence that FELONY crimes were committed in his Court and Judge French’s court by Officers of their courts and fiduciaries of their courts, Colin and French had obligations under Judicial Cannons, Rules of Professional Conduct and Law to report the misconduct to the proper criminal and civil authorities, instead Judge Colin has allowed them to continue to practice in the matters and further commit fraud upon fraud upon the Court and the beneficiaries in efforts to cover up the many crimes alleged and proven.
	11. That Colin has allowed a pattern and practice of retaliation against Eliot for his efforts in exposing the criminal acts and has continuously allowed conflicted attorneys at law and fiduciaries, involved with the original fraudsters to file pleading after pleading to attempt to harm Eliot and his family, including several contempt and guardianship hearings held against Eliot.
	12. That Judge Colin and Judge French will be material and fact witnesses to the crimes that have occurred in their courts and therefore Judge Colin should disqualify on his own initiative according to Judicial Cannons but has refused several requests of Petitioner to so do and where it is not Petitioner's duty to file a legally sufficient pleading to remove Judge Colin but rather Colin is obligated to voluntarily and on his own initiative disqualify and void his orders.
	13. Petitioner has blown the whistle on corruption that took place in both Judge Colin and French’s courts and has also been involved in an over a decade old whistleblowing lawsuit and other actions against members of this courthouse, the 15th Judicial, The Florida Bar and many Judges of the Supreme Court of Florida and Petitioner fears this also creates prejudice and bias against Eliot with virtually the entire State of Florida legal machine and Judge Colin’s acts have been intentional to prevent Petitioner from gaining his inheritance and having funds that could be used in his other legal actions involving members of the Florida Bar, including protecting what Judge Colin claims is his mentor, Chief Judge Jorge Labarage who is a central figure in Petitioners ongoing civil and criminal complaints regarding Intellectual Properties of Petitioner..
	14. Judge Colin is acting outside his jurisdiction once he was mandated to disqualify on his own initiative and outside the color of law and therefore he should disqualify on his own initiative and his orders must be voided and must be stricken. Judge Colin is a disqualified judge who has not relinquished his unlawful jurisdiction.
	15. Judge Colin now is adverse to Petitioner because Petitioner has filed with a Federal Court exposing the corruption in his Court and throughout the Probate courts in Florida and Petitioner is seeking to have his cases transferred to a Federal Court under Honorable Judge John Robert Blakey for investigation, review and further adjudication of the matters free of conflicts and illegal activities.
	16. Petitioner has sought Federal Court intervention due to the fact that Petitioner is adverse to all Florida State Bar Members and where he has taken civil and criminal actions against the Florida State Bar and thus all members are conflicted and adverse to Petitioner as members of the organization Petitioner is pursuing.
	17. Petitioner has been viciously retaliated by Judge Colin by denying him due process in one manner or another and removing rights of Petitioner and his minor children, while protecting his Court from exposure of the crimes committed in his and Judge French’s court.
	18. Where it may be learned by investigation that they are both involved directly in the crimes and were willing participants in such crimes against Petitioner and his family, including but not limited to, Fraud on the Court, Fraud in the Court, Fraud by the Court, Forged document posited with the Court by officers and fiduciaries of the Court, Fraudulent Notarizations (including Post Mortem for decedents in the actions) filed and posited with the Court and the possible Murder of Simon Bernstein as alleged by Ted Bernstein and others (not Petitioner) on the day Simon died.
	19. Judge Colin has repeatedly retaliated against Petitioner and shown favoritism against him to protect and shield the Court, its Officers and Fiduciaries from prosecution.
		1. Identifies FELONY criminal misconduct, asserts he has enough for Miranda’s and does nothing.
		2. Privilege Letter – Buries as it relates to Iviewit, Gerald Lewin and Proskauer
		3. Fails to Report Felony Misconduct
		4. Interferes with Sheriff Investigations
1. Judge Colin can now be considered an accomplice to fraud against Eliot and Eliot’s minor children who are beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein and it is clear that Eliot has valid fear of being denied due process and procedure further by Judge Colin acting outside the color of law and with no jurisdiction once his mandatory disqualification was not entered on his own initiative.

**Rule 2.330 (d) Grounds.**

**(2) That the judge before whom the case is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto or is interested in the result thereof, or that said judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to the cause.**

1. Judge Colin will be a material and fact witness for Petitioner and the Officers of his Court, the Fiduciaries of his Court and his Court employees in this case as described above regarding the criminal misconduct that has occurred in and on his Court and that of Judge French’s court and his and Judge French’s involvement.
2. Judge Colin due to his direct involvement in the matters and failure to disqualify upon mandated grounds requiring his disqualification on his own initiative will now also be a party of interest in ongoing criminal and civil actions necessary to determine if he has committed felony acts and more in so acting outside the color of law. Now there is not only an appearance of impropriety but the alleged possible misconduct of Judge Colin may constitute criminal impropriety.
3. Judge Colin cannot investigate his own court, the officers and fiduciaries of his Court due to the appearance of impropriety this creates and this appearance of impropriety prejudices Petitioner from due process rights.

**Rule 2.330 Grounds.**

**(e) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and promptly filed. A motion made during hearing or trial shall be ruled on immediately.**

1. This Motion is being made within 10 days from Petitioner’s receipt of the 4 COURT ORDERS JUST RECEIVED, all of which are legally void orders written without proper jurisdiction after his mandated disqualification should have taken place.
2. This Motion is timely because all actions past and future of Judge Colin are void as his disqualification from the matters should have occurred the instant he was aware that crimes occurred in his Court and on his Court by his appointed Officers and Fiduciaries and thus all judicial acts both past, present and future are all grounds for immediate investigation, disqualification, voiding of all orders and sanctions.

**Rule 2.330 Grounds.**

**(f) Determination - Initial Motion.**

**The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.**

1. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Colin has to voluntarily disqualify under Judicial Canons, Attorney Conduct Codes and Law.

**Rule 2.330 Grounds.**

**(g) Determination - Successive Motions.**

**If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.**

1. Petitioner states there have been no Successive Motions.

**Rule 2.330 Grounds.**

**(h) Prior Rulings.**

**Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.**

1. Petitioner seeks that upon disqualification of Judge Colin, that all prior factual or legal rulings be vacated by the successor judge due to the alleged criminal acts and civil torts against Petitioner. That further, Petitioner seeks a replacement Judge who is not a member of the Florida Bar to preside over the cases of Judge Colin involving the Estates and Trusts of Simon and Shirley Bernstein and the case involving the Trusts of Petitioner's minor children. That due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida by members of the Florida Bar Petitioner is seeking this Court to move the matters to a Federal Court. The following cases that Judge Colin presides over are all tainted for the same reasons as stated herein and judge Colin should immediately voluntarily disqualify himself from these cases as well and save Petitioner the expense and aggravation of having to file Disqualification pleadings in each case to force his mandated disqualification:
	1. Case# 502012CP004391XXXXSB – Simon Bernstein Estate
	2. Case# 502011CP000653XXXXSB – Shirley Bernstein Estate
	3. Case# 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
	4. Case# 502014CP003698XXXXSB – Shirley Trust Construction
	5. Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD Case# 502014CA014637XXXXMB

**Rule 2.330 Grounds.**

**(i) Judge’s Initiative.**

**Nothing in this rule limits the judge’s authority to enter an order of disqualification on the judge’s own initiative.**

1. Petitioner states that Judge Colin should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him but refused to do so on the repeated requests of Petitioner. If for any reason Judge Colin finds this Motion legally insufficient for any reason, Judge Colin must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes and Law.

**Rule 2.330 Grounds.**

**(j) Time for Determination.**

**The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.**

1. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner’s children are in life threatening dangers due to the abusive Probate rulings thus far that have interfered intentionally with their and Petitioner’s expectancies that this Disqualification be made instantly as it is legally sufficient. Delays could cause further harm of Petitioner’s minor children and Petitioner which would result in additional damages and liabilities to those parties ultimately held accountable for the acts of Judge Colin outside the Color of Law.
2. That PRIOR to any other actions by Judge Colin, this Disqualification must first be ruled on.

**Florida Statutes 38.10**

**Disqualification of judge for prejudice; application; affidavits; etc.—**

**Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.**

1. Petitioner has supplied a legally sufficient Affidavit herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Colin immediately disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Colin that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law.

Under Penalties of perjury, I swear under oath and affirm that I have read the foregoing and the facts alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 25th day of April, 2015

 Respectfully Submitted,

 Eliot Ivan Bernstein

 2753 NW 34th ST

 Boca Raton, FL 33434 Telephone. 561-245-8588

 iviewit@iviewit.tv

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Eliot Ivan Bernstein

**CERTIFICATE OF SERVICE**

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 25th day of April, 2015.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Eliot Ivan Bernstein

STATE OF FLORIDA

COUNTY OF PALM BEACH COUNTY

Sworn to or affirmed and subscribed before me this 25th day of April, 2015 by Eliot Bernstein who is known to me or produced the following identification.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC

Print name of Notary: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Stamp

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_

**AFFIDAVIT**

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin is true and correct to the best of his knowledge and belief

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Eliot Ivan Bernstein

April 25, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 25th day of April, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

Print name: \_\_\_\_\_\_\_\_\_

Stamp

My commission expires: \_\_\_\_\_\_

**KEVIN NOTES**

1. Nov. 5 2012 Memo by Colin Court Officer on behalf of Colin Directed to Spallina and Not Docketed - Filed until Nov. 6, the next day placing Tescher and Spallina on Notice of Notary issue. Judge Colin presumed to know the filings of his own court officers under his name. <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Reciepts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf>
	1. Colin will be called to witness events regarding this document.
	2. Look up Rules for Supervisory Obligations of Judges.
	3. Court Officer Clearly Witness as to Contents of the Filing, was Letterhead attached that is missing from the file? If so who signed Letter? \* Note: This Memo is Not Addressed to Tescher and Spallina Staff but Addressed to Spallina from Colin.
2. September 13, 2013 Hearing
	1. <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf>
3. Spallina Signature to Simon’s Alleged Signature on a Petition for Discharge alleged to have been performed April 9, 2012 Filed with Colin Court Time Stamped Oct. 24, 2012 clearly Filed that date Petition to Close Shirley’s Estate by Simon AFTER Simon Deceased in Sept. 2012 - Spallina Clearly Implicated in Criminal Fraud Filing of Court Document before Colin. <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>
	1. NOTE: spell out Parts of Petition that Clearly had Not been Performed as of that April 9 2012 date such as Waivers and Tax Filings.
		1. Statement #3 of the Petition is untrue on 4/9/12 as State of Florida tax forms were not submitted until October 2012, after Simon was dead.

“3. Petitioner has filed all required estate tax returns with the Internal Revenue Service and with the Department of Revenue of the State of Florida, and has obtained and filed, or file herewith, evidence of the satisfaction of this estate's obligations for both federal and Florida estate taxes, if any. “

* + 1. All of the following statements in #5 in the Petition for Discharge are false statements made Simon as beneficiaries were not even sent Waivers until after May 10, 2012 and Jill Iantoni did not even send a waiver until after Simon was deceased.

“5. Petitioner, pursuant to Section 731.302 of the Florida Probate Code, and as permitted by Fla. Prob. R. 5.400(f), files herewith waivers and receipts signed by all interested persons:

* + - * 1. (a) acknowledging that they are aware of the right to have a final accounting;
				2. (b) waiving the filing and service of a final accounting;
				3. (c) waiving the inclusion in this petition of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers or other agents employed by the personal representative and the manner of determining that compensation;
				4. (d) acknowledging that they have actual knowledge of the amount and manner of determining compensation of the personal representative, attorneys, accountants, appraisers, or other agents, and agreeing to the amount and manner of determining such compensation, and waiving any objections to the payment of such compensation;
				5. (e) waiving the inclusion in this petition of a plan of distribution;
				6. (t) waiving service of this petition and all notice thereof;
				7. (g) acknowledging receipt of complete distribution of the share of the estate to which they are entitled; and
				8. (h) consenting to the entry of an order discharging petitioner, as personal representative, without notice, hearing or waiting period and without further accounting.”
	1. Spallina of course placed on additional Notice by Colin via Nov. 5th Memo ( Query: Why did it take another day to Docket this Memo? Private phone Calls? Meetings ? )
1. Probate Checklist Dated on document Feb. 15 2012 again under Tescher and Spallina Office but not filed and docketed until Oct. 24, 2012, the probate checklist must be updated when filed and this one is missing several key transactions between 2/12 and 12/12, note which documents on docket are missing from the probate checklist that were filed. Aha <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf>
2. Eliot’s Motion May 2013 Places both the Court ( Colin ) and Tescher and Spallina on Notice of Fraud in Filings; Assumed that Eliot already has some Doc on File that Places Court on Notice that Tescher and Spallina’s Office had Already Refused to Come forward with Any Docs on Shirley Trust for nearly 2 years while claiming Ted as Trustee which Should have Created Presumption Against Ted and Spallina or at least Issue of Inquiry by Colin as to Authenticity of Any Tescher and Spallina Filings. <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>
3. Home Sale Saint Andrews Primary Residence of Simon Bernstein
	1. Material Witness to his own Fraud Order as No Buyer Present, Material Witness as to who the Buyer is, claims Arm Length but No Buyer - Due Process Denial
	2. Abdicating Judicial Responsibilities, Judicial Duties, Judicial Functions transforming to an active complicit culpable criminal party in the fraud, directing and navigating the fraud while Steering and directing proceedings away from the truth proper inquiry of primary wrongdoers ( See Hearing Transcripts with Pratt ) <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf>
	3. Prejudice - Claims No Emergency yet House Not yet Sold so Assets still there and other assets could be clawed back, , Trust NOt Yet Determined, Clear Evidence of Criminal Fraud with you , No Construction or Authenticity Hearing, Evidence of Murder originally brought forward by the one you are allowing as Trustee ( who may be in involved with the Murder ) Yet you want to talk to me about Dunkin Donuts, Burger King and getting your lawn cut. See Transcript Page
4. Did not freeze estate and trust assets.
5. Let attorneys slip away without questioning.
6. Failed to secure court records and obtain statements from Court officials.

**EXHIBIT 1**

**EXHIBIT 2**

**EXHIBIT 3**

**EXHIBIT 4**

**RULE 1.080 SERVICE OF PLEADINGS AND PAPERS**

**(a) Service; When Required.** Unless the court otherwise orders, every pleading subsequent to the initial pleading and every other paper filed in the action, except applications for witness subpoena, shall be served on each party. No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them shall be served in the manner provided for service of summons.

**(b) Service; How Made.** When service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service on the attorney or party shall be made by delivering a copy or mailing it to the attorney or the party at the last known address or, if no address is known, by leaving it with the clerk of the court. Service by mail shall be complete upon mailing. Delivery of a copy within this rule shall be complete upon: (1) handing it to the attorney or to the party, (2) leaving it at the attorney's or party's office with a clerk or other person in charge thereof, (3) if there is no one in charge, leaving it in a conspicuous place therein, (4) if the office is closed or the person to be served has no office, leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing such person of the contents, or (5) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete. Service by delivery after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.

**(c) Service; Numerous Defendants.** In actions when the parties are unusually numerous, the court may regulate the service contemplated by these rules on motion or on its initiative in such manner as may be found to be just and reasonable.

**(d) Filing.** All original papers shall be filed with the court either before service or immediately thereafter. If the original of any bond or other paper is not placed in the court file, a certified copy shall be so placed by the clerk.

**(e) Filing Defined.** The filing of papers with the court as required by these rules shall be made by filing them with the clerk, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note the filing date before him or her on the papers and transmit them to the clerk. The date of filing is that shown on the face of the paper by the judge's notation or the clerk's time stamp, whichever is earlier.

**(f) Certificate of service.** When any attorney shall certify in substance:

"I certify that a copy hereof has been furnished to (here insert name or names) by (delivery) (mail) (fax) on .....(date)......

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney"

the certificate shall be taken as prima facie proof of such service in compliance with these rules.

**(g) Service by Clerk.** If a party who is not represented by an attorney files a paper that does not show service of a copy on other parties, the clerk shall serve a copy of it on other parties as provided in subdivision (b).

**(h) Service of Orders.**

(1) A copy of all orders or judgments shall be transmitted by the court or under its direction to all parties at the time of entry of the order of judgment. No service need be made on parties against whom a default has been entered except orders setting an action for trial as prescribed in rule 1.440(c) and final judgments that shall be prepared and served as provided in subdivision (h)(2). The court may require that orders or judgments be prepared by a party, may require the party to furnish the court with stamped, addressed envelopes for service of the order or judgment, and may require that proposed orders and judgments be furnished to all parties before entry by the court of the order or judgment.

(2) When a final judgment is entered against a party in default, the court shall mail a conformed copy of it to the party. The party in whose favor the judgment is entered shall furnish the court with a copy of the judgment, unless it is prepared by the court, and the address of the party to be served. If the address is unknown, the copy need not be furnished.

(3) This subdivision is directory and a failure to comply with it does not affect the order or judgment or its finality or any proceedings arising in the action.

1. November 05, 2012 Memorandum

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Reciepts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf> [↑](#footnote-ref-1)
2. Simon Bernstein un-notarized Waiver @ URL

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf> [↑](#footnote-ref-2)
3. Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf> [↑](#footnote-ref-3)
4. Affidavit of No Florida Estate Tax Due @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf> [↑](#footnote-ref-4)
5. Probate Checklist

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf> [↑](#footnote-ref-5)
6. Order of Discharge

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf> [↑](#footnote-ref-6)
7. May 06, 2013 Petition @ URL <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf> [↑](#footnote-ref-7)
8. Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a 113 year old male. [↑](#footnote-ref-8)
9. September 13, 2013 Hearing Judge Colin

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf> [↑](#footnote-ref-9)
10. May 06, 2013 Petition - Section III “POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT

INVESTIGATION OF ALLEGATIONS OF MURDER” [↑](#footnote-ref-10)
11. May 06, 2013 Petition - Section XV “The Elephant in the Room” Pages 57-82 [↑](#footnote-ref-11)
12. October 28, 2013 Evidentiary Hearing

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf> [↑](#footnote-ref-12)
13. Brand Pratt Letter @ [↑](#footnote-ref-13)