# IN THE SUPREME COURT OF FLORIDA

# CAUSE NO. SC15-1077

**LOWER TRIBUNAL No(s).:**

**1. Case: 502015CP002717XXXXNB, formerly 502012CP004391XXXXSB, formerly 20I2CP004391IX;**

**2. Case: 502011CP000653XXXXSB;**

**3. Case: 502014CP002815XXXXSB;**

**4. Case: 502014CP003698XXXXSB;**

**5. Case: 502015CP001162XXXXSB;**

**6. Case: 502014CA014637XXXXMB;**

**Other related caseS TO NEXUS OF EVENTS**

**7. Case: 13-cv-03643 - Federal Lawsuit in the US District Court of Eastern Illinois - Hon. Judge John Robert Blakey;**

**8. Case: 07-cv-11196 Bernstein, et al. v Appellate Division First Department Disciplinary Committee, et al. – HON. JUDGE SHIRA A. SCHEINDLIN;**

**9. Case: CA01-04671 AB Fifteenth judicial - hon. judge jorge labarga.**

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**IN THE ESTATES AND TRUSTS OF SIMON LEON BERNSTEIN, SHIRLEY BERNSTEIN AND PETITIONER’S MINOR CHILDREN TRUSTS**

**ELIOT IVAN BERNSTEIN,**

**PETITIONER**

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**PETITION FOR ALL WRITS, WRIT OF PROHIBITION, WRIT OF MANDAMUS AND PETITION TO STAY CASES AND TEMPORARILY RESTRAIN SALE, TRANSFER, DISPOSITION OF ANY ASSET AND FOR PRESERVATION OF ALL EVIDENCE**

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**WARNING:**

**POTENTIAL CONFLICTS OF INTEREST**

Eliot Ivan Bernstein has pursued in investigations since early 2000 to present, including a Petition to the White House[[1]](#footnote-1), the White House Counsel’s Office, the US Attorney General’s Office, investigations to the SEC[[2]](#footnote-2), FBI, and various State Attorney Generals, and actions with the USPTO, and other legal actions, including RICO and ANTITRUST civil litigation and criminal complaints several Florida Supreme Court Justices, The Florida Bar, several New York Supreme Court Justices, the New York Supreme Court Disciplinary Agencies 1st & 2nd, several large law firms and lawyers, political figures at the highest levels in both Florida and New York and others and this may cause any review of the following matters by any member of The Florida Bar, a subsidiary of the Florida Supreme Court, with any title in the organization, to prejudice the rights of Eliot Bernstein and his family and will be construed as a denial of due process that obstructs justice.

Defendants in the RICO and other actions include:

* STATE OF FLORIDA,
* OFFICE OF THE STATE COURTS ADMINISTRATOR, FLORIDA,
* **FLORIDA SUPREME COURT**,
  + Jorge Labarga, in his official and individual capacities, [this lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election where he aided in the failure to recount the People's vote when he was a civil circuit judge and for his effort to derail Eliot’s legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess filed before his court. Proskauer v. Iviewit, Case #CASE NO. CA 01-04671 AB.]
  + Charles T. Wells, in his official and individual capacities,
  + Harry Lee Anstead, in his official and individual capacities,
  + R. Fred Lewis, in his official and individual capacities,
  + Peggy A. Quince, in his official and individual capacities,
  + Kenneth B. Bell, in his official and individual capacities,
  + THOMAS HALL, ESQ. in his official and individual capacities,
* **THE FLORIDA BAR**,
  + JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,
  + KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,
  + LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,
  + ERIC TURNER, ESQ. in his official and individual capacities,
  + KENNETH MARVIN, ESQ. in his official and individual capacities,
  + JOY A. BARTMON, ESQ. in her official and individual capacities,
  + JERALD BEER, ESQ. in his official and individual capacities,
  + BROAD & CASSEL, and, all of its Partners, Associates and Of Counsel, in their professional and individual capacities,
  + JAMES J. WHEELER, ESQ. in his professional and individual capacities,
* DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION – FLORIDA,
* CITY OF BOCA RATON, FLA., [Police Department]
  + DETECTIVE ROBERT FLECHAUS in his official and individual capacities,
  + CHIEF ANDREW SCOTT in his official and individual capacities,
* CHRISTOPHER C. WHEELER, ESQ. in his professional and individual capacities, [now involved in the Estate and Trust matters]
* MATTHEW M. TRIGGS, ESQ. in his official and individual capacity for The Florida Bar and his professional and individual capacities as a partner of Proskauer,
* ALBERT T. GORTZ, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]

That the Florida judicial system has not only failed Bernstein twice in protecting his properties, life and liberty but it has played a significant role in the alleged criminal acts committed against Petitioner, his family and now perhaps has led to the death of his father, as alleged by Petitioner’s brother Ted as a possible “murder.” The recent criminal acts committed by Florida Bar attorneys and fiduciaries of the estates and trusts of Simon and Shirley Bernstein. These estate and trust crimes part of a fraudulent scheme and an attempt to rob and preclude Petitioner from inheritance, through Post Mortem crimes committed after the passing of his mother and father Shirley and Simon Bernstein through sophisticated complex legal frauds, including multiple Frauds on the Court and Fraud by the Court itself, with irrefutable evidence of criminal acts by lawyers and law firms and now new allegations that Judges are involved on the attempt to fix and silence the crimes of other members of the Florida Bar and others.

That in the original instance of fraud that occurred against Petitioner and his family in the Courts, many of the Florida Supreme Court Justices named herein may recall that Bernstein in early 2000 began pursuing members of the Florida Bar from a case that began with Jorge Labarga and the international law firm Proskauer Rose intimately involved in thefts of technologies valued as “The Holy Grail” and “Priceless” by leading engineers and when Judge LaBarga was a circuit court judge in Palm Beach County and the complaints against the lawyers and judges involved made their way all the way up to the Supreme Court and why many of the Florida Supreme Court Justices are named in all ongoing actions, including the instant matters involving the fraud on the court of Judge Martin Colin and Judge David French, where yet again we find members of the Florida Bar, two Florida judges and several more Florida attorneys at law involved in the criminal acts described herein and again using the Florida Courts to directly deprive Petitioner and his family of their rights and further retaliate against Petitioner to directly attempt to stop his pursuit of his Intellectual Property rights and more.

These matters are brought expressly to the forefront of this case so matters of conflicts of interest may be properly adjudicated even in the hearing of the instant petitions for writs and other relief and for consideration as to whether the entirety of these matters should be transferred to a jurisdiction outside the State of Florida and other proper relief.

**PETITION FOR ALL WRITS, WRIT OF PROHIBITION, WRIT OF MANDAMUS AND PETITION TO STAY CASES AND TEMPORARILY RESTRAIN SALE, TRANSFER, DISPOSITION OF ANY ASSET AND FOR PRESERVATION OF ALL EVIDENCE**

Now comes ELIOT IVAN BERNSTEIN (“PETITIONER”) who respectfully petitions and pleads and shows this court as follows:

1. This is a Petition for All Writs and is a Writ of Mandamus, Writ of Prohibition and a Temporary Restraining Order-Stay prohibiting any transfer, sale or disposition of any assets herein under the Estates and Trusts of Simon and Shirley Bernstein and Trusts of PETITIONER’S minor children and further requiring the parties to preserve any and all evidence, documents, records, notes, statements, properties and materials relating to these Estate and Trust matters in all cases stated in the caption.
2. It is respectfully submitted that Hon. Judge Martin Colin (“COLIN”) has failed to perform mandatory duties under Florida law by failing to mandatorily Disqualify himself under the Judicial Canons and as required by law by instead issuing a “Recusal” Order sua sponte within 24 hours of Denying the Disqualification motion “as legally insufficient” and then after “Recusal” acted outside of his jurisdiction to poison and prejudice these cases by communicating with other Judges to transfer the cases while acting as a “material witness” to fraud upon and in his own court. In so doing Judge Martin Colin has acted in excess of his jurisdiction and outside the law and must be prohibited by the writ herein. Because the Orders of Judge Colin who should have mandatorily Disqualified are a nullity and void and must be officially voided, there are no valid and proper Orders under which the parties are acting and thus the parties herein and each case listed in the caption shall be temporarily restrained from any further transfers, sale, disposition or compromise of any asset herein pending proper determinations of authority to act, proper determinations of who is and should be Trustee, the Personal Representative and what Dispositive documents prevail and other substantive orders in the case.

# BASIS FOR INVOKING JURISDICTION

1. This is an Original Proceeding filed in the Florida Supreme Court pursuant to Florida Rule of Civil Procedure 9.100(b) and 9.030 for extraordinary writs.
2. Florida Rule of Appellate Procedure Provides:

**Original Jurisdiction.** The Supreme Court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction, and may issue writs of mandamus and quo warranto to state officers and state agencies. The supreme court or any justice may issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

1. This Court has jurisdiction to issue writs of mandamus, prohibition and any other writ within the exercise of its judicial authority. See McFadden vs. Fourth Dist. Court of Appeal, 682 So.2d 1068 (Fla. 1996).
2. Florida Rule of Appellate procedure 9.100(h) provides:

**Order to Show Cause.** If the petition demonstrates a preliminary basis for relief, a departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal, or that review of final administrative action would not provide an adequate remedy, the court may issue an order either directing the respondent to show cause, within the time set by the court, why relief should not be granted or directing the respondent to otherwise file, within the time set by the court, a response to the petition. In prohibition proceedings, the issuance of an order directing the respondent to show cause shall stay further proceedings in the lower tribunal.

1. On May 14, 2015, Petitioner filed a “VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN” (EXHIBIT A) and now seeks Mandamus to compel Hon. Judge Martin Colin to strike his Order Denying the Petition (EXHIBIT B) for mandatory Disqualification as “legally insufficient,” and further strike his Order (EXHIBIT C) for Sua Sponte Recusal ordered the day after denying the Petition for Disqualification and then enter an Order of Disqualification as required by law. Petitioners also seek Prohibition which is also appropriate to prevent Judge Colin from further acting in excess of lawful authority and outside his jurisdiction as Judge Colin acted unlawfully in denying the Motion for Mandatory Disqualification as “legally insufficient” and by his own Sua Sponte Recusal Order issued within 24 hours thereafter showed he had continued to act outside the law and further tainting and poisoning the case by communicating with two other local Judges which ultimately lead the action which is immersed in fraudulent filings, fraudulent documents and fraud on the court to somehow be Transferred to one Hon. Judge Coates who himself was previously a Partner working at Proskauer Rose, an international law firm whose conduct and actions are clearly implicated in these cases in the Probate Courts of Florida. In fact, Judge Coates who gets these Probate cases after Judge Colin acts to poison these cases with other Florida Judge, worked in the office of Proskauer Rose right across the hall from Petitioner here in Boca Raton, Florida during key times at issue in the underlying actions.

# IMMINENT AND IMMEDIATE PENDING ACTIONS MAKING PROHIBITION, STAY AND TEMPORARY RESTRAINING ORDER APPROPRIATE

1. Prohibition and further Stay and Temporary Restraining Order is further appropriate since the unlawful acts of Judge Colin in denying Disqualification and instead issuing “Recusal” could have the effect of leading the parties herein to further act in fraud such as an immediately imminent illegal Sale of the deceased Simon Bernstein home in Boca Raton, Florida pursuant to an illegal Order of Sale by Judge Colin which should have been vacated as a nullity upon his mandatory disqualification, yet despite being a legal nullity and there being no lawful authority to act, the parties acting in fraud could infer this Sale still proper to move forward and thus must be Stayed and temporarily restrained pending further hearings and determinations. Of fundamental relevance herein and as set out in the mandatory Disqualification motion of Judge Colin, actions were permitted to continue in fraud in his courts for nearly 2.5 years yet Judge Colin had never held a hearing to determine a proper Trustee of the Trusts, no hearing for the meaning and proper construction of the Trusts , and likewise never held a hearing to determine the validity of any Will or Trust nor the Personal Representative of either estate and instead Judge Colin’s Court simply permitted parties intertwined in the Fraud such as Ted Bernstein to continue to act illegally selling off property, stealing personal property and making other dispositions and now the illegal sale of the deceased Simon Bernstein home by Ted Bernstein is imminently scheduled for sale by tomorrow, June 10, 2015. It is noted that in the Estate of Shirley Bernstein alone which was first filed in 2011, there has been no Trust accountings in over 4 years.

# STATEMENT OF FACTS

1. The mandatory disqualification of Judge Colin herein came in the Estate cases of my parents, Shirley and Simon Bernstein, with Shirley predeceasing Simon in Dec. 2010 and Simon passing in Sept. 2012. According to the “official” Court records to date, Judge Colin presided over the Estate of Shirley Bernstein while initially Judge French presided over the Estate of Simon Bernstein although eventually Judge Colin begins making rulings and taking action in both cases. At the time of Simon Bernstein’s passing in 2012, his eldest son Ted Bernstein was claiming possible murder of his father at the hospital in Boca Raton, and proceeded to take steps to claim possible murder with the Coroner, members at the hospital and eventually the Palm Beach County Sheriff’s Office back at the home of Simon Bernstein shortly after he was declared deceased. Since that time, valuable personal property items and jewelry which itself was worth more than a million dollars has gone missing and unaccounted for, Simon’s home computer and hard drives had been wiped clean, Shirley’s condo on the beach was sold off illegally, while multiple key and critical documents like Trusts and other business documents went “missing” and/or not produced by the involved attorneys and fiduciaries. Simon Bernstein had been in the insurance business some 50 years or so and a fair approximate combined worth of both estates could be $50 to $100 million.
2. This estimate of combined value does not consider the “missing Iviewit stock” wherein the international law firm of Proskauer Rose was directly involved with Simon Bernstein and the Bernstein family trust and estate planning where the “missing Iviewit stock” alone could send the value of the Estates into the billions of dollars.
3. Yet, despite significant estate and trust planning to provide for Petitioners minor children, Joshua, Jacob and Daniel Bernstein, under Judge Colin the minor children have not only been kicked out of the St. Andrew’s school for non-payment of education bills despite Shirley and Simon having planned for them to attend this school through graduation (including fully funded college plans) and provide for their welfare, but the minor children have even faced risk of having electricity cut off while the children’s home has already had the home security system cut off and other bills remaining unpaid while Ted Bernstein and others have secreted away monies, properties and documents and records while Judge Colin acted as Probate Judge.
4. Thus, Petitioner herein, Eliot I. Bernstein, filed a detailed and specified Motion for mandatory Disqualification of Judge Colin on or about May 14, 2015. The motion satisfied all requirements under the law and rules pertaining to mandatory Disqualification under the Canons of Judicial Conduct and was proper in all respects. The motion, which is annexed hereto, set out mandatory Disqualification under several provisions (Florida Rule of Judicial Administration 2.330, Florida Statute 38, and Florida Code of Judicial Conduct, Canon 3(B)7, 3(B)5, 3E(1), 3(E)1a, 3(E)1b and 3(E)1b(iv) ) pertaining to (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer; (b) or personal knowledge of disputed evidentiary facts concerning the proceeding; (c) is to the judge's knowledge likely to be a material witness in the proceeding.
5. While Petitioner set out a proper legally sufficient motion to mandate Disqualification under all three grounds, most troubling and critical for purposes of the Writ of Prohibition as it relates to Judge Colin’s conduct acting in excess and outside jurisdiction is the continuing to act and interfere in proper adjudication of the cases with other judges while being a material witness to the ongoing and continuing frauds in his courts and on his court. See, COLIN Sua Sponte Recusal issued within 24 hours of illegal denial of mandatory disqualification motion.
6. It is noted that at the time this mandatory disqualification motion had been filed, Judge Colin had already permitted the cases to continue for nearly 2.5 years without ever holding a hearing to determine who the proper Trustees were, who proper Personal Representatives of the Estate were and are, what the construction and meaning of the Trusts and Estates should be all the while permitting parties such as Ted Bernstein and attorneys Tescher and Spallina who are involved in the direct frauds upon his court to nonetheless continue acting permitting properties to be illegally sold, substantial monies and assets transferred and disposed of while denying Petitioner and Petitioner’s minor children rights of inheritancy causing substantial financial and related harm.
7. Such Disqualification motion was filed against the further backdrop of a case wherein the Trustee being illegally allowed to act, Ted Bernstein, had such concerns and suspicions that deceased Simon Bernstein (his father) may have been murdered that he sought action by the Coroner, action to get an independent autopsy and a complaint to the Palm Beach County Sheriff’s all within a short amount of hours after Simon Bernstein passed.
8. The Motion for Mandatory Disqualification was filed nearly two years after Petitioner had first filed an Emergency Motion in both the Estate cases of Shirley and Simon Bernstein showing direct fraud on the Court of Judge Colin by the filings of Attorneys Donald R. Tescher, Esq. and Robert L. Spallina, Esq. dating back to at least October of 2012. By the time the May 2015 Disqualification was filed herein, a paralegal Notary Public Kimberly Moran who was employed by Tescher and Spallina had already been under investigation and later charged and convicted in Notary Fraud involving the same filings made by the Attorney Tescher and Spallina law firm in Oct. 2012. Attorney Spallina, himself, later admitted to the Palm Beach Sheriff of fraudulent actions by himself personally in conspiracy with his partner Tescher involving one of the Trusts ( 2008 Shirley Bernstein Trust ), wherein attorney Spallina admitted to fraudulently changing such 2008 Trust of Shirley Bernstein to change the beneficiaries of this Trust to benefit both Ted Bernstein and Pam Bernstein Simon.
9. Yet Judge Colin, despite stating on the Record on Sept. 13, 2013 that Miranda warnings were appropriate for Ted Bernstein and his attorneys Tescher and Spallina and others, continued to allow the parties to move forward in fraud and held no hearings to correct the frauds and took no actions to refer the attorneys Spallina and Tescher to proper authorities. This was the first hearing held after I filed a detailed Emergency Motion in May of 2013 detailing the fraud upon Judge Colin’s Court and other improprieties and requests for relief.
10. While Judge Colin’s full involvement in the frauds is presently unknown, it is clear that he was made directly aware of the frauds by Petitioner’s Emergency motion filing in May, 2013, if not directly aware or involved earlier. It presently remains unclear the extent to which Judge Colin’s acts post sua sponte recusal have further poisoned the fair adjudication of the cases herein.

# MANDAMUS

1. A Writ OF Mandamus is appropriate and required to direct JUDGE COLIN to vacate his prior illegal ORDERS, specifically the Sua Sponte Order of Recusal and Order Denying the motion for Disqualification as “legally insufficient” and to further enter an Order of Disqualification and Vacating all other Orders in the case. The writ of mandamus is appropriately used to require a government actor to perform a nondiscretionary duty or obligation that he or she has a clear legal duty to perform. See Austin v. Crosby, 866 So. 2d 742, 743 (Fla. 5th D.C.A. 2004) (holding that mandamus may only be granted if there is a clear legal obligation to perform a duty in a prescribed manner). It applies to enforce a right already established. Austin, 866 So. 2d at 744. The writ of mandamus will issue to require a trial court to comply with the mandate of an appellate court. Superior Garlic Int’l, Inc. v. E&A Produce Corp., 29 Fla. L. Weekly D2341 (Fla. 3d D.C.A. Oct. 20, 2004).
2. “Mandamus is a common law remedy used to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law.” Poole v. City of Port Orange, 33 So. 3d 739, 741 (Fla. 5th DCA 2010) (citing Puckett v. Gentry, 577 So. 2d 965, 967 (Fla. 5th DCA 1991)). “A duty or act is ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.” Austin v. Crosby, 866 So. 2d 742, 744 (Fla. 5th DCA 2004).”
3. “Mandamus is a common law remedy used to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law.” Poole v. City of Port Orange, 33 So. 3d 739, 741 (Fla. 5th DCA 2010) (citing Puckett v. Gentry, 577 So. 2d 965, 967 (Fla. 5th DCA 1991)). “A duty or act is ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.” Austin v. Crosby, 866 So. 2d 742, 744 (Fla. 5th DCA 2004).
4. Petitioner’s motion for Disqualification clearly shows it was properly filed according to law and was facially valid and sufficient and thus Petitioner has established a clear legal right to Disqualification by Judge Colin and mandamus is thus appropriate to enforce this right. The only question before this Court is whether Petitioner met this burden in the filing of the mandatory Disqualification of May 2015 and this Petition and such original Disqualification motion (EXHIBIT A) clearly shows the burden was met by Petitioner thus making mandamus appropriate at this time.

# Disqualification Motion SHOWED JUDGE Colin as A Material Fact Witness to fraudulent filings by attorneys robert spallina and donald tescher using a now deceased simon bernstein to close the estate of his wife, shirley bernstein, who predeceased him

1. The Disqualification motion clearly demonstrated Judge Colin as a material fact witness in relation to the fraud by Attorneys Spallina and Tescher specifically in relation to an Oct. 24, 2012 filing wherein Attorney Spallina files multiple documents allegedly signed by then Deceased Simon Bernstein nearly 6 months before, yet filing these documents in Judge Colin’s Court in the Estate of Shirley Bernstein as if Simon was present and still alive, thus using a Deceased person to attempt to close the Estate of Shirley Bernstein. One of the documents filed at this time is an April 9, 2012 Petition for Discharge which was signed before attorney Robert Spallina allegedly by Simon Bernstein. In addition to this document being fraud as purporting in October of 2012 to be filed by Simon who was now deceased, the document had further fraud in the document such as alleging Waivers by the Simon Bernstein children had been performed by such date and yet these Waivers were not completed as of April 9, 2012. These Waivers which were not completed as of April 9, 2012 are other documents later admitted by the Tescher Spallina employee and Notary Kimberly Moran to have been forged. The Disqualification motion further shows Judge Colin and his Court Officer having Ex Parte contact with Attorney Spallina two weeks later on Nov. 5, 2012 but not even this Ex Parte communication is docketed until the next day, Nov. 6, 2012.

An excerpt of the Disqualification motion shows ***just some of the material fact issues relating to the scheme of fraud in Judge Colin’s court*** as follows from paragraph 19:

1. 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? Who told him?
2. Note: These are not an exhaustive list of material fact questions surrounding these fraudulent filings and actions but were sufficient for the mandatory Disqualification as set out in the May 2015 motion.
3. The Disqualification motion in Exhibit A shows other legally proper and valid grounds for disqualification based upon reasonable fear of bias and lack of impartiality and is detailed in the grounds. It is petitioned to this Court that this May 2015 Disqualification motion is not an exhaustive list of the errors and grounds for Disqualification of Judge Colin but was clearly legally sufficient at the time and Judge Colin and Mandamus should now be issued.
4. As a further except of the May 2015 Disqualification motion, the following is presented:
5. Finally, in his own words in the first day of the hearing to sell the house on March 26, 2015, Colin stated that he first had to have hearings to remove Ted, hearings for trust construction to determine validity and investigation of wrongdoings beyond Tescher and Spallina before being able to proceed further and yet with none of those things were achieved and at the next hearing he allows the sale of the house ignoring his prior statement:

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. Yet, despite Judge Colin proclaiming on the Record that he had to have hearings on whether Ted should be trustee and what the proper construction of the instruments are, Judge Colin proceeds to allow the Simon Bernstein home to be sold by Ted Bernstein in the next hearing and falsely proclaims this to be an “arms-length” transaction despite never having testimony from the alleged buyer of the home nor disclosing the identity of the buyer. See, Exhibit A Disqualification motion. This comes after Judge Colin has already allowed Ted Bernstein to sell a condo of Shirley Bernstein’s allegedly as the successor Trustee of Shirley’s Trust and yet it is the precise Shirley’s Trust of 2008 that attorney Spallina had admitted to fraudulently altering making such admission to the Palm Beach County Sheriff’s Office on or about Jan. 2014, nearly a year and a half before, without Judge Colin ever holding a hearing on these issues. It is further noted that Ted Bernstein is acting almost solely upon the acts of Tescher and Spallina who were clearly shown by this time to have been engaged in massive fraud upon the Court, yet Colin permits Ted Bernstein to continue to act.
2. COLIN had a statutory duty and was mandated by judicial canons to disqualify himself on his own initiative years before his Sua Sponte Recusal on May 20, 2015 and after PETITIONER filed a Petition to Disqualify on May 14, 2015 that was legally sufficient within Fla. Stat. 38.10 and Fla. Rules Jud. Admin 2.330 and Judicial Canons.
3. That Petitioner, being Pro Se, also motioned COLIN several times to disqualify on his own initiative as required under statutes and Judicial Canons and COLIN failed to rule on the motion and disqualify himself.
4. The Florida Code of Judicial Conduct Canon 3 provides states:

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 the party or a party’s lawyers.

1. Disqualification is mandatory under Florida Rule of Judicial Administration Rule 2.330 and Florida Statute 38.10. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. U.S*., 114 S.Ct. 1147, 1162 (1994). Positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp*., 486 U.S. 847 (1988); *Levine v. United States,* 362 U.S. 610 (1960);
2. Should a judge not disqualify himself, the judge is in violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.")"[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). *Garraghty v. Va. Dep't of Corr*., 52 F.3d 1274, 1282 (4th Cir. 1995); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);
3. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his “appearance of partiality” which further disqualifies the judge. Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996).
4. Disqualification is Mandatory under the Code of Judicial Conduct, Canon 3

“A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently” Section 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: (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. The issues before this Court are the failure of COLIN to mandatorily Disqualify and the “**legal sufficiency”** of the motion to Disqualify filed by PETITIONER and more importantly the failure of COLIN to mandatorily disqualify on his own initiative versus waiting for PRO SE PETITIONER to file sufficient pleadings. In order to demonstrate legal sufficiency, PETITIONER needed to show:

…a well-grounded fear that he will not receive a fair [hearing] at the hands of the judge. **It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling**.’

*State ex rel. Brown v. Dewell*, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). *See also Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981). **The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially**. *State v. Livingston*, 441 So. 2d 1083, 1086 (Fla. 1983) (emphasis added). In a case where the PETITIONER’S liberty is at stake, the court “should be especially sensitive to the basis for the fear.” *Chastine v. Broome*, 629 So. 2d 293, 294 (Fla. 4th DCA 1993). The circumstances of this case are of such a nature that they are “sufficient to warrant fear on PETITIONER’S part] that he would not receive a fair hearing by the assigned judge.” *Suarez v. Dugger*, 527 So. 2d 191, 192 (Fla. 1988).

1. For all the reasons set forth herein and by the attached Disqualification Motion of May 2015 in Exhibit A and upon all the proceedings, document s and records herein, Mandamus must now issue for Judge Colin to strike the prior Sua sponte Order of Recusal, strike the Order denying the Disqualification motion as legally insufficient, and void all Orders in the case from Nov. 2012 forward at minimum.

# PROHIBITION

1. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. Carroll v. Fla. State Hosp., 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge’s order denying a motion to disqualify).
2. WRIT OF PROHIBITION is proper to prevent an inferior court or tribunal from improperly exercising jurisdiction over a controversy and if a petition for a writ of prohibition demonstrates a preliminary basis for entitlement to relief, the court can issue an order to show cause why relief should not be granted. Once a show cause order issues in prohibition, it automatically stays the lower court proceeding. Fla. R. App. P. 9.100(h).
3. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. *Carroll v. Fla. State Hosp.,* 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge’s order denying a motion to disqualify).
4. That COLIN influencing the matters after recusal appears further obstruction and may have given Proskauer inside information and records with intent and scienter in further efforts to derail PETITIONER’S rights.

The Court further stated:

In Metropolitan Dade County v. Martinsen, 736 So. 2d 794, 795 (Fla. 3d DCA 1999), this Court restated the well-settled principle "that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends." Hanono v. Murphy, 723 So. 2d 892, 895 (Fla. 3d DCA 1998) (citing Carter v. Carter, 88 So. 2d 153, 157 (Fla. 1956).

1. This is the exact same divisive and devious conduct exhibited herein – these state actors are employing the very institution they have subverted to achieve their ends.
2. Thus, in this case, Judge Colin proceeded to poison the further hearing and adjudication of the cases in Florida by having ex parte communications with other Judges of the Florida Courts while he should have been disqualified as a material witness to the Tescher Spallina Moran frauds and for other grounds. Yet, this process of poisoning the case with other Judges leads to the case being directed to one Judge Coates who himself was a Proskauer Rose partner out of the Boca Raton, Florida office right across the hall from Petitioner herein when Proskauer and related parties were stealing away patents and technologies valued in the hundreds of billions ( if not trillions ) over the lifetime of the IP and heraled by leading engineers and experts as the “holy grail” of the internet.
3. Proskauer Rose, themselves, had in fact “billed” for Estate and Trust work involving Simon Bernstein and Petitioner’s minor children in Billings that came out in a prior action here in Florida heard before Judge Labarga.

See, Proskauer v. Iviewit Lawsuit – Proskauer Legal Bills @

<http://www.iviewit.tv/20040404ProskauerBillsIviewit.pdf>

06/29/99 M ROBBINS 3.00 Draft and preparation of memoranda to Gortz; Revisions to The Jacob Bernstein 1999 Trust subscription agreement, See Proskauer Rose Billing Lawsuit

09/27/99 M ROBBINS .50 Inter-office conference with G. Karibjanian re: trusts and waiver of permitted transferee provision of S. Bernstein's subscription agreement.

09/28/99 M ROBBINS 1.25 Meeting with Simon Bernstein re: transfer of shares to trusts. Send LLC Agreement to Simon Bernstein. Inter-office conferences with G Karibjanian re: transfer of shares to trusts.

Preparation of e-mail to G. Karibjanian retransfer of shares to trusts.

1. Judge Colin had already been petitioned and advised about the “elephant in the room” being the Proskauer Rose involvement and missing Iviewit stock and patent fraud by the May 2013 Emergency Motion attached herein and further set out in the May 2015 Disqualification motion. .
2. Attorneys Spallina and Tescher had already filed a Will of Simon Bernstein on or about Oct. 2, 2012 shortly after Simon’s passing that was prepared by Proskauer Rose and thus, clearly Simon Bernstein’s passing was noted in the State of Florida Palm Beach County Court System prior to the Oct. 24, 2012 fraud by Spallina and Tescher when now deceased Simon Bernstein is being used to “close” Shirley Bernstein’s Estate and certainly Simon’s passing was registered in the Florida Probate Court system at the time of the subsequent Nov. 2012 Ex Parte communication to Spallina by Judge Colin’s case assistant on behalf of Judge Colin.
3. Yet, even in “resigning” from the case by the sua sponte recusal Judge Colin continued to poison proceedings and a writ of prohibition must now issue along with protective Orders as requested.

**ALL ORDERS OF JUDGE COLIN ARE A NULLITY AND ARE VOID**

1. Where a judge fails to disqualify, there is no jurisdiction to act and any order issued is illegal and void. *Kilbourn v. Thompson*, 103 U.S. 168 (1881). In *Kilbourn*, the Sergeant-at-Arms of the United States House of Representatives was held not to have immunity for ordering that the PLAINTIFF be arrested under a warrant issued by the House for refusing to testify because they lacked jurisdiction to issue such an order. Id, The court held that the House *did not have jurisdiction* to conduct the particular investigation. The Sergeant at Arms was liable for false arrest and could not assert the issuance of the warrant as a defense. Id. An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See *Pennoyer v. Neff* (1877) 95 US 714; *Windsor v. McVeigh* (1876) 93 US 274; A void judgment is no judgment at all and "a court must vacate any judgment entered in excess of its jurisdiction**.**" *Lubben v. Selective Service System Local Bd. No*. 27, 453 F.2d 645 (1st Cir. 1972). *Kalb v. Feuerstein* (1940) 308 US 433.
2. "A void judgment does not create any binding obligation. *Kalb v. Feuerstein* (1940) 308 US 433. If a court grants relief, which, under the circumstances, it hasn't any authority to grant, its judgment is to that extent void." An illegal order is forever void. A void order is *void ab initio* and does not have to be declared void by a judge. The law is established by the *U.S. Supreme Court in Valley v. Northern Fire & Marine Ins*. Co., 254 U.S. 348, (1920) as well as other state courts, in *People v. Miller*. “Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities...” *Valley v. Northern Fire* and Marine Ins. Co., 254 U.S. 348.
3. Thus, because Judge Colin should have disqualified and acted outside his jurisdiction, all such Orders of Judge Colin should now be vacated and voided. Judge Colin himself, even prior to the Sept. 2013 Hearing which occurred after his court was expressly petitioned on the Tescher Spallina fraud by the May 2013 Emergency Motion, must be charged with personally knowing of Simon’s passing by May of 2013 since he issued an Order denying the Emergency motion in BOTH the Estates of Shirley and Simon and thus must have known Simon had passed by that date. It is noted, however, that Judge French had been assigned to Simon’s estate in May of 2013 yet Judge Colin issued the Order denying the Emergency motion. Further, Judge Colin must be chargeable with reading the filings in his own Court by the time he issued the Order closing Shirley’s Estate in Jan. 2013 and thus should have known of Simon’s passing by that time and thus all Orders from Jan. 2013 on must be vacated.

# All Prior Orders of Judge Colin should be Vacated as Void and a legal nullity

1. “Procedural due process promotes fairness in government decisions by requiring the government to follow appropriate procedures when its agents decide to deprive any person of life, liberty or property.” John Corp. v. City of Houston, 214 F.3d 573, 577 (5th Cir. 2000) (internal citations and quotations omitted). “Substantive due process, by barring certain government actions regardless of the fairness of the procedures used to implement them, serves to prevent governmental power from being used for purposes of oppression.” Id. In order to establish either a substantive or procedural due process violation, a plaintiff must first establish the denial of a constitutionally protected property interest. See Bryan v. City of Madison, 213 F.3d 267, 276 (5th Cir. 2000).

**LEGAL AUTHORITIES**

**MANDATORY DISQUALIFICATION**

1. COLIN had a statutory duty and was mandated by judicial canons to disqualify himself on his own initiative years before his Sua Sponte Recusal on May 20, 2015 and after PETITIONER filed a Petition to Disqualify on May 14, 2015 that was legally sufficient within Fla. Stat. 38.10 and Fla. Rules Jud. Admin 2.330 and Judicial Canons.
2. That Petitioner, being Pro Se, also motioned COLIN several times to disqualify on his own initiative as required under statutes and Judicial Canons and COLIN failed to rule on the motion and disqualify himself.
3. The Florida Code of Judicial Conduct Canon 3 provides states:

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 the party or a party’s lawyers.

1. Disqualification is mandatory under Florida Rule of Judicial Administration Rule 2.330 and Florida Statute 38.10. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994). Positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988); Levine v. United States, 362 U.S. 610 (1960);
2. Should a judge not disqualify himself, the judge is violation of the Due Process Clause of the U.S. Constitution. United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.")"[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). Garraghty v. Va. Dep't of Corr., 52 F.3d 1274, 1282 (4th Cir. 1995); Mathews v. Eldridge, 424 U.S. 319, 335 (1976);
3. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his “appearance of partiality” which further disqualifies the judge. Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996).
4. Disqualification is Mandatory under the Code of Judicial Conduct, Canon 3

“A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently” Section 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: (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. The issues before this Court are the failure of COLIN to mandatorily Disqualify and the “legal sufficiency” of the motion to Disqualify filed by PETITIONER and more importantly the failure of COLIN to mandatorily disqualify on his own initiative versus waiting for PRO SE PETITIONER to file sufficient pleadings. In order to demonstrate legal sufficiency, PETITIONER needed to show:

…a well-grounded fear that he will not receive a fair [hearing] at the hands of the judge. It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling.’

State ex rel. Brown v. Dewell, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). See also Hayslip v. Douglas, 400 So. 2d 553 (Fla. 4th DCA 1981). The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially. State v. Livingston, 441 So. 2d 1083, 1086 (Fla. 1983) (emphasis added). In a case where the PETITIONER’S liberty is at stake, the court “should be especially sensitive to the basis for the fear.” Chastine v. Broome, 629 So. 2d 293, 294 (Fla. 4th DCA 1993). The circumstances of this case are of such a nature that they are “sufficient to warrant fear on PETITIONER’S part] that he would not receive a fair hearing by the assigned judge.” Suarez v. Dugger, 527 So. 2d 191, 192 (Fla. 1988).

1. PETITIONER and his minor children are entitled to a full and fair proceeding, including a fair determination of the issues by a neutral, detached judge. Holland v. State, 503 So. 2d 1354 (Fla. 1987); Easter v. Endell, 37 F.3d 1343 (8th Cir. 1994). Due process guarantees the right to a neutral, detached judiciary in order “to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests.” Carey v. Piphus, 435 U.S. 247, 262 (1978). Principles of due process demand that this case be heard by another judge selected without COLIN’S prejudice and for COLIN to disqualify himself and remove his Orders issued outside his jurisdiction and outside the color of law:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See Carey v. Piphus, 435 U.S. 247, 259-262, 266- 267 (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. See Matthews v. Eldridge, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, ‘generating the feeling, so important to a popular government, that justice has been done,’ Joint Anti-Fascist Committee v. McGrath, 341 U.S. 123, 172, (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980).

1. The disqualification rules require judges to avoid even the appearance of impropriety and COLIN’S self-dealing actions after knowing he would be a material and fact witness to crimes that occurred in his court by officers and fiduciaries he appointed, in which his own actions became questionable, establishes a prima facie case of appearance of impropriety:

It is the established law of this State that every litigant…is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the court to scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any manner where his qualification to do so is seriously brought into question. The exercise of any other policy tends to discredit and place the judiciary in a compromising attitude which is bad for the administration of justice. Crosby v. State, 97 So.2d 181 (Fla. 1957); State ex rel. Davis v. Parks, 141 Fla. 516, 194 So. 613 (1939); Dickenson v. Parks, 104 Fla. 577, 140 So. 459 (1932); State ex rel. Mickle v. Rowe, 100 Fla. 1382, 131 So. 3331 (1930).

\* \*

The prejudice of a judge is a delicate question for a litigant to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge in question should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned. Dickenson v. Parks, 104 Fla. 577, 140 So. 459 (1932); State ex rel. Aguiar v. Chappell, 344 So.2d 925 (Fla. 3d DCA 1977).

1. The United States Supreme Court has stated:

…the inquiry must be not only whether there was actual bias on respondent’s part, but also whether there was ‘such a likelihood of bias or an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused.’ Ungar v. Sarafite, 376 U.S. 575, 588 (1964). ‘Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties,’ but due process of law requires no less. In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). Taylor v. Hayes, 418 U.S 488, 501 (1974) (emphasis added).

1. The appearance of impropriety violates state and federal constitutional rights to due process. A fair hearing before an impartial tribunal is a basic requirement of due process. See In re Murchison, 349 U.S. 133 (1955). “Every litigant is entitled to nothing less than the cold neutrality of an impartial judge.” State ex rel. Mickle v. Rowe, 131 So. 331, 332 (Fla. 1930). Absent a fair tribunal, there can be no full and fair hearing.
2. The issues before this Court are the dismissal of the Recusal order of Colin in favor of a mandated mandatory disqualification of COLIN and voiding of his prior orders and the question of “legal sufficiency” of the motion filed by PETITIONER; there is no deference owed to the lower court. Smith v. Santa Rosa Island Authority, 729 So. 2d 944, 946 (Fla. 1st DCA 1998). The test for determining the legal sufficiency of a motion for disqualification is an objective one which asks whether the facts alleged in the motion would place a reasonably prudent person in fear of not receiving a fair and impartial hearing. See Livingston v. State, at 1087. The fact that the crimes were committed in COLIN’S court by Officers and Fiduciaries under COLIN’S tutelage requires mandatory disqualification on COLIN’S own initiative and casts “a shadow…upon judicial neutrality so that disqualification [of the circuit] is required.” Chastine v. Broome, at 295.
3. In Partin v Solange et al, 2015 WL 2089081 (Fla.App. 4 Dist., 2015), the court granted the petition to disqualify stating the lower court judge cut-off petitioners' counsel and expressed his prejudgment of the matter and in another hearing, the lower court judge made acerbic comments about petitioners and exhibited overall hostility toward both petitioners and their counsel. Not only did COLIN engage in this similar egregious conduct towards PETITIONER from the start but his disqualification is also mandated because of his direct involvement and handling of the fraudulently notarized and forged documents posited in his court and other direct involvement in the matters that eroded PETITIONER’S rights to fair and impartial due process under law by retaliating for two years against PETITIONER instead.
4. The Due Process Clause serves to protect use of fair procedures to prevent the wrongful deprivation of interests and is a guarantee of basic fairness. Johnson v. Mississippi, 403 U.S. 212, 216 (1971); Peters v. Kiff, 407, U.S. 493, 502 (1972). "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552 (1965) Garraghty v. Va. Dep't of Corr., 52 F.3d 1274, 1282 (4th Cir. 1995); Denying access to important records, evidence, and witnesses and mistreating PETITIONER and his minor children as a pro se party are violations of Equal Protection and due process of law. Pro se parties are a distinct minority class in judicial proceedings. COLIN should have demanded that the minor children and PETITIONER were represented by counsel, forced bonding of the fiduciaries and officers he appointed involved in the criminal acts, posted bonds for the court, reported the misconduct, removed all parties involved in the fraud instead of allowing them to continue to participate for months and even to this day, disqualified himself and instead COLIN took opposite actions to harm PETITIONER and his minor children and delay their inheritances by continuing the Fraud on the court, Fraud in the court and Fraud by the court, to intentionally cause catastrophic financial ruin upon PETITIONER and his minor children by continuing to hold fraudulent proceedings and illegally issue orders.
5. None of the orders issued by a judge who has been disqualified or should have disqualified by law are valid. They are void as a matter of law, and are of no legal force or effect. The orders issued by COLIN are null and void and of no force and effect as they are procured by fraud, without jurisdiction, the result of unlawful rulings, are unconstitutional and violate due process causing criminal Obstruction of Justice.

**ALL ORDERS OF JUDGE COLIN ARE A NULLITY AND ARE VOID**

1. Where a judge fails to disqualify, there is no jurisdiction to act and any order issued is illegal and void. Kilbourn v. Thompson, 103 U.S. 168 (1881). In Kilbourn, the Sergeant-at-Arms of the United States House of Representatives was held not to have immunity for ordering that the PLAINTIFF be arrested under a warrant issued by the House for refusing to testify because they lacked jurisdiction to issue such an order. Id, The court held that the House did not have jurisdiction to conduct the particular investigation. The Sergeant at Arms was liable for false arrest and could not assert the issuance of the warrant as a defense. Id. An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See Pennoyer v. Neff (1877) 95 US 714; Windsor v. McVeigh (1876) 93 US 274; A void judgment is no judgment at all and "a court must vacate any judgment entered in excess of its jurisdiction." Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645 (1st Cir. 1972). Kalb v. Feuerstein (1940) 308 US 433.
2. "A void judgment does not create any binding obligation. Kalb v. Feuerstein (1940) 308 US 433. If a court grants relief, which, under the circumstances, it hasn't any authority to grant, its judgment is to that extent void." An illegal order is forever void. A void order is void ab initio and does not have to be declared void by a judge. The law is established by the U.S. Supreme Court in Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, (1920) as well as other state courts, in People v. Miller. “Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities...” Valley v. Northern Fire and Marine Ins. Co., 254 U.S. 348

# PETITION TO STAY CASES AND TEMPORARILY RESTRAIN ANY SALE, TRANSFER, DISPOSITION OF ANY ASSET OR PROPERTY AND PRESERVATION OF EVIDENCE

# 

1. Petitioners must establish the following four elements:

# a substantial likelihood that the plaintiffs will prevail on the merits; (2) a substantial threat that plaintiffs will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to plaintiffs outweighs the threatened harm the injunction may do to the defendant; and (4) granting the preliminary injunction will not disserve the public interest. Church v. City of Huntsville, 30 F.3d 1332, 1342 (11th Cir.1994).

1. The mandamus petition herein and filed motion for mandatory Disqualification clearly shows said motion was legally sufficient and Judge Colin should have mandatorily disqualified. Thus Petitioners have a substantial likelihood to prevail on this application. In addition to an illegal sale of real property being the home of deceased Simon Bernstein imminently scheduled for sale by June 10, 2015, Petitioners have shown loss of property, loss of records, loss of documents and evidence, loss of trusts and inheritances and other issues of irreparable harm. Granting a temporary stay and injunction against further threatened injury to Petitioners outweighs and harm to Respondent –defendants. Granting a temporary stay is in the public interest until a neutral court can sort out the frauds and conflicts and proper parties and proper trustees and proper trusts and instruments.
2. PETITIONER has suffered at the hands of the Florida court system for thirteen years and has been denied INTELLECTUAL PROPERTIES and due process to seek redress as the alleged criminals are almost all attorneys at law in their various capacities as private lawyers, judges, prosecutors and politicians.
3. PETITIONER has suffered at the hands of the Florida court system for almost three years since the passing of PETITIONER’S father and has been denied PROPERTIES rightfully his through inheritance and again the criminals are almost all attorneys at law and many are connected to the prior INTELLECTUAL PROPERTIES thefts.
4. PETITIONER again cannot get redress or due process in the Florida court system and seeks to have the cases moved from the Florida court system as due to his pursuit of Supreme Court Justices, the Florida Bar and many Florida Lawyers and Law Firms and therefore PETITIONER fears he cannot get a fair and impartial hearing and adequate remedy of law by any party that is a member of the Florida Bar.
5. PETITIONER has battled two years to remove JUDGE COLIN for a situation of Fraud on the Court that was irrefutable and cause for disqualification on several grounds but who refused to follow Judicial Canons and Law and thus has caused severe harms to PETITIONER and his three minor children as the record reflects.
6. Even when “recusing” JUDGE COLIN influenced inappropriately the case knowingly to a former PROSKAUER partner and where PETITIONER was again harmed as the new judges COATES then had access to all the courts records to gain further advantage over PETITIONER. That COLIN and COATES knew of the conflict of interest and that PROSKAUER was a Counter Defendant in the certain of PETITIONER’S Counter Complaints and a party to the matters.
7. That COATES had reviewed the case file and stated on the record that he was NOT CONFLICTED with PETITIONER and the matters until PETITIONER reminded JUDGE COATES that despite his desire to stay on the case that he had JUDICIAL CANONS that could make his retaining the case violate them, whereby JUDGE COATES after several attempts to claim NO CONFLICT suddenly SUA SPONTE recused himself.
8. That due to this nefarious setup of PETITIONER’S cases to further stymie and delay and interfere with PETITIONER’S due process and procedure rights PETITIONER fears that no matter how or who the cases are transferred to in Florida that PETITIONER cannot receive due process and any successor to Judge Coates was part of a forgone plan to derail due process.

# CONCLUSION AND PRAYER

**WHEREFORE,** PETITIONER seeks a WRIT OF PROHIBITION to prohibit COLIN from:

* 1. Acting in excess of his lawful jurisdiction;
  2. Attempting to enforce the May 20th 2015 SUA SPONTE RECUSAL or ANY OTHER ORDER;
  3. Taking any action in this matter other than vacating and voiding all Orders and immediately disqualifying himself;
  4. Prohibition is invoked for the protection of PETITIONER and his minor children, whose safety and well being are in danger if this WRIT is denied for lack of a legal remedy.

**WHEREFORE,** PETITIONER seeks a WRIT OF MANDAMUS, compelling the COLIN to:

* 1. abide by the laws of the State of Florida, Federal law and the United States Constitution and cease acting beyond his jurisdiction immediately;
  2. set aside the May 20th 2015 Order to Recuse as void ab initioimmediately and instead disqualify himself and make NO FURTHER ACTION;
  3. set aside the ALL ORDERS as void ab initio immediately;
  4. set aside all other Orders in his Court as *void ab initio* immediately as they are the product of fraud on, in and by the court; and,
  5. immediately disqualify himself from this case and take no further action.

**WHEREFORE,** PETITIONER seeks a 30 day STAY ORDER for all cases in order to move the cases to a prescreened conflict free venue, either state or federal.

* 1. IMMEDIATELY SEIZE ALL ASSETS AND PROPERTIES OF THE ESTATES AND TRUSTS of Simon and Shirley Bernstein and have all assets that have been converted through the fraudulent orders immediately be returned and put in protective custody by this Court, until all matters of document fraud, trust constructions, trust validity, fraud and breaches of fiduciary duties can be adjudicated by a fair and impartial court of law; and,
  2. Reverse COLIN’S acts to interfere with the next venue in these matters by having the case assigned to a proper jurisdiction and venue without COLIN’S steering the case to a court and judge that he influenced the outcome in choosing.

And for such other and further relief as to this Court may seem just and proper.

DATED: Tuesday, June 30, 2015

Respectfully submitted,

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

Pro Se

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was furnished by e-filing and email on this Tuesday, June 30, 2015.

Respectfully submitted,

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

Pro Se

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# 

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the font standards, i.e. Times New Roman 14 point font as set forth in Florida Rule of Appellate Procedure 9.210.

DATED: Tuesday, June 30, 2015

Respectfully submitted,

/s/ Eliot Ivan Bernstein

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**EXHIBITS**

**URL’ S ARE FULLY INCORPORATED HEREIN BY REFERENCE.**

|  |  |
| --- | --- |
| **Exhibits** | **Document - URL** |
| A | See Attachment – Disqualification Petition |
| B | See attachment – Order Denying Disqualification Petition |
| C | See attachment – Order Sua Sponte Recusal |
| 1 | September 02, 2014 Counter Complaint  <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf> |
| 2 | October 06, 2014 Colin Order Prohibiting Attorney/Fiduciaries from being sued  <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141006%20Order%20on%20Ted%20Bernstein%20Removal%20as%20Trustee%20and%20Attorney%20Protection%20Order.pdf> |
| 3 | July 25, 2012 ALLEGED Simon Bernstein Trust (See Pages 5,6 and 16, 17)  <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120725SimonBernsteinAmendedRestatedTrust.pdf> |
| 4 | Crystal Cox Blog    <http://tedbernsteinreport.blogspot.com/2014/07/alan-rose-john-pankauski-and-ted.html> |
| 5 | TED Testimony Admitting Force and Aggression to be used against PETITIONER with his counsel.  <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140711%20Hearing%20TED%20ADMITS%20FORCE%20AND%20AGRESSION%20AGAINST%20ELIOT.pdf> |
| 6 | July 18, 2014 COLIN Privilege Order  <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140718%20Order%20Regarding%20Privilege.pdf> |
| 7 | Palm Beach County Sheriff Report (Pages 25-28)  <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf> |
| 8 | Palm Beach County Coroner Report (Pages 31-51)  <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf> |
| 9 | May 06, 2015 TED Deposition (Pages 115-134)  <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf> |
| 10 | September 13, 2013 Emergency Hearing  <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf> |
| 11 | May 14 2015 Motion for Disqualification  <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf> |
| 12 | June 16, 2104 Petition to Remove Judge Colin  <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140616%20FINAL%20SIGNED%20PRINTED%20OBJECTION%20TO%20PROPOSED%20AND%20EXISTING%20ORDERS%20and%20DISQUALIFY%20OF%20HON%20JUDGE%20MARTIN%20COLIN.pdf> |
| 13 | January 01, 2014 Motion to Disqualify Colin  <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140101%20Final%20PRINTED%20SIGNED%20Motion%20to%20Disqualify%20Colin%20and%20more%20131279ns.pdf> |
| 14 | Iviewit RICO and Antitrust  <http://www.iviewit.tv/20071215usdcsnycomplaint.pdf> |
| 15 | Iviewit RICO and Antitrust Amended Complaint  <http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080509%20FINAL%20AMENDED%20COMPLAINT%20AND%20RICO%20SIGNED%20COPY%20MED.pdf> |
| 16 | Candice Schwager, Esq. Warning - PETITIONER correspondences with Sheriff Andrew Panzer & DOJ OIG Michael Horowitz  <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150411CandiceSchwagerEsqWarningDOJOIGHorowitzAndSherifPanzerLetters.pdf> |

**EXHIBIT A**

**EXHIBIT B**

**EXHIBIT C**

1. <http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090213%20FINAL%20SIGNED%20LETTER%20OBAMA%20TO%20ENJOIN%20US%20ATTORNEY%20FINGERED%20ORIGINAL%20MAIL%20l.pdf> [↑](#footnote-ref-1)
2. http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf [↑](#footnote-ref-2)