

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

TED BERNSTEIN, AS TRUSTEE
OF THE SHIRLEY BERNSTEIN TRUST
AGREEMENT DATED MAY 20, 2008,
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXNB

PLAINTIFF,

**ELIOT BERNSTEIN'S MOTION FOR STAY &
CONTINUANCE OF TRIAL**

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

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Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips, Should

Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate
Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
Case # 502014CP003698XXXXSB – Shirley Trust Construction
Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
OLD CASE # 502014CA014637XXXXMB

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1. I am presently acting pro se and have a Texas attorney seeking admission Pro hac vice and file this motion for a Stay and Continuance of a Trial and said motion should be heard at the Commencement of proceedings on Dec. 15, 2015 at 9:30 am EST.
2. The Trial should be stayed and continued as this court is without proper jurisdiction as this Court should be mandatorily Disqualified and I hereby renew and refile the Disqualification¹.

¹ See,

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L.%20Phillips.pdf>

3. The Trial should be stayed and continued since I have a Texas licensed attorney Candice Schwager who has been preliminarily retained and who has filed a Notice of Abatement letter with the Court and Letter to Alan Rose seeking a voluntary stay for this attorney to be admitted Pro Hac Vice².
4. This attorney is seeking to represent the Minor Children in this action and Trustee Ted Bernstein, Alan Rose and the Estate have denied funds to represent the Minor children who have interests herein and even refused to voluntarily stay the proceeding pending her admission to this Court. The Trial should be stayed and continued so these Minor children have Counsel and due process provided.
5. This attorney has indicated she will also represent my interests if upon completion of her review of all necessary documents she can determine that this representation will not have irreconcilable conflicts of interest.
6. The Trial should thus be stayed and continued at least 30 days according to this attorney seeking to be admitted Pro Hac Vice.
7. The Trial should be stayed and continued under due process as it was not properly Noticed for the Case Management Conference that set the Trial date and Alan Rose either mistakenly or knowingly mislead this Court by claiming otherwise.

Improperly NOTICED Trial

8. Simply reviewing the Notice that I, Eliot Bernstein was sent from the PR Brian O'Connell's office clearly shows the Case was Noticed to be heard in the Estate of Simon Bernstein.

²See, <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20ECF%20Filing%20Stamped%20Copy.pdf>

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference, provides in part: **“The matter to be considered shall be specified in the order or notice setting the conference.”**

9. A simple review of the Transcript from the Case Management Conference Noticed in the Estate of Simon Bernstein before Judge Phillips on Sept. 15, 2015 shows that Alan Rose who represents the alleged Trustee Ted Bernstein either Mistakenly or Knowingly presented False Information before the Court claiming that All 4 Cases were Noticed.
10. The Transcript further shows that neither Florida Licensed attorneys Brian O’Connell, nor Joy Foglieta, who were both present and who had sent the NOTICE for the Conference stood up to Correct the Record on this day and instead went along moving in the Shirley Bernstein case when the case was only Noticed for Simon Bernstein Estate.
11. The Trial should be stayed and continued for further due process denial by failing to determine the standard Case Management issues according to the Rules as set out herein.

Case - Management and Due-Process Issues:

12. Due process is violated where almost None of the Standard Pre-Trial Case Management Rules have been followed or even allowed to be Discussed by myself on Sept. 15, 2015 creating a further basis to Stay the current Trial.
13. These Rules include items such as:

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference:

[http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/\\$FILE/Civil.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/$FILE/Civil.pdf)

“At such a conference the court may:

- (1) schedule or reschedule the service of motions, pleadings, and other papers;

(2) set or reset the time of trials, subject to rule 1.440(c); (3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)–(a)(2)(H) are present; (4) limit, schedule, order, or expedite discovery; (5) consider the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, and stipulations regarding authenticity of documents and electronically stored information; (6) consider the need for advance rulings from the court on the admissibility of documents and electronically stored information; (7) discuss as to electronically stored information, the possibility of agreements from the parties regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources; (8) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts; (9) schedule or hear motions in limine; (10) pursue the possibilities of settlement; (11) require filing of preliminary stipulations if issues can be narrowed; (12) consider referring issues to a magistrate for findings of fact; and (13) schedule other conferences or determine other matters that may aid in the disposition of the action. (b) Pretrial Conference. After the action is at issue the court itself may or shall on the timely motion of any party require the parties to appear for a conference to consider and determine: (1) the simplification of the issues; (2) the necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof; (4) the limitation of the number of expert witnesses; (5) the potential use of juror notebooks; and (6) any matters permitted under subdivision (a) of this rule

14. Nowhere in the Sept. 15, 2015 Conference Transcript is there any Discussion or

Determination by the Court on: 1) Outstanding Discovery including requests for Production by Eliot Bernstein; 2) the need for Pre-Trial Depositions; 3) Disclosure of Expert Witnesses particularly in a case that already has Admitted Document Fraud in Documents filed with the Court where Forensic Experts are likely necessary; 4) and many other pre-trial issues as outlined in the Case Management rules.

15. Based on the proven history of fraud, both the minor children and myself should have access to Trust and Estate funds for hiring of proper forensic experts. Ted Bernstein's failure to obtain such as alleged Trustee is a further breach of his fiduciary duties creating further

conflict with his proceeding forward in this Trial which should be stayed and continued at this time.

16. Alan Rose must be Disqualified as a necessary and material fact witness based upon his May 20, 2015 Email about alleged “Original” Documents in a related Oppenheimer Trust and his subsequent June 4, 2015 letter issued upon his Law Firm Letterhead apparently providing further information on “Original” (actually claimed as “Duplicate Original”) documents in his Possession.
17. Conspicuously absent from these letters and emails is a Sworn Affidavit detailing the *entire links in the Chain of Custody* for this “Original” Best Evidence and thus Alan Rose must be Disqualified under Florida ***RULE 4-3.7 LAWYER AS WITNESS*** grounds as he and the PRs and are intertwined in the Chain of Custody and Possession of these Originals and other items with the PR Brian O’Connell and attorney Joy Foglietta and other staff at the Ciklin law firm.
18. These parties should be available at pre-Trial Deposition and should have to Testify at Trial to establish a proper chain of custody of these items of evidence. These other “originals” are also important for purposes of viewing and comparison and analysis pre-trial which is what should have been scheduled previously.
19. Alan Rose necessary intertwines himself with the PRs and with items that were allegedly Inventoried and yet still claims to make the magical Discovery of these “original” documents. See, Email May 20, 2015:

“From: Alan Rose [<mailto:ARose@mrachek-law.com>]
Sent: Wednesday, May 20, 2015 2:14 PM
To: Lessne, Steven; Eliot Ivan Bernstein; Eliot Ivan Bernstein
Cc: Ted Bernstein; O’Connell, Brian M.; Foglietta, Joy A
Subject: Original signed "Oppenheimer" Trusts

Mr. Lessne and Mr. Eliot Bernstein:

I am writing to advise that we located some files in drawers in Simon's private office in his home at Lions Head, as we were trying to assess the complexity of things that must happen between now and the closing of Lions Head. My primary reason was to visually inspect the three chandeliers that have been the subject of PR emails in the past few days.

In any event, and although these files likely were examined and discounted as unimportant by the PRs after Simon's death and likely meant nothing if and when they were catalogued or viewed during the O'Connell as PR re-appraisal/re-inspection, I noticed a folder marked as the Jake Bernstein trust. Looking more closely, there were three green folders labeled with Eliot's children's names and inside are what appear to be the original signed Irrevocable Trust Agreements for the Trusts which Oppenheimer formerly served. **These may be relevant or important to the ongoing Oppenheimer case, so I bring them to your attention.** There also are what appears to be some tax returns and Stanford Account Statements. Simply because I have attended some of the Oppenheimer hearings, I understand that Eliot claims at least one of the Trusts does not exist. As an officer of the court, and because these may be relevant, I have taken temporary custody of the documents. I will hold them pending joint instructions or a court order, but would prefer to deliver them to Steve Lessne as Oppenheimer's counsel. These have no economic value and have no bearing on the estate, so I doubt Brian O'Connell would want them, but I did not want to see them lost or discarded in the impending move. To facilitate your review, I have scanned the first and last page of each trust, and scanned the first page of the ancillary documents, and attach that in .pdf format.

I am sure that people have looked through these files before, and there did not appear to be anything else of significance. (I did notice a few folders with other grandchildren's names, not Eliot's kids, but left those papers in place because I understand that everyone except Eliot has fully cooperated with Oppenheimer in resolving these matters.)

I also have had occasion to re-look through a small box of trust documents which I have been holding, which came from Simon's former work office. Inside file folders in a desk drawer, Simon retained duplicate originals of the trust agreements relevant to my cases. When I was looking to reexamine these documents – duplicate originals of the 2008 Trusts and the 2012 Trust (the true originals remain with Tescher & Spallina who drafted them) – I noticed a copy of the three separate irrevocable trust documents. Again, these would not have caught my eye originally because I would have never guessed that Eliot would claim the trusts were not valid. I only recently had occasion to notice these in

looking for the duplicate trust originals for Simon and Shirley. The three Irrevocable Trusts appear to be signed and witnessed on page 17, but the individual pages are not initialed. Again, these were only copies, but now having looked at the originals included in the attached scan, I note (although not a handwriting expert) that the attached copies appear to be absolutely identical to the originals just found in Simon's personal office.

These copies include IRS forms under which Traci Kratish PA, as Trustee appears to have applied for and obtained a Taxpayer ID number for each trust, and obviously she provided these to Simon. Each of the Trust documents is signed by Simon Bernstein, as Settlor, and by Traci Kratish PA as the initial Trustee, and the signatures are witnessed by two people. Simon's is witnessed by Jocelyn Johnson and someone else. I am advised that Jocelyn was an employee of Simon's, as presumably was the second witness and also the initial Trustee, Traci Kratish, who was in house counsel for the companies Simon owned part of.

Although this was long before any involvement on my part, Traci Kratish appears to have been the initial trustee (there is a typo elsewhere naming Steven Greenwald). I do not know Steven Greenwald, but I have confirmed that that these trusts were not created by Tescher & Spallina. If they had been, I'm sure they would have retained the original and given Simon duplicate originals as they did for all of the trust documents for the 2008 and 2012 Trusts they prepared. I do not know if Greenwald prepared these and made a typo leaving his name on a later section, or if Kratish prepared these from a boilerplate Greenwald form and made the typo. Either way, and it does not matter to me, the fact that this was a simple and ordinary typo should be obvious to all.

Eventually, Traci Kratish left the employ as the in-house counsel for the companies. Sometime before or at the time of her leaving, she resigned and appointed someone else, and eventually these trusts accounts along with similar trusts for Simon's other seven grandchildren and much of Simon's personal wealth, were moved to Stanford. After Stanford's collapse amid word that it was a Ponzi scheme -- Simon lost upwards of \$2 million of his own funds in the Ponzi scheme -- Simon directed the transfer of the his and these trust accounts to Oppenheimer. Simon selected Oppenheimer; paid Tescher's firm to do the necessary documents to appoint Oppenheimer as successor trustee; took the documents from Tescher and had them signed by all children, including Eliot and Candice; and returned the documents to Tescher for filing. I presume that Simon paid all of these legal fees, because that is the right thing to do from an estate planning strategy and as a favor to his grandkids. I now have seen copies of the filed Petitions, and again without being a handwriting expert, it certainly looks like Eliot's and Candice's signature on them, regardless of whether they had ever met Tescher or Spallina before their parents' deaths.

Eliot and Candice reaped the benefits of Oppenheimer's services, and in any event there is no reason to believe that Candice and Eliot did not sign these Petitions for the benefit of their children. If Eliot now suggests that his and his wife's signatures do not appear on the June 2010 Petitions appointing Oppenheimer 2010 allegation, which is highly doubtful just looking at the three sets of signatures, that would mean Eliot is accusing Simon of being a forger. Eliot already is supportive of Bill Stansbury, who accuses Simon of committing a fraud on Stansbury. I would be shocked by any accusation that Simon did not obtain from Eliot and Candice their genuine signatures on the June 2010 Petitions, and particularly shocked that Eliot, who received so much of his father's (and mother's) largesse during their lifetimes, would now malign Simon's name in such a manner.

Anyway, I'm not sure if either of you needs these any longer, but if you do, here they are.

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20. The Trial should be stayed and continued as TED is Invalid as a Trustee and is acting contrary to his fiduciary duties in failing to get proper forensic examinations of documents and Trust and Will Agreements.

21. Simon Bernstein's business and other records which have been denied in Discovery and should have been addressed Pre-trial are necessary to assist in the determination of whether he was Unduly Influenced in any alleged signing of any of the Trust and Will instruments herein.

Wherefore it is respectfully prayed for an Order Staying and Continuing the Trial herein upon terms that are just, proper and reasonable under the facts, circumstances and the law.

Respectfully Submitted on December 15, 2015,

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

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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 15th day of December, 2015.

/s/ Eliot Ivan Bernstein

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