

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.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

_____/

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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**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR
IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L.
PHILLIPS**

COMES NOW Eliot Bernstein (“Eliot” or “Petitioner”) and files under information and
belief this Verified Emergency Petition and Affidavit for Immediate Mandatory Disqualification
of Judge John L. Phillips, 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 John Phillips is a circuit judge in the 15th Judicial Circuit Probate Division and therefore this rule applies.

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.

2. Petitioner, a party to the case moves for mandatory disqualification on behalf of himself and his three minor children and to otherwise disqualify Judge Phillips provided by rules, statute and by the Code of Judicial Conduct.
3. Judge Phillips is alleged to have violated Statutes and Court and Judicial Rules related to, including but not limited to;

a. 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 other relief as is just and proper;

b. Continued Fraud in the Court;

c. Continued Fraud by the Court;

d. Continued Obstruction of Justice through

Denial of Due Process;

e. Aiding and Abetting Court Appointed Fiduciaries and Court Appointed Attorneys at Law in covering up Fraud on the Court and Fraud by the Court and continuing Fraud on the Court and Fraud on the Beneficiaries;

f. Violations of Probate Statutes and Rules ;

g. Violations of Judicial Cannons - Judge

Phillips has violated the following Judicial Canons, including but not limited to:

Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary

4. Judge Phillips has failed to Uphold the Integrity and Independence of the Judiciary as further set forth herein.

Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities

5. Judge Phillips express and direct conduct, statement and activities in the case have created the Appearance of Impropriety in violation of this Canon as set further set forth herein.

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.

6. Judge Phillips was required to mandatorily disqualify upon the filing of the Disqualification Motion¹ filed by Petitioner on December 04, 2015 for all the ground set forth therein and should have already Disqualified on his own motion sua sponte prior to Petitioner filing said written motion as it has already been alleged by Petitioner and suggested by Creditor attorney Peter Feaman that the transfer of the cases to Phillips Court was improperly interfered with post recusal by the former Judge Martin Colin as further set forth herein and set forth in the All Writs Petition² filed with the Florida Supreme Court in these cases and then Transferred to the 4th DCA³

¹ December 04, 2015 Disqualification Judge Phillips @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

and

Corrections @

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

² See All Writ Filed with the Florida Supreme Court @

7. Any competent Judge acting impartially knew or should have known prior Judge Martin Colin was a material fact witness to the multiple frauds occurring in his Court specifically involving Fiduciaries Robert Spallina, Donald Tescher, the Tescher Spallina law firm, and at minimum Ted Bernstein also purporting to act in an alleged fiduciary capacity specifically involving the very case, the Shirley Estate and Trust, which Judge Phillips illegally set for Trial on Sept. 15, 2015 acting in a case Not Noticed for Case Management by the current PR of the Simon Bernstein Estate Brian O'Connell and Joy Foglietta of the Ciklin Lubitz & O'Connell law firm.
8. Thus, Judge Phillips should now be Disqualified further for failing to mandatorily Disqualify previously and knowing he is acting outside his jurisdiction and acting in the clear absence of jurisdiction.
9. Had Judge Phillips not been immediately disqualified due to his being a witness to relevant matters in the improper Transfer and steering of the case to the North Branch where it ended up with Judge Coates who not only was a Proskauer Rose partner (Proskauer also a Counter Defendant in these matters) but turned out he worked in the exact office across the hall from Petitioner where some of the initial frauds and thefts occurred of IP that should be a part of the Estates and Trust values for Shirley and Simon Bernstein, the only proper initial action for Judge Phillips would have been to freeze and enjoin all Court files from the Colin and French and Main Branch courts, freeze and enjoin all Estate and Trust accounts, freeze and enjoin all evidence and

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

³ Transfer Order Florida Supreme Court to Fourth District Court of Appeals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20151013%20Supreme%20Court%20Florida%20Transfer%20Probate%20Trust%20Cases%20to%20Fourth%20District%20Court.pdf>

records, documents, computer files and all alleged “Originals” and other instruments which instead are still in the hands of the prior fiduciaries Spallina and Tescher who committed some of the original frauds in Judge Colin’s court, then Phillips should have further moved to invalidate the entire proceedings held under Colin and remove all Fiduciaries, Officers of the Court and attorneys involved for having committed FRAUD UPON THE COURT by OFFICERS OF THE COURT who submitted fraudulent documents to the court and used a deceased party to close the Estate of his deceased wife in a bizarre fraud lasting several months after Simon Bernstein died, where he was used post mortem to posit documents with the court to close an estate.

10. A simple, basic, non-octopus wrangling competent reading and review of the Case files assigned to Judge Phillips by the improper Transfer should have revealed to any marginally competent independent and neutral jurist acting consistent with US Constitutional due process that Ted Bernstein had to know of the frauds committed by the fiduciaries Tescher Spallina in Shirley’s Estate, the counsel he retained to represent him in his fiducial capacities before Judge Colin since Ted Bernstein had NOT signed any Waiver in Shirley’s Estate prior to April 9, 2012 and thus Ted Bernstein knew and had to know as early as 2012 or at minimum May of 2013 by Petitioners May 6, 2013 Emergency Filing that ANY document posited by the TESCHER SPALLINA law firm to the contrary to close Shirley’s Estate such as the April 9, 2012 Sworn Petition to Discharge allegedly signed by Simon Bernstein before Robert Spallina was fraud upon the Court, fraud against the Estate of Shirley Bernstein, and fraud involving the use of his father Simon Bernstein prior to his passing and after his passing.

11. A competent impartial judge who is neutral and independent and acting consistent with US Constitutional Due process knew and had to know that in addition to actual Frauds Upon the Court and likely involving the Court, these matters also raised the important issue of whether

Simon Bernstein himself was being unduly influenced and improperly pressured since there would be no reason for Simon Bernstein to sign an April 9, 2012 Petition to Discharge knowing this was fraudulent since a phone call to discuss matters with the Beneficiaries did not even occur until May of 2012 and some of the beneficiaries did not even sign the Waiver until after Simon passed in Sept. of 2012 and that Ted Bernstein, instead of securing ALL files and evidence away from TESCHER and SPALLINA immediately as a proper fiduciary and seeking forensic investigation of key and critical documents and instruments instead continued along and became part of the fraud acting together with TESCHER and SPALLINA and where TED and his counsel Alan Rose, a material fact witness, continued to work with and interact with former fiduciaries SPALLINA and TESCHER even into and during the illegal trial of Dec. 15, 2015. Having failed to properly act in all these matters, Judge Phillips has demonstrated bias, prejudice, lack of impartiality, complete abdication of judicial responsibilities and obligations, intentionally and knowingly denied due process, aided and abetted the crimes using the machinery of the courts and furthering the fraud using the machinery of the courts and thus must mandatorily be disqualified at this time.

12. A minimally and marginally competent impartial judge who is neutral and independent and acting consistent with US Constitutional Due process knew and had to know from even the most minimally marginally competent review of the Transcript of Hearings before Judge Colin on Sept. 13, 2013, that instead, not only did TED BERNSTEIN purporting to Act as Fiduciary “stay silent” on the issues of FRAUD in the Court despite having to possess actual knowledge of these frauds, but further that Judge Martin Colin immersed himself deeper as material and fact witness on such date by including but not limited to: a) failing to get any clear answers out of Spallina specifically including how and who filed the fraudulent instruments in the court; b) failing to get

admissions from Ted Bernstein on his actual knowledge that these matters had to be fraudulent; c) failing to ask Ted Bernstein and Spallina that if Ted was legally supposed to be the Trustee and PR of Shirley's Trust and Estate after Simon passed, why Spallina and Tescher simply didn't have Ted Bernstein act to file proper documents to close the Estate but instead carried on an elaborate fraud scheme; d) how Ted Bernstein could have been permitted to act to illegally sell off multi-million dollar properties such as Shirley's Condo when involved in the nucleus of fraud with TESCHER and SPALLINA; and more. Judge John Phillips having knowingly and intentionally failed in all these matters must be further mandatorily disqualified and is acting outside his jurisdiction and in the clear absence of jurisdiction by instead aiding and abetting ongoing frauds in the machinery of the Palm Beach courts by the fraudulent and illegal orchestration of an alleged Trial in his own Court on Dec. 15, 2015.

13. Judge John L. Phillips is clearly acting knowingly and intentionally outside his jurisdiction knowingly violating due process and further aiding and abetting fraud upon the Courts by the Courts by acting in concert with Alan Rose on Dec. 15, 2015 knowing Alan Rose should have been disqualified as a material fact witness for his magical sudden possession and finding of various "Original" documents and instruments herein being intertwined in the chain of custody but instead permitting Alan Rose to fraudulently hand Judge Phillips a proposed Order on Dec. 15, 2015 without permitting Petitioner to review which contained a proposed Judicial Finding by Judge Phillips that Ted Bernstein is not involved in the frauds when both Alan Rose and Judge Phillips have actual and direct knowledge that the Dec. 15, 2015 Trial which was illegally scheduled anyway was further Not Noticed to hear such matters of Ted Bernstein thus further constituting knowing, intentional and purposeful Due process violations mandating Judge

Phillips immediate Disqualification as further evidenced by the attached Order allegedly signed by Phillips on Dec. 16, 2015⁴,

14. That Ted Bernstein, acting as alleged fiduciary in Shirley's Estate and Trusts and his elaborate team of lawyers were all involved in the Frauds committed and the attorneys who committed the crimes were retained by Ted as his counsel and were his business associates and who committed the frauds to benefit Ted's family directly to the detriment of other beneficiaries. Yet, Phillips allowed Ted and his replacement counsel Alan Rose, as Tescher and Spallina resigned after admitting to fraud, to continue and attempt to cover up and continue the crimes in the court as did Colin.

(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.

15. Judge Phillips has not maintained professional competence in hearing the Estate and Trust matters of Simon and Shirley Bernstein as further set forth herein and as shown by the facts alleged in the entirety of this document.

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.

16. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another judge, Martin Colin, has committed a violation of the Judicial Cannons and has failed to take appropriate action in regards to the fraud in and on his court that has already been proven, committed by Fiduciaries and Attorneys at Law involved in these matters, which has

⁴ December 16, 2015 Phillips Order

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151222%20Received%20US%20Mail%20Entered%20by%20Phillips%20Dec%2016%202015%20Order%20Final%20Judgment%20on%20Count%20II%20of%20the%20Amended%20Complaint.pdf>

material impact on these matters before Judge Phillips now. Further, Judge Phillips ability to hear the case forward is now precluded for all these reasons and due to improper transfer of the case post recusal by Judge Colin through interference in the transfer process as petitioned in the All Writs Petition pending before the Florida Supreme Court. Judge Phillips had such knowledge as of Dec. 15th, 2015 but instead of properly acting to Disqualify himself and have an illegally scheduled Trial “continued” / “stayed”, acted in disregard of his judicial obligations mandating disqualification at this time.

(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.

17. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another lawyer, Alan B. Rose, Esq. has committed a violation of the Rules Regulating the Florida Bar and has failed to take appropriate action. Judge Phillips was made aware prior to an illegally scheduled Trial for Dec. 15, 2015 both by Letter of Attorney Candice Schwager filing a Notice of Abatement and seeking a Continuance to enter the case Pro Hac Vice⁵ that Attorney Alan B. Rose should be Disqualified under the Witness Advocate Rule of Florida as Alan B. Rose is a material fact Witness in the chain of custody of various “original” Instruments, Trusts, documents who should have Disqualified before and during Trial.
18. Judge Phillips received similar information by a Motion filed by Petitioner to seek a Continuance and Stay⁶ on similar grounds that the attorney sought to enter the case pro hac vice and that Alan Rose was a material fact witness in the chain of custody and possession of critical original

⁵ Attorney Pro Hac Vice Filing

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

⁶ December 15, 2015 Motion to Stay and Continue Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20ESIGNED%20Phillips%20Trial%20Stay%20ECF%20STAMPED%20COPY.pdf>

documents and instruments relating to the Trial and overall case. Judge Phillips knew and should have known Disqualification of attorney Rose was necessary but disregarded all these matters on Dec. 15, 2015 despite himself who should have already mandatorily disqualified.

19. As shown in the prior Disqualification motion, Judge Phillips knew and should have known from information in hearings and in the case pleadings that another Attorney at Law and new Personal Representative of the Estate of Simon Bernstein made pleadings to the Court that Ted Bernstein, counseled by Alan B. Rose, Esq. is acting as a fiduciary when he is not qualified under the terms of the trust he is operating under and therefore is not a “valid” trustee⁷. The terms of the trust preclude a successor that is related to the issuer of the trust, Simon Bernstein and Ted is also considered predeceased in the dispositive documents for all purposes of the trust and dispositions made thereunder, yet despite knowing this, Alan B. Rose, Esq. continues to file pleadings on behalf of a client he knows is not valid and Judge Phillips refuses to address the issue of Alan Rose’s client’s validity as Trustee first and foremost. Despite this claim coming from a Florida Bar attorney, Brian O’Connell, Esq., Judge Phillips has chosen to allow Rose and Ted Bernstein to continue to plead fraudulently to the Court without first determining the veracity of O’Connell’s claims and Judge Phillips further acted on Dec. 15, 2015 continuing the frauds in the court and knowingly and intentionally disregarding judicial obligations.

20. That Judge Phillips has information that Alan B. Rose, Esq. showing a substantial likelihood that he is acting improperly in violation of the Rules Regulating the Florida Bar with his client Ted Bernstein in an Illinois District Court case, acting in conflict and with adverse interest to parties in these matters and where this information of the improper conduct was identified by Attorney

⁷ O’Connell Pleading Affirmative Defense 1 - Page 7
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

at Law Peter Feaman in a letter to the PR O'Connell⁸ and submitted to the Colin Court by Eliot Bernstein. Yet, without first determining these matters first Judge Phillips has ignored this information and moved forward with Alan B. Rose and Ted Bernstein as fiduciaries and counsel without questioning the merits of the claims by licensed Florida Bar members O'Connell or Feaman.

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:

21. Judge Phillips impartiality is reasonably questioned as set forth herein.

(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

22. Judge Phillips showed continuing improper bias and prejudice on Dec. 15, 2015 by continuing to act outside and in the clear absence of jurisdiction knowing he was mandatorily disqualified yet continued to act on Dec. 15, 2015 showing further bias and prejudice.

23. Judge Phillips showed continuing improper bias and prejudice on Dec. 15, 2015 by knowingly and intentionally mis-stating the applicable law on Dec. 15, 2015 in court to a pro se party by declaring a Motion filed by Petitioner as untimely which was seeking a Continuance of the Trial so an attorney Candice Schwager could be admitted pro hac vice and represent three minor children and to the extent not conflicted, my interests before the Court and at a properly scheduled trial as well. Judge Phillips actually knew that Florida Rules of Civil Procedure

⁸ August 29, 2014 Letter Feaman to O'Connell
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

and

December 16, 2014 Feaman to O'Connell Letter

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

RULE 1.460 CONTINUANCES allows said motion to be made at Trial and Petitioner's motion was filed before the Trial. Thus, Judge Phillips intentionally and actually knew he was clearly misstating and misapplying the law showing further bias and prejudice against the Petitioner.

24. Judge Phillips showed further actual bias and prejudice on Dec. 15, 2015 knowing he was already mandatorily Disqualified from conducting the trial and acting in these cases by denying proper time for proper witnesses at the trial, Traci Kratish, Kimberly Moran, Donald Tescher (who was seen outside the Courthouse but did not testify despite being one of the Estate Planners,) and other witnesses to the alleged documents and signatures by not permitting Petitioner to adequately review the alleged Exhibits Evidence being placed into the trial or having a proper time to object and by providing Petitioner a mere five minutes to "write down" a Disqualification at the end of the alleged "trial" and further denying Petitioner an opportunity to inspect a proposed "Order" submitted by Alan Rose and denying proper inspection of original instruments, denying the ability to even see a "flow chart" being used by Alan Rose, denying a continuance and counsel to minor children, and continuing knowing the trial was improperly scheduled in a case Not noticed to be heard on Sept. 15, 2015 and denying Petitioner a fair opportunity to be heard before the trial or during the alleged trial.
25. Phillips then scheduled and held a validity hearing where the star witness was a FELON, Spallina⁹ and he was attesting to signatures of another FELON Moran on the dispositive

⁹ See, SEC Complaint and "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

and Government Complaint @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and Consent Orders

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

and

documents and where both have unclean hands in these matters admitting they committed Fraud, Fraud on the Court and Fraud on the Beneficiaries in the Simon and Shirley Bernstein Estates and Trusts and yet Phillips rules to validate the documents based on Spallina's testimony alone and cuts Eliot off repeatedly, sustaining him when asking questions to probe the crimes of Spallina claiming they are not relevant, despite relevance to his character and testimony¹⁰.

26. At the hearing Spallina admitted he was under a consent order with the SEC for insider trading and had pled guilty to a felony in an unrelated matter. Spallina further admitted that he had committed a Fraud Upon the Court when he closed the Estate of Shirley with a dead Personal Representative her deceased husband Simon, submitting fraudulent documents to close the estate. Spallina further admitted that he had fraudulently created a Shirley Trust document and then mailed it to an attorney at law, Christine Yates, Esq. who was representing Eliot's minor children, as part of a fraud that benefited his client Ted Bernstein at the expense of his other client, the Estate of Simon and the beneficiaries thereunder.
27. While "doodling" through the Validity hearing, Phillips ignored the confessions to felony crimes in the matter by Spallina, who he refers to as "Bob" and his partner Tescher, who he calls "Don" and instead focused on attacking Candice Bernstein, who was served as a party in the Validity hearing service list prepared by Rose for her handing a document to Eliot and asking that Rose turn a display graphic so everyone could see, for this she was sent out of the hearing area and into the gallery where she was threatened with contempt if she made a sound. Candice Bernstein

Bernstein Emergency Petition before in Florida Probate May 2013 @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>.

¹⁰ Article Regarding Unclean Hands and Fraud on the Court @ <http://www.schnader.com/files/publication/e3f5e3d7-1f77-450d-80ff-26866b4aa2c4/preview/publicationattachment/514594c4-8f88-475a-b1d9-1517f201b542/ftd-stern.pdf>

being the guardian of her minor children aids Eliot with his exhibits and witness questions and without her Eliot was lost at the Trial and could not find exhibits, etc. timely, as the record reflects.

28. That despite learning that an Officer of the Court had committed frauds upon the court and the beneficiaries and having admission at the trial, Judge Phillips has done nothing to notify the proper authorities as required by his Judicial Cannons and law or taken any actions to remedy the crimes. For instance, the Court, having learned of the Fraud on the Court should have then ordered all records submitted by those committing Fraud on the Court to be forensically analyzed by an expert to make sure that the documents and records in the Court are not further fraudulent and instead allowed the trustee Ted to shift the burden of investigating and forensically examining the documents to Eliot. The Court should also have ordered all parties to turn over their records, assets, etc. to the Court and provided all records of those parties and the Court to the aggrieved beneficiaries for inspection and transparency. Judge Phillips thus continued to act on Dec. 15, 2015 in the prejudicial, biased, lack of impartiality style that he had on Sept. 15, 2015 the date the “trial” was illegally scheduled and thus mandatorily must be disqualified at this time.

29. One of the facts from the prior Disqualification motion which Judge Phillips knew and knows was legally sufficient and mandatorily disqualified him from acting is contained in an All Writs Petition filed with the Florida Supreme Court and then transferred to the 4th DCA, is if Judge Martin Colin improperly steered the case POST recusal by Judge Shopping the Case and interfering with the transfer first to Judge Coates (who Sua Sponte recused after admitting conflict that should have been cleared prior to even taking the case as his former law firm is a Counter Defendant in these matters and Judge Coates had an office as a Partner in the Proskauer

Rose law firm in the same Boca Raton, FL location where fraud by his former law firm occurred against Petitioner) and with the intended ultimate steer to Judge Phillips after reasonably knowing Coates would either be disqualified by parties involved or recuse voluntarily, after gaining access and control to the prior Colin courts documents. Therefore, it will be instrumental for Petitioner to receive the Court files regarding the matters as requested in the All Writs to then question both Coates and Phillips as material witnesses about these disputed evidentiary facts regarding their interactions with Colin prior to transfer.

30. Until Phillips knew what the decision from the Florida Supreme Court would be regarding the voiding of the transfer due to the factual interference by Colin in moving the case as a necessary and material fact witness who should have been Disqualified, Judge Phillips only action as a knowing material and fact witness to the events surrounding the improper transfer was to wait the Florida Supreme Court Ruling.
31. Yet, without regard to the All Writs pending and the answer to the improper transfer resolved, he began to deliberate on the matters, acting as he claimed in hearings to be “stupid.” In fact, if it is found that the transfer was improper, despite if he was knowledgeable or not of the impropriety by Colin or involved in such act, he would still have had to disqualify because it would lead to an inescapable APPEARANCE OF IMPROPRIETY that could only be resolved by his becoming a witness and being questioned as such since due to the reasonable appearance and chance that the improper transfer by Colin to the North Branch was with criminal intent, Phillips certainly will be a suspect in criminal complaints filed against Colin and others.
32. Judge Phillips has expressed personal bias for a party to the proceeding in professing his love for Judge Martin Colin who is alleged to have participated in a fraud in and on the court when he stated on the record:

THE COURT: Okay. Great. This is the way
15 I intend to proceed -- **I love Marty Colin.**
16 This guy is a judge that's been around a long
17 time. I know him. He's an entirely different
18 guy than me.

33. Judge Phillips professed “love” for Judge Martin Colin on the Record who is a necessary and material fact witness before the Court creates substantial bias, prejudice and reasonable fear that Petitioner can not get a fair trial before Judge Phillips as further set forth herein and Judge Phillips must now be mandatorily disqualified as Judge Phillips further knew Judge Colin’s Orders all should have been voided or at least should have been a material fact witness subject to discovery and deposition before any such “trial” on Dec. 15, 2015 yet Judge Phillips continued to act on Dec. 15, 2015 knowing he should be mandatorily disqualified and thus must now be disqualified.
34. The bias, prejudice, appearance of impropriety and reasonable fear that Petitioner can not receive a fair trial before Judge Phillips is particularly egregious in light of the fact that Judge Phillips never even permitted Petitioner to be heard about this pending Petition for All Writs and Stay and Injunctive relief despite 2 assurances at the prior conference that this would occur and further egregious as the Record shows each time Petitioner did attempt to be heard he was cut-off by Judge Phillips without being fully or fairly heard.
35. Judge Phillips also spoke to his personal knowledge of the attorneys at law involved and how he knew them well and did not know Petitioner Eliot Bernstein and this also seemed prejudicial, since attorneys at law in the cases have already committed fraudulent acts, including fraud on the court.

(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;

36. Judge Phillips is a material witness in the proceeding as it is already alleged that he was a participant in the improper steering of the case, knowingly or unknowingly his involvement must be questioned to determine if Ex Parte conversations took place with Judge Colin prior to the transfer as further defined herein. Judge Phillips continues to know he is a material fact witness and was on Dec. 15, 2015 and remains as such and thus must be mandatorily disqualified.

**Rule 2.330 (c) Motion.
A motion to disqualify shall:
(1) be in writing.**

37. 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.**

38. 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.**

39. 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.**

40. 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.**

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

42. That Petitioner asserts for all the reasons and facts alleged herein and as set out below and
further in the entirety of the document incorporated herein that he will not and has not already
received a fair trial or hearing and that Judge Phillips because of the following specifically
described prejudices and biases under Rule 2.330 (d) should be mandatorily disqualified for the
reasons that follow:

**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;**

**CANON 3B(1) - ...A judge shall hear and decide matters assigned to the judge except those
in which disqualification is required.**

43. Judge Phillips knew and actually knows he was acting outside his jurisdiction on Dec. 15, 2015 as he knew a legally sufficient mandatory disqualification motion was filed in writing before Trial and he should have disqualified.
44. Judge Phillips knows he was intentionally misstating and improperly applying the law on Motions for Continuance which are allowed to be made at trial and yet Judge Phillips denied as untimely.
45. Judge Phillips knows this is a “complex” case and should have been treated as a complex case under the Case Management rules but instead illegally scheduled a trial in a case not noticed for Trial and then carried on with an illegal trial on Dec. 15, 2015.
46. Judge Phillips knew on Dec. 15, 2015 that not only was an improper trial scheduled and he should be mandatorily disqualified, but further knew no possible fair trial could have been conducted in a day, without determination of proper discovery in advance and without expert witnesses and without counsel for my minor children all being matters which Judge Phillips actually knows he illegally and improperly denied being heard by Petitioner on Sept. 15, 2015, thus Phillips actually knowing he was denying Petitioner due process in violation of the US Constitution and Florida State Constitution and violatiion of his role and functions as a Judge.
47. In all of these manners, Judge Phillips acted with partiality, prejudice and bias creating a reasonable fear that I would not receive a fair trial and did not and that the trial itself was a sham and fraud.
48. Judge Phillips knew that he, himself is and was a material witness since it is alleged in the All Writ Petition in these matters currently before the Supreme Court of Florida that Judge Coates was never the intended party Judge Colin interfered post recusal to steer the case to, allegedly knowing of Conflict with Coates due to his being a former Proskauer Rose partner and that

Proskauer was a counter defendant in these matters and knowing the case would be moved to a new Judge who was unknown at the time. After Coates first hearing where he Sua Sponte recused himself on record, the case was transferred to Judge Phillips.

49. Where it is alleged based on information and belief that the interference by Colin was to move the case to Phillips, despite whether it is true, it can only be proven after Petitioner has access to the Court record from Colin, Coates and Phillips and Petitioner has the right to question each party under deposition or otherwise to ascertain their involvement, Judge Phillips new becomes a material and fact witness to a major allegation of fraud on the court in the transfer by Colin and to answer if he had any Ex Parte communications with Judge Coates or Judges Colin or any other party prior to taking the cases that Colin is alleged to have improperly steered to the North District.

In the fact that this question can be reasonably asked of Judge Phillips due to the improper post recusal steering of the case by Colin, Judge Phillips should on his own initiative have then disqualified himself as a witness, allowed a completely independent judge to be picked properly and thus from the start Judge Phillips could not hear the matters further without first addressing this most serious issue of the transfer.

50. That even if the Supreme Court of Florida or Appellate Court were to now attempt to permit such transfer, the fact that Phillips acted first, prior to any rulings, remains cause for his disqualification.

CANON 3E(1) - ...A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.

51. Judge Phillips must mandatorily be disqualified as his impartiality is reasonably questioned on multiple grounds as further set forth herein throughout this document including but not limited to his “pre-judging” and “pre-determination” in the case that he would not do anything to find

Judge Colin “wrong” prior to Petitioner even being heard on Sept. 15, 2015, further based upon Judge Phillips professed “love” for Judge Colin who is a necessary and material fact witness, for his due process violations in Ordering a Trial in Shirley Bernstein’s Estate when the Conference was only “Noticed” for Simon Bernstein’s Estate and for other grounds as set forth herein and then continuing to act in fraud and further aid and abet the fraudulent criminal scheme herein using the machinery of the Florida Courts in the North Branch of Palm Beach County on Dec. 15, 2015 and by an illegal Order Dec. 16, 2015.

52. Judge Phillips impartiality is challenged as despite now being a material and fact witness in the matter, he did not clarify or rectify this matter first before determining if he could adjudicate, or allow the Florida Supreme Court to determine if the Colin transfer was improper, before taking ANY judicial action in the matters or even minimally afford Petitioner Due Process to be heard before Judge Phillips on the best procedural manner to bring the issues of the All Writs¹¹ before the Phillips court.

¹¹ See Petition for All Writs by Eliot I. Bernstein @ See All Writ Filed with the Florida Supreme Court @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>
and
See Amended All Writ Filed with the Florida Supreme Court @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>
and
See VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin>
and
Colin Order Denying Disqualification @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>
and
See Colin Sua Sponte Recusals @ <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

53. Instead, Judge John L. Phillips began acting in the matters and in fact held two hearings, including issuing an Order on Sept. 24, 2015 thereby scheduling a Trial date of December 15, 2015 on a claim for construction filed by Attorney Alan B. Rose, Esq. on behalf of an alleged trustee Ted Bernstein and further enforcing a prior Stay Order of Judge Martin Colin who was petitioned for mandatory Disqualification by Eliot I. Bernstein as a material and fact witness to fraud in the Court, upon the Court and potentially by the Court and further that this Order by Judge John L. Phillips was issued despite the pendency of a Petition for All Writs at the Supreme Court of Florida seeking Mandamus and Prohibition in relation to the conduct of Judge Martin Colin and further seeking injunctive relief and other redress Judge John L. Phillips, both by express words, conduct and by omission has committed acts that mandate Disqualification since the judge's impartiality might reasonably be questioned in this proceeding as defined herein and as set out herein throughout this filing specifically referencing ongoing continuing conduct on Dec. 15, 2015. .

CANON 3E(1)(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.

54. Judge John L. Phillips is further mandated to be Disqualified again both by express words, conduct and by omissions demonstrating bias and prejudice against Eliot I. Bernstein, a party in this proceeding as defined herein and as set out by the entirety of this document and filing herein.

CANON 3E(1)(d)(iv) - ...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;

55. As already stated above Judge Phillips has knowledge that he is a material and fact witness in the proceedings to highly relevant information regarding the cases at this time.

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.

56. Until such time as the frauds upon the court is corrected, the cases reset with new fiduciaries and counsel and due process restored, any such motion presently is timely herein. This motion is otherwise timely being filed on the first day the Courts were open after the Dec. 25th Holiday also closing the Courts on Dec. 26th, 2015.

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.

57. 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 Phillips has to voluntarily and mandatorily disqualify under Judicial Canons, Attorney Conduct Codes and Law as stated herein.

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.

58. 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.

59. Petitioner seeks that upon disqualification of Judge Phillips, that all prior factual or legal rulings be vacated by the successor judge due to the alleged continued civil torts against Petitioner by Judge Colin and his successors.

60. That further, Petitioner seeks a replacement Judge, who is not a member of the same jurisdiction as Judge Colin or Phillips and who is not a member of the Florida Bar to preside over the cases of Judge Colin/Coates/Phillips involving the Estates and Trusts of Simon and Shirley Bernstein and the case involving the Trusts of Petitioner's minor children. This request due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida and certainly not by the 15th Judicial, perhaps the conflicts now include any members of the Florida Bar for reasons cited herein and in the All Writ and therefore Petitioner is seeking this Court to move the matters to a Federal Court or find other suitable remedy in such serious case where the Court is alleged part of the frauds and adhering to rules and regulations is of primary concern due to the past three years of alleged fraud.

61. The following cases that Judge Phillips now presides over are all tainted for the same reasons as stated herein and Judge Phillips should immediately voluntarily disqualify himself from these cases as well, voiding any/all orders, etc. and turning over the court records to Petitioner for review and save Petitioner the expense and aggravation of having to file Disqualification

pleadings and subpoenas in each case to force his mandated disqualification and release of critical to the case court records already requested in the All Writs Petition pending:

a.	Case#	502012CP004391XXXXSB	–
Simon Bernstein Estate			
b.	Case#	502011CP000653XXXXSB	–
Shirley Bernstein Estate			
c.	Case#	502014CP002815XXXXSB	–
Oppenheimer v. Bernstein Minor Children			
d.	Case#	502014CP003698XXXXSB	–
Shirley Trust Construction			
e.	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.

62. Petitioner states that Judge Phillips 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 as a potential witness regarding the alleged improper post recusal steering of the cases by Colin but has thus far failed to do so and instead rushed into hearings without first addressing these fundamental issues of fair and impartial due process. If for any reason Judge Phillips finds this Motion legally insufficient, Judge Phillips must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes, Probate Rules and Statutes and Law for the reasons stated herein, whether pled sufficiently or not by Pro Se Eliot Bernstein.

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.

63. 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 and fraudulent Probate rulings and proceedings for the last three year which have directly and intentionally interfered with inheritances/expectancies causing massive harms to them caused directly by the Fraud on the Court by the Court Appointed Attorneys at Law and Fiduciaries and potentially the Court itself and this requires that this Disqualification be made instantly. Delays cause further ongoing harms and damages of Petitioner's minor children and Petitioner's family which results in additional liabilities to those parties ultimately held accountable for the criminal acts, civil torts and frauds that occurred in Judge Colin and Judge French's courts.
64. That PRIOR to any other actions by Judge Phillips, 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.

65. Petitioner has supplied a legally sufficient Affidavit herein.
66. Judge John L. Phillips is again mandated to be Disqualified under the Rules by both express words, conduct and by omissions by creating a reasonable fear by the party Eliot I. Bernstein that he will not receive a fair trial as defined herein and as demonstrated and plead throughout the entirety of the document and filing herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Phillips immediately mandatorily disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Phillips 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. Further, all Orders of Judge Phillips should be voided including the Mediation scheduled for Dec. 4th, 2015 at 10 am EST and Trial Scheduled for Dec. 15th, 2015. Finally, as Eliot has filed a previous disqualification of Judge Phillips that was denied as “legally insufficient” alone with no explanation and where “legally insufficient” is a legally insufficient phrase as it has not a legal definition, Eliot asks this Court to fully explain what is legally insufficient with the pleading so corrections can be made if necessary and to explain why the previous filing did not meet a “sufficiency” standard.

Under Penalties of perjury, I, Eliot Ivan Bernstein, 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 28th day of December, 2015

Respectfully Submitted,

Eliot Ivan Bernstein

2753 NW 34th ST
Boca Raton, FL 33434
Telephone. 561-245-8588
iviewit@iviewit.tv

/s/ Eliot Ivan Bernstein

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 28th day of December, 2015.

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

STATE OF FLORIDA

COUNTY OF PALM BEACH COUNTY

Sworn to or affirmed and subscribed before me this 28th day of December,
2015 by Eliot Bernstein who is known to me or produced the following
identification. _____

NOTARY PUBLIC

Print name of Notary:

Notary Signature:

X _____

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 John L. Phillips is true and correct to the best of his knowledge and belief and that he fears that for all the reasons herein he and his minor children will not and have not thus far received a fair and impartial trial with due process and procedure.

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

December 28, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by

Eliot Ivan Bernstein who is known to me or produced the following identification

Notary Public

Print name: _____

Notary Signature: _____

Stamp

My commission expires: _____