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WRITER'S E-MAIL ADDRESS: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

February 19, 2016

*VIA US MAIL*

The Honorable Jeffrey Colbath, Chief Judge  
Palm Beach County Courthouse  
205 North Dixie Highway  
Room 5.2500  
West Palm Beach, FL 33401

Re: *Estate of Simon Bernstein*  
Case Number:502012CP004391XXXXNB (IH)

Dear Judge Colbath:

I am writing on behalf of the Trustee of the Simon L. Bernstein Amended and Restated Trust, the sole beneficiary of the above-referenced estate, in response to a letter sent to you by Peter M. Feaman (a copy is attached). In his letter, Mr. Feaman on behalf of his client questions the reassignment of this estate proceeding from the South County Courthouse to the North County Courthouse. We do not believe this letter was appropriate, nor have I ever seen a similar letter sent to the Chief Judge attempting to "judge shop" after extensive proceedings have occurred in a matter.

For the reasons expressed herein, we respectfully request that Your Honor, as Chief Judge, take no action to interfere with the assignment of these probate matters to Judge Phillips or the pending Petition to the 4th DCA. To assist Your Honor in understanding this request, we provide brief background information.

First, this is an estate opened in 2012. Mr. Feaman's client is merely a claimant in the estate; he is neither a creditor nor a beneficiary. As such, it is our position that he lacks standing to make any request of Your Honor, as Chief Judge, and that this request was inappropriate under the circumstances. Indeed, "litigants have no standing to enforce internal court policy" (13 Fla. Jur. 2d Courts and Judges § 309) and the proper remedy for one expressing "severe dissatisfaction with the new judge to whom the case has now been assigned" is to seek disqualification under Florida Rule of Civil Procedure 1.432 and the appropriate statutes. *Allen v Bridge*, 427 So. 2d 249 (Fla. 4th DCA 1983).

The Honorable Jeffrey Colbath  
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Here, already there have been motions to disqualify Judge Colin, a request that Judge Coates recuse himself, and at least two or three motions to disqualify Judge Phillips, who denied those motions as legally insufficient. The denial by Judge Phillips of motions to disqualify has been challenged at the appellate level through a Petition for Writ of Prohibition, now pending in Case No. 4D16-0022. (The prior challenge by another party to Judge Colin's denial of a disqualification motion was dismissed by the 4th DCA in Case No. 4D15-3849, and the Supreme Court denied review.)

There is no basis in February 2016 to first question the integrity of Judge Phillips, who has been handling this matter since June of 2015. The matter originally was assigned to Judge French, but transferred from Judge French's division to Judge Colin's division because there are related estate proceedings for the decedent's wife, who died two years earlier. On May 19, 2015, Judge Colin recused himself from this matter and four other related matters (after multiples motions were filed to disqualify him).<sup>1</sup>

After Judge Colin's Order of Recusal, the matter was reassigned to Judge Howard Coates. No one objected to the reassignment of the matter to Judge Coates nor to the fact that the matter was reassigned to the North County Courthouse. At the first hearing held before Judge Coates, Eliot Bernstein objected to Judge Coates continuing involvement because of his prior affiliation with the Proskauer Rose law firm. Despite the fact that there was a very attenuated claim of potential conflict, Judge Coates recused himself in an abundance of caution, and the matter was reassigned to Judge Phillips on June 10, 2015. See attached Notices of Recusal and Clerk's Notices of Reassignment.

In Judge Phillips courtroom, the parties held a status conference before Judge Phillips on July 30, 2015 and a one-hour case management conference on September 15, 2015. During this case management conference, Peter Feaman (the author of the letter to you) questioned why the matter had been assigned to the North County branch when the parties and litigants were either in West Palm Beach or South. Judge Phillips indicated he was proceeding forward, but invited anyone who felt otherwise to file an appeal to the Fourth District Court of Appeals. (See attached transcript excerpt.) Mr. Feaman did not appeal, nor did he complain about Judge Phillips until this week.

Since that hearing on September 15, 2015, Judge Phillips has presided over this matter and the related matters, including conducting a one-day trial to determine the validity of various documents, including the Will of Simon L. Bernstein, the decedent in this estate. Contrary to the assertions in Mr. Feaman's letter, there is no reason to be concerned with a conflict of interest

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<sup>1</sup>Judge Colin had previously denied a motion to disqualify himself as being legally insufficient. That denial was challenged by a petition for all writs filed with the Florida Supreme Court, referred to the Fourth DCA and ultimately dismissed by the Fourth DCA.

The Honorable Jeffrey Colbath  
February 19, 2016  
Page 3

involving Judge Phillips. He had no prior involvement with the parties and has been handling this matter properly. There is no legally sufficient basis to disqualify Judge Phillips, and if there is, the appellate court reviewing the petition for writ of mandamus can address it.

Finally, regardless of the newly entered administrative order specifying that cases be reassigned from the South County Courthouse to the Main Branch, the fact remains this transfer occurred in June 2015 and is first being challenged eight months after the case was assigned to Judge Phillips, after he already held a trial in a related case and entered rulings adverse to certain parties. The interest of judicial economy and the efficient administration of this matter would be undermined by uprooting this case from Judge Phillips and transferring it to the main branch. Such a change will do nothing but increase the cost and expense of litigation for the parties and require a fifth judge to become familiar with the facts and circumstances of this matter.

For those reasons, we respectfully request that Your Honor disregard Mr. Feaman's letter and take no action in response to it, rather than allow an unhappy litigant to judge shop.

We appreciate Your Honor's time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan B. Rose'. The signature is stylized with a large initial 'A' and a wavy line extending to the right.

Alan B. Rose

Enclosures

cc: All parties on service list

**SERVICE LIST** - CASE NO. 502012CP004391XXXXNBIJH

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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Individually and as trustee for her children, and  
as natural guardian for M.F. and C.F., Minors

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Individually and as trustee for her children, and  
as natural guardian for J.I. a minor

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February 17, 2016

TOSS COPY

VIA U.S. MAIL

Chief Judge Jeffrey Colbath  
Palm Beach County Circuit Court  
205 N. Dixie Highway, Room 5.2500  
West Palm Beach, Fl 33401

Re: Estate of Simon Bernstein  
Case No.: 502012CP004391XXXXNB (IH)

Dear Judge Colbath:

I had occasion today to read your Administrative Order of February 9, 2016, No. 11-101-2/16, in re: Assignment of Judges. In reading the last page of the Order, I was struck by the following language, "Should a reassignment be required due to disqualification or recusal, the Clerk of Court shall, when possible, randomly reassign the case to a judge within the Division at the same courthouse. For those Divisions where there is only one judge or where all judges are unable to preside over the case, reassignment shall be as follows: ...

2. Probate/Guardianship/Mental Health Division:
  - a. Branch Courthouse Divisions to Main Courthouse Division"

The reason this language struck me is because in the above-referenced case, where I am counsel of record for one of the Parties, the case was originally assigned to Judge Colin's Division in the South Branch. There came a point in time when he recused himself. However, the Order of Recusal appears to clearly violate the language set forth above from your Administrative Order.

A copy of Judge Colin's Order of Recusal is attached for your reference. Therein, he, as the recusing judge, specifically reassigns the case to the North Branch. I am now made aware by reading your Order of February 9, 2016, that Judge Colin's Order seems to violate your Administrative Orders on recusal, which directs first, that the Clerk of the Court randomly reassign the case or, in the situation where all judges are unable to preside over the case, reassignment should be from the Branch Courthouse (in this case South County) to the Main Courthouse Division. However, as you can see from the attached Order, Judge Colin assigned this to the North Branch.

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Honorable Jeffrey Colbath  
February 17, 2016  
Page 2

My client has read recent news reports concerning judicial conflicts of interest. He is very concerned about this. He has requested me to request you to order that the above-referenced case be reassigned in accordance with your Standing Order for random reassignment to the Main Courthouse Division, rather than as directed by Judge Colin.

Thank you for your attention to this matter.

Respectfully,

PETER M. FEAMAN, P.A.

By: 

Peter M. Feaman

PMF/mk  
Enclosure

cc: Alan Rose, Esq.  
505 South Flagler Drive, Suite 600  
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Jeffrey and Lisa Friedstein  
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Gary Shendell, Esq.  
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IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT, IN AND FOR PALM BEACH  
COUNTY, FLORIDA

CASE NO: 502012CP004391XXXXSB  
PROBATE DIVISION: IY


**THE ESTATE OF  
SIMON L. BERNSTEIN,**  
Deceased.

---

ORDER OF RECUSAL

**SUA SPONTE**, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

**DONE and ORDERED** in chambers, at Delray Beach, Palm Beach County, Florida, this 19<sup>th</sup> day of May, 2015.

---

**MARTIN H. COLIN**  
Circuit Judge

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Joshua, Jacob and Daniel  
Bernstein, Minors  
c/o Eliot Bernstein  
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13 Fla. Jur 2d Courts and Judges § 309

Florida Jurisprudence, Second Edition  
February 2016 Update  
Courts and Judges

Corey E. Burnham-Howard, J.D., Robert F. Koets, J.D., Ethan Kraybill, J.D., Stephen Lease, J.D., Karl Oakes, J.D. and Mitchell Waldman J.D.

Part Two. Judges  
XV. Assignment and Substitution  
A. Assignment in General

Topic Summary Correlation Table References

§ 309. Assignment of specific cases to particular judges

**West's Key Number Digest**

**West's Key Number Digest, Courts ~~67-70~~**

The assignment of specific court cases to particular judges of a multijudge court is a matter within the internal government of that court.<sup>1</sup> Litigants have no standing to enforce internal court policy and have no right to have any particular judge hear their case.<sup>2</sup> Moreover, the assignment of a petitioner's appeal to a single circuit court judge rather than to a three-judge panel does not deny a petitioner due process rights where the rules of the judicial district permit an appeal to a single judge, where there is no supreme court rule requiring three-judge panels, and where the petitioner fails to demonstrate that a single judge appellate review resulted in the deprivation of a fair and meaningful opportunity to be heard.<sup>3</sup>

The intracircuit transferring of cases from one judge to another, whether within a designated division or between different divisions, is a matter of internal administration of the court and does not affect the validity of orders or judgments entered.<sup>4</sup> Circuit court judges have no authority to assign matters or cases in such a way that the court's jurisdiction would be affected, however.<sup>5</sup> The chief judge of a circuit should cause an order of reassignment to be entered to reflect the identity of the successor judge.<sup>6</sup>

Litigants have no due process right to be heard before any reassignment of a particular case to a particular judge.<sup>2</sup> Accordingly, a petition for writ of mandamus or common law certiorari to review the transfer of a case from one circuit judge to another will be denied.<sup>8</sup>

When assigning a judge to hear any type of postconviction or collateral relief proceeding brought by a defendant who has been sentenced to death, the chief judge of a judicial circuit must assign to such cases a judge qualified under the Florida Rules of Judicial Administration to conduct such proceedings.<sup>9</sup>

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FLJUR COURTS § 309

Footnotes

<sup>1</sup> Allen v. Bridge, 427 So. 2d 249 (Fla. Dist. Ct. App. 4th Dist. 1983).

<sup>2</sup> Rodriguez v. State, 919 So. 2d 1252 (Fla. 2005), as revised on denial of reh'g, (Jan. 19, 2006).

§ 309. Assignment of specific cases to particular judges, 13 Fla. Jur 2d Courts and...

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<sup>2</sup> Rader v. Allstate Ins. Co., 789 So. 2d 1045 (Fla. Dist. Ct. App. 4th Dist. 2001), cause dismissed, 816 So. 2d 128 (Fla. 2001).

<sup>4</sup> Pantoja v. Reliable Trucking, Inc., 585 So. 2d 955 (Fla. Dist. Ct. App. 4th Dist. 1991).

<sup>5</sup> Castrillon v. State, 821 So. 2d 360 (Fla. Dist. Ct. App. 5th Dist. 2002).

<sup>6</sup> Bobbitt v. State, 726 So. 2d 848 (Fla. Dist. Ct. App. 5th Dist. 1999).

<sup>7</sup> Bobbitt v. State, 726 So. 2d 848 (Fla. Dist. Ct. App. 5th Dist. 1999).

<sup>8</sup> Allen v. Bridge, 427 So. 2d 249 (Fla. Dist. Ct. App. 4th Dist. 1983).

<sup>9</sup> Fla. R. Jud. Admin. 2.215(b)(4).  
As to such qualification, see § 302.

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End of Document

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

CASE NO: 502012CP004391XXXXSB  
PROBATE DIVISION: IY

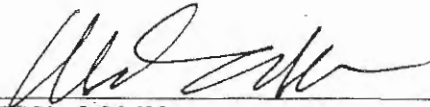
**THE ESTATE OF  
SIMON L. BERNSTEIN,**  
Deceased.

---

**ORDER OF RECUSAL**

**SUA SPONTE**, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

**DONE and ORDERED** in chambers, at Delray Beach, Palm Beach County, Florida, this 19<sup>th</sup> day of May, 2015.

  
\_\_\_\_\_  
**MARTIN H. COLIN**  
Circuit Judge

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Alan Rose, Esquire  
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West Palm Beach, Fl. 33401

Pamela Beth Simon  
950 North Michigan Avenue, #2603  
Chicago, IL 60611

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA.  
FAMILY DIVISION "FJ"

CASE NO.: 50 2012 CP 004391 XXXX NB

IN RE: ESTATE OF:

SIMON L. Bernstein,

Deceased.

**ORDER OF RECUSAL AND REASSIGNMENT**

The above-captioned case is presently pending in Division FJ of the Circuit Court now presided over by Judge Howard K. Coates Jr. The presiding Judge hereby disqualifies himself from the above-styled cause. This case is referred to the Clerk of the Circuit Court for reassignment to another division. All parties shall be notified by the Clerk of said reassignment.

**DONE AND ORDERED** in Palm Beach Gardens, Palm Beach County, Florida  
this the 4<sup>th</sup> day of June, 2015.



HOWARD K. COATES, JR.,  
Circuit Judge

copies furnished:

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

PROBATE DIVISION  
CASE NUMBER: 502012CP004391XXXXNB  
DIVISION: IH

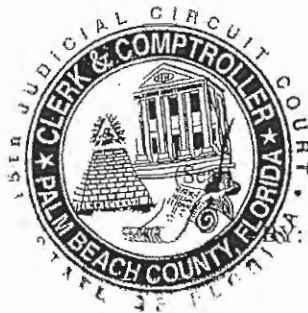
IN RE: ESTATE OF  
SIMON L BERNSTEIN, Deceased

---

***CLERK'S NOTICE OF REASSIGNMENT***

Pursuant to Court order of the Honorable **JUDGE HOWARD K COATES JR.** dated *JUNE 4, 2015*, the above styled case is reassigned to Division *IH*, Judge(s) *JUDGE JOHN L PHILLIPS* for all further proceedings.

WITNESS my hand and seal of this Court this 10 day of June, 2015.



Sharon R. Bock  
Clerk & Comptroller

*Angela Budd*  
Deputy Clerk

cc:  
CC: ALL PARTIES

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

IN RE: ESTATE OF

File No. 502012CP4391XXXXNB IH

SIMON L. BERNSTEIN

Deceased.

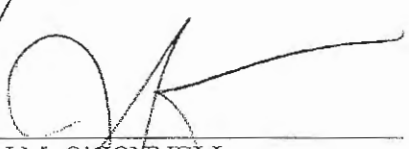
NOTICE OF HEARING

TO: ALL PARTIES ON CERTIFICATE OF SERVICE ATTACHED

YOU ARE HEREBY NOTIFIED that the undersigned will call up for hearing before the Honorable JOHN PHILLIPS, Judge of the above court, in the Judge's chambers in the Palm Beach North County Courthouse, 3188 PGA Blvd, Courtroom 3, Palm Beach Gardens, FL 33410 on **July 30, 2015 at 8:30 AM** (Exparte) or as soon thereafter as same may be heard, the

STATUS CONFERENCE -- TO SCHEDULE A CASE MANAGEMENT CONFERENCE

I HEREBY CERTIFY that a true and correct of the foregoing was sent by e-mail service or U.S. Postal Service on the 7 day of July, 2015 to the parties on the attached Service List.

  
BRIAN M. O'CONNELL

Florida Bar No: 308471

ASHLEY N. CRISPIN

Florida Bar No: 037495

JOIELLE A. FOGLIETTA

Florida Bar No: 094238

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IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

IN RE: ESTATE OF

File No. 502012CP4391XXXXNB IH

SIMON L. BERNSTEIN

Deceased.

NOTICE OF HEARING

TO: ALL PARTIES ON CERTIFICATE OF SERVICE ATTACHED

YOU ARE HEREBY NOTIFIED that the undersigned will call up for hearing before the Honorable JOHN PHILLIPS, Judge of the above court, in the Judge's chambers in the Palm Beach North County Courthouse, 3188 PGA Blvd, Courtroom 3, Palm Beach Gardens, FL 33410 on **September 15, 2015 at 9:30 AM (one hour set aside):**

CASE MANAGEMENT CONFERENCE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by e-mail service or U.S. Postal Service on the 31<sup>st</sup> day of July, 2015 to the parties on the attached Service List.

  
BRIAN M. O'CONNELL  
Florida Bar No: 308471  
ASHLEY N. CRISPIN  
Florida Bar No: 037495  
JOIELLE A. FOGLIETTA  
Florida Bar No: 094238  
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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE NO: 502012CP4391XXXXNB

IN RE: ESTATE OF SIMON L. BERNSTEIN  
Deceased.

-----/

PROCEEDINGS BEFORE  
HONORABLE JOHN PHILLIPS

DATE: September 15, 2015  
TIME: 9:27 a.m. to 10:32 a.m.



1 APPEARANCES:

2

3 APPEARING ON BEHALF OF THE PERSONAL REPRESENTATIVE:

4 BRIAN O'CONNELL, ESQ.  
5 JOIELLE A. FOGLIETTA, ESQ.  
6 CIKLIN, LUBITZ & O'CONNELL  
7 West Palm Beach, FL 333401

8 APPEARING OF BEHALF OF WILLIAM STANSBURY:

9 PETER FEAMAN, ESQ.  
10 PETER M. FEAMAN, P.A.  
11 3695 Boynton Beach Blvd., Suite 9  
12 Boynton Beach, FL 33436

13

14 APPEARING ON BEHALF OF MOLLY SIMON, et al:

15 JOHN MORRISSEY, ESQ.  
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17 330 Clematis Street, 213  
18 West Palm Beach, FL 33401

19

20 APPEARING ON BEHALF OF TED S. BERNSTEIN:

21 ALAN B. ROSE, ESQ.  
22 PAGE, MRACHEK, FITZGERALD & ROSE, P.A.  
23 505 S. Flagler Drive, Suite 600  
24 West Palm Beach, FL 33401

25

26 APPEARING ON BEHALF OF TESCHER & SPALLINA:

27 KENNETH S. POLLOCK, ESQ.  
28 SHENDELL & POLLOCK, P.L.  
29 2700 N. Military Trail, Suite 150  
30 Boca Raton, FL 33431

31

32

33 ALSO PRESENT: Eliot Bernstein

34

1           BE IT REMEMBERED, that the following  
2           proceedings were taken in the above-styled cause  
3           before Honorable JOHN PHILLIPS, at the Palm Beach  
4           County Courthouse, 3188 PGA Blvd., Palm Beach  
5           Gardens, County of Palm Beach, State of Florida, on  
6           Tuesday, the 15th day of September, 2015, to wit:

7

8           THE COURT: We're here on the Simon  
9           Bernstein case; is that right?

10          MS. FOGLIETTA: Yes, Judge.

11          THE COURT: This ended up in this division  
12          of the Court because of a recusal from somebody  
13          else in another division of the Court, right?

14          MR. FEAMAN: That raises an interesting  
15          point. Peter Feaman on behalf of William  
16          Stansbury, a creditor of the estate. I was  
17          late coming in. Mr. O'Connell is late. All  
18          the attorneys and the litigants are either in  
19          West Palm or south. I respectfully don't  
20          understand how we ended up here in the north  
21          branch. Should we set it back to the main  
22          branch?

23          THE COURT: No. That would be judge  
24          shopping. When somebody recuses themselves  
25          then it's randomly reassigned. I was verifying

1           this isn't a case that started out with me.  
2           It's a case that started out with somebody  
3           else.

4           MR. FEAMAN: Judge Colin, actually,  
5           specifically said in his recusal order north  
6           branch, which I didn't understand.

7           THE COURT: That's what the 4th DCA is  
8           for. I'm not here to question some other  
9           judge's order. You won't have me saying he was  
10          wrong. I'm not the appellate judge. If  
11          somebody made a mistake and you all think  
12          there's relief that should be granted to  
13          correct his mistake that's what the 4th is for.  
14          Please have a seat.

15          We're here because somebody else is not  
16          the judge in the case anymore and I am, right?

17          MR. FEAMAN: Right.

18          THE COURT: We'll go to the next step.  
19          This is a case management conference. What is  
20          it that I need to do to manage the case? I  
21          received the trustees' status report which is  
22          lengthy and comprehensive. I've read that.

23          Other than being brought up to speed by  
24          having read that report what else needs to be  
25          resolved to get this case done?