

**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,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

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**SUCCESSOR TRUSTEE'S BENCH MEMORANDUM RE:  
APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT  
THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN**

Successor Trustee, Ted S. Bernstein (the "Trustee"), submits this Bench Memorandum on the issues to be addressed in regard to the evidentiary hearing on the Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children.

1. This Court determined after a trial held on December 15, 2015 that beneficiaries of The Shirley Bernstein Trust are Simon Bernstein's then living grandchildren. Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court has ruled that as an individual Eliot lacks standing to participate in this proceeding. But Eliot's three children are among the class of the Trust beneficiaries, and he is attempting to use his role as parent and natural guardian of three trust beneficiaries to justify his standing to continue his irrational challenges to everything and his intentional harassment of the court and fiduciaries.

2. Despite his status as natural guardian, Eliot has a conflict of interest with his children and has proven to be an inadequate representative of their best interests. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He

continues advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta*, 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990)(best interests of a minor are *not* fully protected when adverse to the interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake*, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed then the parents' interests were adverse to the minor child's).

3. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..."<sup>1</sup> Here, Eliot is an inadequate (if not reckless) representative of the best interests of his children. He has pursued his own agenda to rid the court system of corruption, regardless of how much his crusade costs the beneficiaries. He also has (i) refused to negotiate in good faith to resolve this matter, claiming he will not negotiate with terrorists; (ii) expressed that the trial judge, the Florida Bar, lawyers, law firms, fiduciaries, and others within the litigation are corrupt; and (iii) caused excessive waste of Trust assets pursuing his

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<sup>1</sup> In addition, under section 744.3025, the court *may* appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

"causes," most recently causing the Trust to suffer losses of more than \$200,000 to sell the Trust's remaining property over Eliot's objection and his Petition for All Writs to the Florida Supreme Court. These actions are just examples of Eliot's continued attack on this Trust and these proceedings, and demonstrate that Eliot is not adequately and properly representing the best interests of his children.

WHEREFORE, the Trustee respectfully suggests that this Court appoint a Guardian Ad Litem for Eliot's three children, and grant such other relief as the Court deems appropriate.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile **and** U.S. Mail;  U.S. Mail;  Hand Delivery;  FedEx;  Email Electronic Transmission this 25th day of February, 2016.

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**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

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