

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM
BEACH, FL 33401

CASE NO.: 4D16-0222

L.T. No.: 2011CP000653XXXXSB

2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS
TRUSTEE, ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

Motion for Extension of Time to Submit an Initial Brief upon Proper and Meaningful Access to Records on Appeal, Vacating and Rehearing En Banc this Court's Order of June 9, 2016 as violative of the US Constitution, Florida State Constitution and for a Written Opinion Clarifying such matters;

Eliot I. Bernstein, Petitioner-Appellant herein, respectfully shows this Court as follows:

1. I am the Petitioner-Appellant herein.
2. At all such times relevant herein I have been in "indigent status" and have received Orders of this Court and the lower tribunal granting such "indigent status".
3. I make this motion for a further Extension of time under Florida Rule of Appellate Procedure 9.300 to submit an Initial Brief on Appeal until a reasonable time after I have actually received the Full Indexes and Records on Appeal as previously petitioned herein, to vacate this Court's Order of

June 9, 2016 as violative of the US Constitution and Florida Constitution providing and guaranteeing meaningful access to the Courts or alternatively Rehearing said matter En Banc under Florida Rules of Appellate Procedure 9.330 and 9.331 and for clarification and written decision of the Court's Order under 9.330 and such other relief as may be just and proper.

4. The issues raised herein are of exceptional statewide importance and necessary to maintain uniformity in the Court's decisions as the issues relate to the fundamental US and Florida Constitutional access to the courts and meaningful and uniform access to the courts particularly of indigent parties and thus this motion is in conformity with Florida Rule of Appellate Procedure 9.3331(d)(1) and appropriate for rehearing En Banc should the Order not simply be vacated consistent with US Constitutional and Florida Constitutional standards.
5. Consistent with Florida Rule of Appellate Procedure 9.300(a) I notified all counsel and parties herein of my intent to file this motion for Extension and only Counsel Alan Rose for Ted Bernstein has responded indicating he will be objecting to said Motion and seeking other relief.
6. On June 9th, 2016, this Court denied my prior motion for production of the full Indexes and Records on Appeal herein which by this Court's own Rules of Procedure is the standard default action to be taken by the Clerk of the

Lower Tribunal when no Directions are provided to the Clerk otherwise which did not happen in this case.

7. Said recent motion came in response after this Court previously Ordered that I had not shown with specificity why such Records were required even though by operation of Court Rule there is no requirement for any party or litigant on appeal stated in the “Florida Rules of Appellate Procedure”. See, Florida Rules of Appellate Procedure, [http://www.floridabar.org/TFB/TFBResources.nsf/0/830A6BC6B90DA05685256B29004BFAC0/\\$FILE/Appellate.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/0/830A6BC6B90DA05685256B29004BFAC0/$FILE/Appellate.pdf).
8. Thus, this Court had already been imposing additional burdens and impediments on myself as pro se indigent litigant to simply obtain a proper and meaningful access to the Court and Court records even though there is no standard, uniformly applied language anywhere in the Rules of Appellate Procedure pro se indigent litigants to meet this extra impediment and burden to obtain meaningful access to the Courts and a meaningful review on appeal.
9. Nonetheless, my recent motion provided extremely relevant and significant reasons why the Clerk of the Lower Tribunal should simply be doing what by operation of Rule the Clerk ordinarily does in providing the Full Indexes and Records on Appeal such as showing the the Estate of Simon Bernstein

case had a filing for a Petition for Administration which listed *wholly different Beneficiaries* of said Estate than was claimed in an alleged “validity” trial which gave rise to the claimed Final Judgment which is the basis of the appeal herein. See, Motion for Full Records with Specificity¹.

10. Moreover, this motion with specificity further showed that not only had this prior Petition for Administration in the Simon Bernstein Estate been signed by attorney Robert Spallina, but was also a verified document signed by his partner Donald Tescher who was not produced for the Validity Trial nor was there time provided by Judge Phillips for further such witnesses to Testify in a case where pre-trial Discovery procedures had already been denied in violation of due process.

11. As shown in that motion, this is all being relevant to whether Judge Phillips abused his discretion in artificially limiting the trial to “one day” only since Judge Phillips knew or should have known of the Sworn signed document by an Attorney and Officer of the Court Donald Tescher which wholly contradicted the Trial that was conducted by claiming wholly different Beneficiaries of the Simon Bernstein Estate in a case where fraudulent documents had already been proven to be deposited and used in the Court of

¹ May 25, 2016 Motion with Specificity to Order Production and Extend Time to File
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160525%20FINAL%20ESIGNED%204th%20DCA%204D16%200222%20Motion%20with%20Specificity%20to%20Order%20Production%20Extend%20Time%20LT%203698%20ECF%20STAMPED%20COPY.pdf>

one Judge Martin Colin who mysteriously “recused” himself “sua sponte” within 24 hours of a Mandatory Disqualification motion being filed claiming Judge Colin as a Necessary Witness in the case only to lead to Judge Colin “steering” the case to the North Branch of Palm Beach County upon the sudden recusal without reason.

12. It was further shown in said recent motion that such full access to the Indexes and Records of the Simon Bernstein Estate and Trust cases were necessary since I affirmed before this Court that I had never been served or even received some of the filings that were later discovered and thus should have full access via the Certification of the Clerk of the Court Sharon Bock for a proper and meaningful access to these Courts on appeal.
13. Moreover, it was shown to this Court that the Records of the Simon Bernstein Estate Case were absolutely necessary as it was the Simon Bernstein Estate Case that had been Noticed for Conference where Judge Phillips had issued the Order setting a Trial in the first instance by setting the Trial in the Shirley Bernstein Estate case which had not been Noticed for Conference in violation of the Florida Rules of Civil Procedure 1.200. Only by access to full indexes and Records from the case can a meaningful access to the Courts and meaningful appeal be obtained by being able to show fundamental errors, due process errors, procedural errors and plain errors of

the lower tribunal, nor is there any rationale basis or reason for Appellant-Petitioner to be denied said Records and Indexes in the first instance which speaks of disparate and discriminatory and retaliatory treatment to a whistleblower who has protections even under the Florida Supreme Court State Court Fraud policy.

14. Even further still, the parties that were sued in the validity trial by Ted Bernstein and Alan Rose allegedly were from the Simon Bernstein Trust and Estate cases and yet somehow without reason, opinion or rationale basis this Court is directly impeding, impairing and obstructing rights under the US Constitution due process and equal protection standards and Florida Constitution and acting contrary to its own stated, express Florida Rules of Appellate Procedure.
15. In its June 9th, 2016 Order, this Court simply said, “ Upon consideration of appellee's May 26, 2016 response, it is ORDERED that appellant's May 25, 2016 motion with specificity to order production of the full record and extend time to file initial brief is denied. Appellant shall file the initial brief within five (5) days from the date of this order.”
16. Petitioner-Appellant has timely moved before this Court to extend such time within 5 days and said Order should now be Vacated under Constitutional standards or alternatively re-heard En Banc.

17. While this Court refers to consideration of “appellee’s” response as an alleged rationale for its obstruction and impediment and impairment to fundamental US Constitutional rights of meaningful access to the Court’s, the appellee has raised no substantive ground to deny such records and only claimed alleged “delay” and yet it is the appellee and this Court that is creating the delay by not simply Ordering the Lower Tribunal to do what it does by default under this Court’s Rules and instead is treating Appellant-Petitioner disparately in what almost appears as retaliation.

18. Not only are the Records of the Simon Bernstein Estate and Trust case to be available as a matter of right by operation of the Rules, the specificity shown previously goes to “fundamental errors” below, errors of a subject matter jurisdiction and due process nature.

19. For example, such Records Certified by the Clerk Sharon Bock would show if the parties sued by Ted Bernstein and Alan Rose even exist or have the capacity to be sued as some of the entities are alleged Trust entities and thus the Indexes and Records would show if any Notice of Trust was filed and if so, served upon who and who the beneficiaries designated were.

20. Specifically, Petitioner-Appellant was sued in Shirley Bernstein’s Trust case as an alleged party from the Simon Bernstein Estate and Trust Case namely, “ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B.

and Jo. B. under the Simon L. Bernstein Trust Dtd 9/ 13/12” yet no such Trust has ever been produced or shown to exist relating to capacity to be sued and subject matter jurisdiction and thus all Indexes and Records of the Simon Bernstein Estate and Trust cases to show the existence and propriety of this Trust are necessary and should not be denied.

21. Such full Indexes and Records are necessary and proper for meaningful access to the Courts and a meaningful appeal as such Records should further show if the State Court System Fraud Policy Effective Sept. 27, 2012 Statewide have been complied with in all of the cases as the original frauds in the Shirley Bernstein case with Judge Colin were occurring using Simon Bernstein’s name in the weeks and days after this policy became effective and transmitted statewide. See,

<http://www.jud6.org/News/StateCourtsSystemFraudPolicy.pdf>

22. According to the Florida Constitution, “The Declaration of Rights, Article I of the Florida Constitution, provides that the “courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.”

23. Petitioner-Appellant Eliot Bernstein pro se indigent status herein is within the class of persons covered by the Florida Constitution.

24. In fact, as long ago as 2008 the State Supreme Court of Florida empaneled a Commission that addressed in part the fundamental right of access to the courts. See, Supreme Court of Florida Commission on Trial Court Performance and Accountability Ensuring Access to Justice: Serving Florida’s Self-Represented Litigants April 2008, <http://www.flcourts.org/core/fileparse.php/260/urlt/SelfHelpFinalReport0408.pdf>
25. Right in the Introduction it states, “Justice in Florida will be accessible, fair, effective, responsive, and accountable. ~ Vision of the Florida Judicial Branch”.
26. “Of the values embraced in the vision statement of the Florida court system, the first is “access,” meaning “convenient, understandable, timely, and affordable to everyone.”¹ Access to the courts is an explicit right of the people,² guaranteed to all litigants and not reserved to those represented by an attorney.”
27. “While the elements in the vision statement were not specifically ranked in order of importance, the decision to list “access” first is instructive – without access, realization of the other values is impossible. “
28. “Florida courts have demonstrated a strong commitment to ensuring that the people of Florida have access to the best justice system possible. This

commitment to access includes efforts aimed at: increasing public knowledge about the role and operations of the courts; improving electronic access to court records” is one of the stated objectives.

29. “Enhancing public trust and confidence in the court system.” is another goal,” See page 5,

<http://www.flcourts.org/core/fileparse.php/260/urlt/SelfHelpFinalReport0408.pdf> .

30. Yet, denial of meaningful access to court records that all parties are entitled to breeds nothing but lack of public trust and confidence in the court system and has no rationale basis stated herein.

31. The US Supreme Court has said, “Because we recognized that "adequate and effective appellate review" is impossible without a trial transcript or adequate substitute, we held that States must provide trial records to inmates unable to buy them. *Griffin v. Illinois*, 351 U.S. 12, 20 (1956).”

32. The US Supreme Court has also reaffirmed that a “State must "assure the indigent defendant an adequate opportunity to present his claims fairly." *Ross v. Moffitt*, 417 U.S., at 616 . "Meaningful access" to the courts is the touchstone. See *id.*, at 611, 612, 615.

33. In *Griffin v Illinois*, the US Supreme Court further said, “Thus to deny adequate review to the poor means that many of them may lose their life,

liberty or property because of unjust convictions which appellate courts would set aside. Many States have recognized this and provided aid for convicted defendants who have a right to appeal and need a transcript but are unable to pay for it. 15 A few have not. Such a denial is a misfit in a country dedicated to affording equal justice to all and special privileges to none in the administration of its criminal law. 16 There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts.” See,

<http://caselaw.findlaw.com/us-supreme-court/351/12.html>

34. It is without dispute that the lack of financial resources has been the impediment for Appellant-Petitioner to obtain these Records and Indexes already. The Order must be vacated and Petitioner-Appellant granted full access to the Indexes and Records and then given a reasonable time to file the initial brief AFTER full access to the Courts and such records.
35. This is a case where the fraud itself is claimed to be part of what has caused and forced the indigent status on Appellant-Petitioner in the first instance.
36. Should this Court not simply vacate and reverse the Orders of Judge Phillips summarily, then this Court must now Vacate it's order Denying access and

obstructing meaningful access to the courts and records or alternatively rehear said matter En Banc.

37. The matters herein should then be clarified by written opinion and decision and preserved for review by the Florida Supreme Court due to the exceptional statewide importance.

WHEREFORE, it is respectfully prayed for an Order extending the time to file and serve an Initial Brief until a reasonable time after production of the full Indexes and Records on Appeal, further directing the Clerk of the 15th Judicial Circuit to prepare and transmit and serve full Indexes and Records for all the named affected cases herein and vacating this Court's prior Order on Constitutional grounds or alternatively rehearing the matter en banc and overturning said June 9, 2016 Order by written opinion clarified for the importance of such issues and for such other and further relief as to this Court may seem just and proper.

Dated: June 14, 2016

/s/Eliot Ivan Bernstein

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 14th day of June, 2016.

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