

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 4D16-222

ELIOT BERNSTEIN

L.T. CASE NOS. 2014CP003698XXXXNB
2011CP000653XXXXNB

Appellant,

v.

TED S. BERNSTEIN, AS TRUSTEE,
et al.

Appellee.

**APPELLEE'S RESPONSE IN OPPOSITION TO APPELLANT'S
MOTION CONTAINING A FOURTH REQUEST FOR
EXTENSION OF TIME TO FILE INITIAL BRIEF AND SEEKING
REHEARING EN BANC OF THE COURT'S JUNE 9TH ORDER**

Appellee, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust ("Trustee"), files his response in opposition to Appellant's, Eliot I. Bernstein, *Motion for Extension of Time to Submit an Initial Brief upon Proper and Meaningful Access to Records on Appeal, Vacating and Rehearing En Bank 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* (the "Motion"), and states:

1. To remove any doubt that Eliot Bernstein is a vexatious litigant, he now has filed his fourth motion asking this Court to extend the deadline for filing of his Initial Brief, and his third request to require the filing of enormous materials,

including trial court records from other cases, in connection with this appeal. Appellee's May 26th Response to the Appellant's last motion fully explained the reasons why the record is sufficient, if not complete, and easily can be supplemented through the use of an appendix.

2. The Court could not more clearly have ruled or explained its ruling in each of the prior order, and Appellant simply expresses his disagreement. Indeed, this Court's Order dated May 13, 2016, clearly states:

Upon consideration of appellee's May 3, 2016 response, it is ORDERED that appellant's May 3, 2016 motion for extension of time to file brief is granted, and appellant shall serve the initial brief within fifteen (15) days from the date of this order. ***In addition, if the initial brief is not served within the time provided for in this order, the above-styled case may be subject to dismissal*** or the court in its discretion may impose other sanctions; further, ORDERED that appellant's May 3, 2016 request for order to produce indexes for appeal for two additional cases is denied. The court notes that the transcript of the one-day trial is a part of the record. Further, appellant has failed to show how the additional indexes of the related cases would be helpful for the instant appeal, as opposed to the two records that have already been provided.

3. Rather than file the brief timely, Eliot Bernstein filed on May 25, 2016, a motion requesting for the second time to supplement the record and for the third time to extend the deadline for the Initial Brief (the Court had granted two prior extensions, taking the original March 31st deadline to May 28th). The Court denied the motion, and specifically denied the request for more time to file the Initial Brief.

Nevertheless, Appellant, Eliot Bernstein, was given an additional five days to file the Initial Brief, through June 14th.

4. In addition to the original 70 days for the Initial Brief, Appellant's deadline already has been extended a total of 76 days from the first due date. At 11:42 p.m. on June 14, 2016, the last day for him to file his Initial Brief, Eliot Bernstein filed yet another motion seeking for an indefinite extension of time to file his Initial Brief, and setting forth an unauthorized motion for rehearing and rehearing en banc on the June 9th Order. The filing is misguided and cites a litany of irrelevancies, and continues a practice of stall and delay – doing anything to avoid resolving a matter.¹

5. In light of Eliot Bernstein's repeated failure to file his Initial Brief within the deadlines set by clear and unambiguous orders of this Court, and in particular his ignoring of this Court's order dated June 9th which denied his prior motion, Appellant, Ted Bernstein as Trustee, requests that the Court deny the pending Motion and immediately dismiss the appeal for lack of prosecution.

¹ These tactics are not unique to Eliot Bernstein, as other vexatious, pro se litigants employ similar methods. *Zavodnik v. Harper*, 17 N.E.3d 259, 263 (Ind. 2014) ("Nothing Mr. Zavodnik has filed or done in this case shows any desire to litigate this case expeditiously to resolution on the merits. Rather, he has burdened the opposing party and the courts of this state at every level with massive, confusing, disorganized, defective, repetitive and often meritless filings.").

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; E-mail Electronic Transmission; FedEx; Hand Delivery this 15th day of June, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone / (561) 655-5537 Facsimile
email: arose@mrachek-law.com
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST - CASE NO. 4D16-222

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein
(iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0766 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra
Bernstein, Eric Bernstein, Michael
Bernstein

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
lisa@friedsteins.com
Individually and as trustee for her
children, and as natural guardian for
M.F. and C.F., Minors

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
(561) 734-5554 - Facsimile
Email: service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

Pam Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
psimon@stpcorp.com

Robert Spallina, Esq.
Donald Tescher, Esq.
Tescher & Spallina
925 South Federal Hwy., Suite 500
Boca Raton, Florida 33432

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Individually and as trustee for her
children, and as natural guardian for
J.I. a minor

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com