

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.

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**APPELLEE'S, TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE,  
RESPONSE TO APPELLANT'S MOTION FOR  
NINE-WEEK STAY OF APPEAL**

Appellee, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust ("Trustee"), submits his opposition to the Motion for Extension of Time and Stay of Proceedings filed by Appellant, Eliot Bernstein ("Eliot"), in which Eliot has requested that all proceedings in this appeal be stayed for nine weeks.

1. While the undersigned is sympathetic to the need of a litigant for additional time, Eliot has abused that privilege throughout these proceedings. In this appeal, Eliot already has been granted four or five extensions to file his Initial Brief, for a total of 102 days from the original due date. Nevertheless, Eliot still filed his

Initial Brief one day later, meaning he had 103 extra days on top of the 70 days afforded for the filing of an Initial Brief.

2. In response to Eliot's Initial Brief, the Trustee's counsel worked diligently to file an Answer Brief, which was accomplished after one short extension of 10 days. Part of the reason the Trustee is anxious to move this appeal forward is that the Trustee wants to make distributions and close-out this Trust, but cannot do so until the order determining beneficiaries is upheld on appeal by this Court. In fact, the Trustee is prepared to make substantial distributions into trusts created for Eliot's children, who are among the class of beneficiaries of this Trust, as soon as the appeal is resolved. In addition, the Trust possesses claims against third-parties which cannot be finally resolved until this appeal is resolved. Therefore, although this case is no more important than any other case before this Court, the Trustee is concerned about excessive delay and will suffer prejudice if this case is unduly delayed.

3. Finally, the Trustee notes that the only work left to be done in this appeal is the preparation of a reply brief of no more than 15 pages. In fact, there is no requirement or obligation to file a reply brief, and given the extensive Initial Brief, it does not seem justified that preparing a Reply Brief would take nine extra weeks.

4. In light of the foregoing, the Trustee advises the Court that he would have no objection to a very brief extension of time, 10 or 15 days, to accommodate

the needs of Eliot. However, there needs to be a balance between Eliot's needs and the needs of the Trustee and the beneficiaries to bring closure to this trust proceeding.

5. In addition to concerns about Eliot's general pattern of stall and delay, the Trustee notes that Eliot advised of his "nine-week unavailability" on August 22nd (Exhibit "A") – two weeks before his current medical situation. That seems coincidental, and it also seems possible that Eliot wants a nine-week stay through the beginning of November, when the current trial judge, the Hon. Judge John L. Phillips, retires from the bench and is replaced with a new judge. After filing unsuccessful motions to disqualify Judges Martin Colin and John Phillips, and having succeeded in having Judge Howard Coates recuse himself, it appears Eliot is engaging in a systematic case of judge shopping. Also, Eliot may believe he is entitled to seek reconsideration of all prior rulings under Rule 2.330(h) of the Fla. R. Jud. Admin., which is not the case.

6. Accordingly, the Trustee requests that the Court deny in part the pending Motion, but extend the deadline for the service of a Reply Brief, if Eliot chooses to serve one, through no later than October 15, 2016. The Trustee further requests that the Court's order specifically provide that if a Reply Brief is not filed on or before that date, Eliot will have waived the right to file a Reply Brief and the Court will take the matter under consideration based upon the Initial and Answer Briefs.

WHEREFORE, the Trustee respectfully requests the Court deny the pending Motion in part, and grant an extension of time for Eliot to serve a Reply Brief no later than October 15, 2016.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been served by e-mail on all parties listed on the attached service list, this 13th day of September, 2016.

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**Subject:** RE: Bernstein, E/O Simon - Conflict of hearing presently set for 8/30/16 at 10:30 am...

We will be unavailable for hearings until after November 05, 2016, please get dates for after that. The hearings were scheduled without giving parties adequate time to object in the first place. Thank you

Eliot I. Bernstein  
Inventor, really cool shit that changed your world!  
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**A**

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**Subject:** Bernstein, E/O Simon - Conflict of hearing presently set for 8/30/16 at 10:30 am...

Good afternoon. Because a conflict has arisen for Mr. O'Connell on 8/30/16 at 10:30 a.m., we need to reschedule the pending fee petitions set for that date to Thurs., 9/1/16 at 8:30 am. Please advise of any conflicts as soon as you can. If we do not hear from you by tomorrow, 8/23/16, we will assume no conflicts and will file a Re-Notice of Hearing. Thanks so much.

Charlene

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