

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

CASE NO.: 4D16-3162

L.T. NO. 502012CA013933XXXXMB

ELIOT IVAN BERNSTEIN,

Appellant,

vs.

WILLIAM E. STANSBURY, et al.,

Appellees.

**RESPONSE TO APPELLANT'S STATEMENT OF SUBJECT MATTER
JURISDICTION AND MOTION TO ACCEPT LATE FILING**

Steven A. Lessne, Esquire and the law firm of Gunster, Yoakley & Stewart, P.A., on its own behalf and on behalf of Oppenheimer Trust Company of Delaware, in its former capacity as manager of Bernstein Family Realty, LLC, responds to Appellant's Statement of Subject Matter Jurisdiction; Appealable Order and Motion to Accept Late Filing, and states:

BACKGROUND

On September 8, 2016, the trial court granted the undersigned's motion to withdraw as counsel for Bernstein Family Realty, LLC ("BFR"). The undersigned law firm had previously been retained by Oppenheimer Trust Company of Delaware ("Oppenheimer"), which was then the manager of BFR but ceased to

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serve in that capacity based upon, and shortly after, a final judgment entered on June 7, 2016, in a related case.

Appellant, Eliot Bernstein, filed a notice of appeal with respect to the order granting the motion to withdraw. On September 16, 2016, this Court entered its order requiring Appellant to address this Court's subject matter jurisdiction and, specifically, how the order granting a motion to withdraw as counsel is an appealable order. On September 30, 2016, Appellant filed a response to this Court's order. That response was filed several days late, requested that this Court accept the late-filed statement, and failed to include any argument directly addressing how an order granting counsel's motion to withdraw is an appealable order.

As will be discussed briefly below, and as the case law referred to in this Court's order demonstrates, the order sought to be appealed in this case is not an appealable order.

ARGUMENT

In the order, this Court referred the parties to *Roller v. Cripe-Roller*, 58 So. 3d 279 (Fla. 1st DCA 2011). The *Roller* case stands for the proposition that an appellate court in Florida does not have appellate jurisdiction to review an order

granting counsel's motion to withdraw. *Id.*¹ The only orders relating to a law firm's motion to withdraw that have been reviewed on an interlocutory basis have been those occasions where a trial court *denies* a law firm's motion to withdraw. Such orders of denial have been reviewed on the basis of a petition for writ of certiorari. A motion denying a law firm's motion to withdraw arguably satisfies the requirements of a petition for writ of certiorari because it is intrinsically too late for review on plenary appeal where the law firm has been required to remain in the case through final judgment. *See, e.g., Becker & Poliakoff v. King*, 642 So. 2d 821 (Fla. 4th DCA 1994). There is no such irremediable harm where a law firm is *permitted* to withdraw. In fact, the undersigned is not aware of any authority supporting the jurisdiction of an appellate court to review by petition for writ of certiorari an order granting a law firm's motion to withdraw.

In Appellant's response to this Court's order, Appellant takes multiple approaches, none of which support jurisdiction over the appealed order in this Court. First, Appellant moves that the Court accept his late-filed response as timely, based upon what he has referred to as "significant medical issues." Although the undersigned will not address at any length whether this Court should accept the response as timely, it is noteworthy that Appellant has been

¹ Technically, the issue is whether such an order is reviewable by petition for writ of certiorari. The order is an interlocutory one, and the only interlocutory orders that are subject to an *appeal* are those set forth in Fla. R. App. P. 9.130. That rule does not include a provision for appeals of orders on motions to withdraw.

routinely filing papers addressing the same alleged medical issues and alluding to visits with doctors but has never included an affidavit from a medical practitioner supporting his claim that filing papers in the many lawsuits that he chose to bring would be harmful to his health.

Appellant does not directly address the question raised by this Court. Appellant cites the *Becker & Poliakoff* case, *supra*, for the proposition that “approval by the court should be rarely withheld...” (See Appellant’s statement at p. 2). Appellant has misapprehended that statement by the Court, which was a reference from an earlier Supreme Court case expressing the principle that a trial court should rarely *deny* a motion to withdraw (and should only do so where the request would interfere with the efficient and proper functioning of the court.” *See Becker & Poliakoff, supra*, 642 So. 2d at 822.

Appellant goes on to argue the merits of his appeal, claiming that there is “fraud on the court” and other related issues based upon the nature of the undersigned law firm’s representation. At best, Appellant’s argument may be construed as an assertion that where a party intends to make certain claims about an attorney, that attorney should be required to stay in the case (although, interestingly, Appellant suggests in paragraph 11 that counsel should have been removed rather than permitted to withdraw). However, that argument does not address the Court’s jurisdiction, is not the subject of any legal authority presented

to this Court by Appellant, and is not the subject of any case law of which the undersigned is aware. In fact, whether an order granting the withdrawal of an attorney is permitted would not impact the ability to address the types of claims about that attorney suggested by Appellant here.

In short, Appellant presents no exception to the rule that an order granting an attorney's motion to withdraw is not an appealable order and is not reviewable by petition for writ of certiorari. Therefore, the present appeal should be dismissed for lack of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-mail to all parties on the attached Service List this 17th day of October, 2016.

/s/ Steven A. Lessne

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