

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIV.  
CASE NO. 50 2012 CP 004391 XXXX NB

IN RE: ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

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**CASE LAW AUTHORITY**

COMES NOW, Creditor and Interested Person, William E. Stansbury (“Stansbury”), by and through his undersigned counsel and hereby submits the following case law authority in connection with the matters to be heard on Thursday, February 16, 2017 at 2:30 p.m., pursuant to Paragraph 2 on Page 4 of this Court’s Order dated December 13, 2016:

ISSUE:

I. WHETHER WILLIAM STANSBURY HAS STANDING TO CHALLENGE ALAN ROSE, ESQ. AND HIS LAW FIRM FOR REPRESENTATION OF THE ESTATE OF SIMON BERNSTEIN

- A. *Bedoya v. Aventura Limousine & Transportation Service, Inc.*, No. 11-24432-CIV, 2012 WL 1534488, at \*4 (S.D. Fla. Apr. 30, 2012).

“Where the conflict (between a lawyer and that lawyer’s clients) is such as clearly to call in question the fair or efficient administration of justice opposing counsel may properly raise the question...” (citing, *Fla. R. Professional Conduct 4-1.7 comment*) (Recognizing that someone other than a client or former client may move for disqualification in conflict of interest situations); (A party who is not a former client of opposing counsel nevertheless has standing to raise the issue of opposing counsel’s conflict of interest if there is a violation of the rules which is sufficiently severe to call into question the fair and efficient administration of justice).

- B. *Milton Carpter Center, Inc. v. Cincinnati Ins. Co.*, Case No. 3:13cv624/MCR/CJK, 2014 WL 12482616 (N.D. Fla. May 5, 2014).

(A non-client plaintiff had standing to move to disqualify defendant’s attorney/appraiser on the grounds that attorney/appraiser could not

ethically represent the defendant. The court held that “an attorney has an ethical obligation to his or her client that does not admit of competing allegiances” and “loyalty to a client is impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer’s other responsibilities or interests,” quoting Rules Regulating the Fla. Bar 4-1.7 cmt.)

C. *Anheuser-Busch Companies, Inc. v. Staples*, 125 So. 3d 309 (Fla. 1st DCA 2013).

(The trial court noted that even if Respondent lacked prerequisite standing it would have raised the issue itself and reached the conclusion that disqualification was necessary).

## II. WHETHER A CONFLICT OF INTEREST EXISTS REQUIRING A DISQUALIFICATION OF ALAN ROSE, ESQ. AND HIS LAW FIRM

A. *Anheuser-Busch Companies, Inc. v. Staples* (Supra) (“Under Rule 4-1.7 of the Florida Rules of Professional Conduct...it was unreasonable for the firm to believe that it would be able to provide competent and diligent representation to each affected client ...because the representation of Petitioners involved the assertion of a position adverse to Respondent’s employer” *Staples*, at 310).

B. *Florida Bar Rule 4-1.7, Conflict of Interest; Current Clients* (Comment-Other conflict situations, “A lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are aligned in interest even though there are some difference of interest among them.”)

C. *Florida Bar v. Scott*, 39 So. 3d 309 (Fla. 2010) (Attorney violated Rules of Professional Conduct regarding conflicts of interests by representing multiple clients who all had claims to the same limited funds).

D. *Kolb v. Levy*, 104 So. 2d 874 (Fla. 3rd DCA 1958).

## III. WHETHER THE CONFLICT CAN BE WAIVED

A. *Florida Bar v. Scott*, (Supra) (“Attorney violated Rules of Professional Conduct regarding conflict of interests representing multiple clients who all had claims to the same limited funds and froze an account REGARDLESS OF WHETHER CLIENTS SIGNED CONFLICT WAIVER. The conflicts were directly adverse to clients’ interests and could not be waived.”)

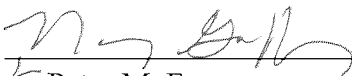
- B. *Anheuser-Busch Companies, Inc. v. Staples* (Supra) (Citing third restatement of the law governing lawyers when clients are aligned directly against each other in the same litigation the institutional interest in vigorous development of each client's position renders the conflict not consentable. The Rule applies even if the parties themselves believe that the common interests are more significant in the matter than the interest dividing them.)
- C. *United States v. Culp*, 934 F. Supp. 394 (M.D. Fla. 1996) (Defendant could not waive either rights of attorney's former clients or interest of court in the integrity of its procedures and fair and efficient administration of justice for purposes of governments Motion to Disqualify Attorney based of conflict of interest).

  
/s/ Peter M. Feaman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to those listed on the attached service list, on this 9<sup>th</sup> day of February, 2017.

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