

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

CASE NO. 502012CP004391XXXXNBIH
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

_____ /

**ESTATE'S SPECIAL LITIGATION COUNSEL'S MOTION TO
ESTABLISH PROTOCOL FOR PAYMENT OF ATTORNEYS' FEES AND COSTS**

Estate's Special Counsel, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. ("Mrachek"), appointed by order of this Court to represent the Estate as legal counsel in the independent action filed by William Stansbury, moves the Court to establish a protocol for payment of attorneys' fees and expenses of that litigation, in a cost effective and efficient manner, and states:

1. This Court has appointed the Mrachek firm to be special counsel for the Estate in the independent action filed by potential claimant, William Stansbury. Despite the fact that Stansbury did not object to the retention of the Mrachek firm, nor did anyone else, Stansbury has since moved to disqualify the law firm both in this court and in the trial court, and his motion in this Court was supported strongly by Eliot Bernstein.

2. After lengthy proceedings, including two separate evidentiary hearings, this Court issued an order agreeing with Mrachek's position. The Court indicated, if it were deciding the merits, it would deny the disqualification motion. Before that, Stansbury had persisted in seeking disqualification notwithstanding the law; that Mrachek firm had no confidential information from Stansbury; and that the personal representative had waived any conflict of interest.

3. In the independent action, based upon this Court's ruling, Stansbury withdrew the motion to disqualify, and the matter has been set for trial May 2018. In the meantime, the Mrachek firm has not been paid any of its invoices for this matter since its retention, and does not wish to engage in a public circus where the opposing party, Stansbury, or Eliot Bernstein may require a lengthy and expensive hearing each month to approve each and every invoice. In addition, production of the invoices during the litigation would give a tactical advantage to Stansbury who as opposing party should have no right to see any of the work product of the Mrachek firm on behalf of the estate.

4. At present, the Mrachek firm has several invoices which total \$21,334.93 in connection with the substantive work on the Stansbury action. In addition, the Mrachek firm has prepared a separate (and substantial) invoice to the Estate relating to the disqualification issue. The Mrachek firm, on behalf of the Estate, is seeking to recover those fees and costs incurred in the disqualification proceeding from Stansbury and Mr. Feaman, Esq. immediately as a sanction under section 57.105,¹ which has not yet been heard.

5. To protect attorney-client/work-product information in the bills; to avoid revealing strategy; and to facilitate the payment of invoices while saving the Estate the considerable expense of numerous and repeated fee hearings, Mrachek requests entry of an order authorizing the personal representative to pay the Mrachek firm's invoices subject to later proceedings to determine the propriety and amount of the legal fees.

¹ *See, Amended Motion for Sanctions Pursuant to Florida Statute §57.105 Against William Stansbury and Peter Feaman, Esq, Etc.* [DE 526].

6. The protocol suggested is as follows:

a. Mrachek firm will submit invoices to the personal representative and the Ciklin law firm on a monthly basis. The personal representative and/or his counsel may review the invoices, and discuss any questions with the Mrachek firm. In the event of any dispute over any specific invoices, the monies will be withheld by the personal representative for resolution by the Court if necessary during or at the end of the case.

b. Except to the extent the personal representative questions an invoice or specific entry, the Mrachek firm will be paid within 10 days of the submission of each invoice, without further order of the Court.

c. At the conclusion of the Stansbury litigation and/or at the hearings to close the estate, any parties with standing at that time to challenge the legal fees paid by the estate to the Mrachek firm may file a petition under section 733.6171, subject to all conditions therein including the right of the Mrachek firm to retain an expert witness and to recover attorneys' fees and costs for such proceedings from the estate or the unsuccessful challenger.

d. To the extent the Mrachek firm has been paid more money than is awarded by the Court in such a proceeding, the Mrachek firm will return those sums to the Estate within 10 days.

7. Due to the unique circumstances of this case, the Mrachek firm respectfully requests entry of the protocol outlined above or such reasonable protocol as the Court deems just. The time and expense to be incurred in each fee application, which would require lengthy evidentiary hearings and permit cross-examination by Stansbury's counsel and Eliot Bernstein, would be a complete waste of the Court's time and the Estate's money, as both the Mrachek firm and the personal representative would incur substantial additional estate expense each month for no real reason.

WHEREFORE, the Mrachek firm request the Court approve the payment protocol outlined herein, and grant such other relief as is just.

CERTIFICATE OF GOOD FAITH CONFERENCE

The undersigned has conferred in good faith with all parties in an attempt to reach agreement on this protocol or otherwise resolve the issues or objections to the payment of Mrachek invoices, but was unable to do so. The only response to date is from the Guardian ad Litem, who proposed the issue be addressed through a Stipulation to be approved by the Court, but neither William Stansbury nor Eliot Bernstein have indicated agreement.

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, 2017.

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