

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT IN AND FOR PALM  
BEACH COUNTY, FLORIDA

CASE NO. 502012CP004391XXXXNB (IH)

IN RE: ESTATE OF SIMON L.  
BERNSTEIN,

Deceased.

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

COMES NOW, interested person, William E. Stansbury ("Stansbury"), by and through his undersigned counsel, and files this Response in Opposition to the Estate's Special Litigation Counsel's Motion to Establish Protocol for Payment of Attorneys' Fees and Costs, and states as follows:

1. In the Estate's Special Litigation Counsel's Motion to Establish Protocol for Payment of Attorneys' Fees and Costs ("Estate's Special Litigation Counsel's Motion"), the law firm of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. (the "Mrachek law firm") asks this Court to enter "an order authorizing the personal representative to pay the Mrachek [law] firm's invoices subject to later proceedings to determine the propriety and amount of the legal fees." Motion, ¶5.

2. Stansbury does not object to the personal representative's authority to pay the Mrachek law firm for its services. Indeed, an attorney for the personal representative may be paid reasonable compensation from estate assets "without court order." §733.6171(1), Fla. Stat.

3. However, Stansbury objects to the extent that the Mrachek law firm seeks to deny every interested person's statutory right to challenge the propriety and reasonableness of the fees at any time because such restriction is not authorized under Florida law. Indeed, the probate court has the exclusive jurisdiction over issues concerning compensation of agents of the estate

and a probate court is obligated to review fees paid by the estate upon the petition of a proper party. *See Estate of Winston*, 610 So. 2d 1323, 1325 (Fla. 4th DCA 1992); *Estate of Goodwin*, 511 So. 2d 609 (Fla. 4th DCA 1987); *Faulkner v. Woodruff*, 159 So. 3d 319 (Fla. 2d DCA 2015) (probate court is obligated to review estate fees upon petition of a proper party); *see also*, §733.6175(1), Fla. Stat. (“the probate court may review the propriety of the employment of any person employed by the personal representative and the reasonableness of any compensation paid to that person” and “court proceedings to determine reasonable compensation of ...any person employed by the personal representative, if required, are part of the estate administration process...” §733.6175(2), Fla. Stat.).

4. Further, pursuant to §733.6171(5), Fla. Stat., “upon petition of any interested person, the court may increase or decrease the compensation for ordinary services of the attorney or award compensation for extraordinary services if the facts and circumstances of the particular administration warrant.” The probate court, “in determining reasonable compensation, ...shall consider all of the following factors, giving weight to each as it determines to be appropriate,” which factors include “the benefits or detriments resulting to the estate or interested persons from the attorney’s services.”

5. In the present case, interested persons have a statutory right to petition the court to seek review of the propriety and reasonableness of compensation that is paid out of the estate to the personal representative’s attorney and other agents of the personal representative. The Estate’s Special Litigation Counsel’s Motion seeks to preemptively and improperly restrict those statutory rights and has provided no legal authority supporting its position.

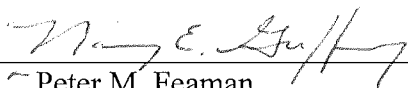
6. Therefore, the Estate’s Special Litigation Counsel’s Motion should be denied.

WHEREFORE, William E. Stansbury ("Stansbury"), requests this Court to deny the Estate's Special Litigation Counsel Motion, and enter such other relief as this Court deems just and proper.

**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 22<sup>nd</sup> day of June, 2017.

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