

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
PROBATE DIVISION  
CASE NO. 502012CP004391XXXXSB

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

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ELIOT IVAN BERNSTEIN, PRO SE,  
  
Petitioner,

vs.

TESCHER & SPALLINA, P.A., (and all parties, associates and of counsel); ROBERT L. SPALLINA (both personally and professionally); DONALD R. TESCHER (both personally and professionally); THEODORE STUART BERNSTEIN (as alleged personal representative, trustee, successor trustee) (both personally and professionally); et al.,

Respondents.

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PROCEEDINGS BEFORE THE  
HONORABLE MARTIN H. COLIN  
VOLUME II  
- - -

DATE: FEBRUARY 19, 2014  
TIME: 2:30 P.M. - 5:03 P.M.

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1 APPEARING ON BEHALF OF PETITIONER:  
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 20 PETER M. FEAMAN, P.A.  
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 23 APPEARING ON BEHALF OF LISA SUE FRIEDSTEIN  
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 ALSO PRESENT:  
 Ted S. Bernstein  
 William Stansbury  
 Candice Bernstein  
 ---

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1 BE IT REMEMBERED, that the following  
 2 proceedings were taken in the above-styled cause  
 3 before Judge Martin H. Colin, at the South County  
 4 Courthouse, 200 West Atlantic Avenue, Courtroom 2,  
 5 City of Delray Beach, County of Palm Beach, State of  
 6 Florida, beginning at 2:30, on Wednesday, the 19th  
 7 day of February, 2014, to wit:  
 8 ---  
 9 THE COURT: Okay. Thanks. Be seated.  
 10 Okay. So we're back on the Estate of  
 11 Simon Bernstein, 2012CP004391. Let the record  
 12 reflect counsel is present following  
 13 yesterday's hearing and Mr. Feaman has now  
 14 filed the verified motion to disqualify counsel  
 15 which we're going to first hear.  
 16 So Mr. Feaman, you're up.  
 17 MR. FEAMAN: Thank you, Your Honor.  
 18 MR. PANKAUSKI: Excuse me, Your Honor.  
 19 Because I have not been able to provide a written  
 20 response and because you were kind enough to give  
 21 Mr. Feaman an opening statement yesterday, may I  
 22 be briefly heard?  
 23 THE COURT: Well, hold on. Let him give his  
 24 opening statement and then you.  
 25 Go ahead.

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1 MR. FEAMAN: Thank you, Your Honor.  
 2 Your Honor, we're traveling, as Your Honor  
 3 is aware, under Rule 4-1.18 of the Rules of  
 4 Professional Conduct dealing with prospective  
 5 clients, which states that a person who  
 6 discusses with a lawyer the possibility of  
 7 forming a client-lawyer relationship with  
 8 respect to a matter is a prospective client, at  
 9 subpart (a). And then subpart (c), Your Honor,  
 10 a lawyer subject to subdivision (b) shall not  
 11 represent a client with an interest materially  
 12 adverse to those of a prospective client in the  
 13 same or substantially related matter.  
 14 In this case, Your Honor, we have filed  
 15 our verified motion to disqualify counsel as  
 16 opposing counsel to Mr. Bernstein in this  
 17 proceeding, which we do have a right to do.  
 18 And in that verified motion it sets forth that  
 19 there was indeed a relationship formed between  
 20 Mr. Pankauski and the Bernsteins as  
 21 prospective -- specifically Eliot Bernstein --  
 22 as a prospective client.  
 23 The law, Your Honor, as you know, states  
 24 that, under Florida law, attorneys must avoid  
 25 appearances of professional impropriety and any

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1 doubt is to be resolved in favor of  
 2 disqualifications.  
 3 We respectively submit that based upon the  
 4 papers submitted that, in fact, the  
 5 relationship as prospective counsel was -- and  
 6 prospective client -- was formed. We attach as  
 7 Exhibit A to the motion an e-mail which, in  
 8 fact, memorializes the existence of the  
 9 relationship. And we would then respectfully  
 10 request, through our motion, that there be a  
 11 disqualification in this case. I don't know  
 12 what opposing counsel's arguments are going to  
 13 be, so I will reserve after I hear.  
 14 THE COURT: Okay. Mr. Pankauski.  
 15 MR. PANKAUSKI: Thank you, Your Honor. Good  
 16 afternoon. So we're here today -- and I'm going  
 17 to try to be concise with my opening statements --  
 18 what I'm going to try to do is talk about the  
 19 burden of proof, the standards which I believe are  
 20 to exist under 4-1.18, because I don't see any  
 21 published decisions on this rule. I know our rule  
 22 in Florida is a little bit different than the  
 23 model rules that the ABA has. I'm also going to  
 24 try to concisely tell you what the evidence is  
 25 going to show.

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1 And then, in closing, I'd just like to  
 2 address three points made by opposing counsel.  
 3 And thank you for this opportunity to be heard.  
 4 This is a tire kicker case. This is a case  
 5 that the litigators, trial attorneys, who get  
 6 lots of calls from prospective clients would  
 7 refer to as, you know, what happens when  
 8 somebody calls up a number of attorneys and  
 9 says, hey, would you take my case, and  
 10 confidential information is not relayed, and  
 11 then that attorney ends up being involved in a  
 12 case. Should an attorney be removed from a  
 13 case -- in a tire kicking case -- because  
 14 somebody is calling up and kicking the tires,  
 15 should Your Honor, which you have the absolute  
 16 discretion to do, impose your discretion to  
 17 prohibit Mr. Ted Bernstein from having the  
 18 counsel of his choice. So let me say at the  
 19 beginning that Mr. Stansbury's counsel said  
 20 that he has a right to file a motion to  
 21 disqualify my firm. We contest that, Your  
 22 Honor. That's not accurate. A third party,  
 23 such as a creditor like Mr. Stansbury, does not  
 24 have standing to determine whether Mr. Ted  
 25 Bernstein can hire someone as his or her

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1 attorney.  
 2 THE COURT: Okay. So stop for a second. I  
 3 just want to make sure I'm looking at something --  
 4 because I agree time was quick on this. So in the  
 5 packet that I received, the verified motion to  
 6 disqualify counsel, it's brought by the  
 7 petitioner, William Stansbury, as a creditor, an  
 8 interested person in the estate, and it's -- it's  
 9 verified by Eliot Bernstein and Candice Bernstein.  
 10 But it's not brought by them. It's brought only  
 11 by William. So -- and William doesn't verify it.  
 12 So the moving party doesn't verify the pleading.  
 13 So under the rule that governs these type of  
 14 pleadings who has to -- two questions -- who has  
 15 to verify the motion; and does the motion have to  
 16 be brought by and/or in behalf of the alleged  
 17 aggrieved individual?  
 18 MR. FEAMAN: Thank you, Your Honor. First  
 19 with regard to the verification. The verification  
 20 has to state that I declare that the facts alleged  
 21 are true. And Mr. Stansbury was not in a position  
 22 to verify that because it would have been through  
 23 secondhand information. So we thought that the  
 24 proper verification should be signed by the people  
 25 who actually are the prospective clients against

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1 whom we say --  
 2 THE COURT: Now, I mean, they may be -- that  
 3 is Eliot and Candice -- may be witnesses. But  
 4 from the motion itself, the moving party is  
 5 William. Eliot has not filed a motion. And so --  
 6 I didn't know this until I saw the pleading -- so  
 7 William has filed a motion. He is seeking to  
 8 disqualify Mr. Pankauski from representing Ted  
 9 Bernstein. Eliot has not filed any action on  
 10 that. Has made no request for such a  
 11 disqualification. And William hasn't even signed  
 12 the pleading that he filed. So let me take a look  
 13 at the rule for a second.  
 14 MR. FEAMAN: Sure. I also have case law with  
 15 regard to whether William can bring it as opposing  
 16 counsel.  
 17 THE COURT: As opposing party?  
 18 MR. FEAMAN: As opposing party, yes, sir.  
 19 THE COURT: Okay. So -- I mean, correct me  
 20 if I'm wrong, the rule that is both 4-1.8 and  
 21 4-1.9 are rules of professional conduct that  
 22 advise about what lawyers can do under  
 23 circumstances that may be involved here. But it  
 24 doesn't really speak to the remedy. Both of you  
 25 agree with that?

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1 MR. PANKAUSKI: Yes, Your Honor.  
 2 THE COURT: So either of you have cases that  
 3 speak to the issues of whether William, as the  
 4 creditor, not as the purported client, who has an  
 5 alleged conflict of interest with Mr. Pankauski,  
 6 can bring this action. And secondly, whether --  
 7 whether I can disqualify Mr. Pankauski without  
 8 Eliot seeking that to happen, and by William as a  
 9 creditor, interested person seeking that, and  
 10 whether I can do it based upon a verified motion  
 11 not signed by William. Those are the three issues  
 12 I see on the surface.  
 13 MR. PANKAUSKI: Yes, Your Honor.  
 14 THE COURT: You want to address that first?  
 15 MR. FEAMAN: Sure. I have the burden, so  
 16 I'll go first. First, I know there is a rule that  
 17 when you seek to disqualify a judge, that it must  
 18 be verified.  
 19 THE COURT: Right. But the -- and in that  
 20 area, the rule speaks out the procedure.  
 21 MR. FEAMAN: Right.  
 22 THE COURT: Here, the procedure in the Bar  
 23 Lawyer's Rules of Professional Conduct, it doesn't  
 24 speak to it. So I assume the case law speaks to  
 25 it.

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1 MR. FEAMAN: To my knowledge, the rules are  
 2 silent as to the procedure.  
 3 THE COURT: So what does the case law say the  
 4 procedure is?  
 5 MR. FEAMAN: We don't have a case law as to  
 6 the procedure. We have it verified to show that  
 7 these are true facts on their face being brought  
 8 before the court. We didn't find a case that sets  
 9 forth the procedure of how this is brought, other  
 10 than this should be an evidentiary hearing.  
 11 THE COURT: Okay.  
 12 MR. FEAMAN: Now, with regard to  
 13 Mr. Stansbury bringing -- being the moving party  
 14 instead of Mr. Eliot Bernstein. We attached the  
 15 case to our motion, which was the Smathers case  
 16 which --  
 17 THE COURT: Brent versus Smathers?  
 18 MR. FEAMAN: Brent versus Smathers, yes, Your  
 19 Honor, 529 So. 2d. 1267. And on Page 2 of that  
 20 decision, Page 2 as copied to you, there is a  
 21 discussion of Rule 4-1.9. And then at the bottom  
 22 of the left-hand column, the last sentence, it  
 23 says as to the law firm's second argument, the  
 24 comments to Rule 4-1.7 states that: Although  
 25 questions involving conflicts of interest are

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1 primarily the responsibility of the lawyer  
 2 undertaking the representation, opposing counsel  
 3 may properly raise the issue, as is the case here.  
 4 That's the authority that we're relying  
 5 upon that we can bring it on behalf of  
 6 Mr. Stansbury.  
 7 THE COURT: So in this Brent case -- let me  
 8 see who is who. Want to be heard on that matter,  
 9 Mr. Pankauski?  
 10 MR. PANKAUSKI: Yes, Your Honor. Thank you.  
 11 The Brent v. Smathers case is outdated. It's a  
 12 1988 case. That pre-dates the 2009 change to  
 13 Florida Rule 4-1.18. It also is traveling under  
 14 the wrong rule of professional conduct. 4-1.9 is  
 15 not applicable here. We both agree it's 4-1.18  
 16 dealing with a prospective client. The standards  
 17 are different for a prospective client than an  
 18 existing attorney-client relationship.  
 19 THE COURT: Okay. Let me -- okay. Let me  
 20 just look at that for one second. For that to be  
 21 true, Mr. Feaman, it would have to be the position  
 22 by Eliot, through the evidence, or Eliot  
 23 Bernstein, that there was no lawyer-client  
 24 relationship between him and Mr. Pankauski. Is  
 25 that the case?

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1 MR. FEAMAN: Was he formerly retained, is  
 2 that your question?  
 3 THE COURT: You're using the word formal, I'm  
 4 not.  
 5 MR. FEAMAN: All right.  
 6 THE COURT: The cases don't use the word  
 7 formal.  
 8 MR. FEAMAN: As defined by the rules, he's a  
 9 prospective client. The rules make a distinction.  
 10 MR. PANKAUSKI: That's 4-1.18.  
 11 THE COURT: So you don't think Rule 4-1.9  
 12 applies?  
 13 MR. FEAMAN: I do. Because it references  
 14 4-1.9 in part B of 4-1.18, which states that even  
 15 when no client-lawyer relationship ensues, a  
 16 lawyer who has had discussions with a prospective  
 17 client shall not use or reveal information learned  
 18 in the consultation, except as Rule 4-1.9 would  
 19 permit. And so a conflict under 4-1.9 would apply  
 20 to a prospective client as defined under 4-1.18.  
 21 THE COURT: Okay. All right. What about --  
 22 Mr. Pankauski, what's your position on whether  
 23 this could be brought by the creditor and not by  
 24 Eliot Bernstein.  
 25 MR. PANKAUSKI: He's not permitted -- the

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1 creditor is not permitted to bring this action.  
 2 The authority for that -- let me state what the  
 3 authority is. Privity is required for someone to  
 4 try to go up to an attorney and say you can't  
 5 represent Ted Bernstein. There is no privity  
 6 here. There is no attorney-client relationship  
 7 between my firm and the creditor, Mr. Stansbury.  
 8 The authority for that is a 2012 Second District  
 9 case called THI Holdings, Thomas Howard Indigo  
 10 Holdings, LLC. And it sets forth that privity is  
 11 required. It involved a motion to disqualify, a  
 12 motion for pro hac vice. And it says here as a  
 13 matter of undisputed facts, there is no privity  
 14 between the estate and Balassa or his firm. And  
 15 it goes on to talk about that. And then it says  
 16 even if the estate could convince this court that  
 17 it had standing to raise the disqualification  
 18 issue, it cannot establish the legal requirements  
 19 for disqualification.  
 20 THE COURT: So here's the thing that's  
 21 concerning me, Mr. Feaman. The allegation,  
 22 looking at the motion, is that there was -- I'm  
 23 using this expression broadly -- some legal  
 24 dealings between Eliot Bernstein and the Pankauski  
 25 firm. That's what you allege, correct?

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1 understand how William Stansbury can say there is  
 2 a conflict that Eliot doesn't say exists.  
 3 MR. FEAMAN: Mr. Stansbury is harmed as a  
 4 result of the apparent dereliction of  
 5 Mr. Pankauski's duties to Mr. Eliot Bernstein  
 6 because --  
 7 THE COURT: Even if Eliot doesn't complain?  
 8 MR. FEAMAN: Yes, sir.  
 9 THE COURT: Okay. Show me -- I need a case  
 10 that says that that's possible. Because that's  
 11 what I don't see. Eliot, I think, can complain,  
 12 and I'm not sure that it's -- which rule applies.  
 13 MR. FEAMAN: And he may yet complain, we  
 14 don't know. And I can't --  
 15 THE COURT: Right.  
 16 MR. FEAMAN: -- speak for Eliot.  
 17 THE COURT: I know. Eliot is representing  
 18 himself.  
 19 MR. FEAMAN: Nor do I prepare pleadings for  
 20 Mr. Bernstein.  
 21 THE COURT: Eliot went so far as to sign your  
 22 verification, but it's not his motion. That's one  
 23 problem. But also -- I'm almost positive because  
 24 of some prior cases I had that the person who has  
 25 to complain is -- about a lawyer representing

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1 MR. FEAMAN: Correct.  
 2 THE COURT: So -- and Eliot Bernstein has  
 3 not -- and then we also know that Ted Bernstein  
 4 has hired Mr. Pankauski, that same lawyer that  
 5 Eliot says he had legal dealings with. True?  
 6 MR. FEAMAN: True.  
 7 THE COURT: So here's what I'm just not  
 8 following you -- almost like a matter of logic.  
 9 With Eliot not complaining, how can a creditor or  
 10 any other outside person who doesn't claim a  
 11 conflict of interest -- say I don't want  
 12 Mr. Pankauski to continue to represent Ted when  
 13 Eliot has not filed the motion complaining because  
 14 Eliot is the other purported either prospective or  
 15 former client, depending upon which rule you look  
 16 at -- who has a right to either complain or not.  
 17 So I'm sure it's not the case in reality, but if  
 18 Eliot didn't complain -- I mean, it could be that  
 19 Eliot is taking a position, you know, whatever I  
 20 did with Mr. Pankauski and his firm, you know, it  
 21 started where it started, ended where it ended,  
 22 and, you know, it may be that Ted hired him and  
 23 that's okay with me. And I'm not asking that  
 24 Mr. Pankauski not represent Ted because of some  
 25 conflict with me, Eliot. I don't -- I just don't

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1 someone else, and in this case it's Mr. Pankauski  
 2 continuing to represent Ted Bernstein, is the  
 3 person who purportedly is the benefactor of these  
 4 rules as an either prospective or former client.  
 5 But if he says no -- if he doesn't seek  
 6 disqualification, I'm not sure how someone else  
 7 can -- has an interest, under the cases that I  
 8 read, for that to happen. Let me just look here  
 9 if there is a case I just saw in my research.  
 10 MR. FEAMAN: The court --  
 11 THE COURT: I did an extensive case right on  
 12 Rule 4-1.9, very similar to this, and it was --  
 13 everyone said it was that rule, not the  
 14 prospective rule. Although, from reading your  
 15 motion, it's almost the identical type of case.  
 16 And both lawyers in that case said, though, that  
 17 it was the 4-1.9 that applied not the 4-1.8. But  
 18 the moving party was the alleged aggrieved party  
 19 who said that they -- that the other lawyer had a  
 20 conflict of interest because the other lawyer  
 21 here, Mr. Pankauski, had performed some  
 22 lawyer-client services, and there was other  
 23 information that led to the -- because if there is  
 24 no attorney-client relationship that is complained  
 25 about that Eliot says was breached, I'm not sure

<p style="text-align: right;">65</p> <p>1 that William has standing. And I just -- I mean,  2 if you have a case that says he does...  3 MR. FEAMAN: Only thing I have is the comment  4 to 4-1.7 --  5 THE COURT: Okay.  6 MR. FEAMAN: -- which deals with conflicts of  7 interest.  8 THE COURT: Sure. Let me see.  9 MR. FEAMAN: And it's at the end in the  10 book -- I don't know if you have the book.  11 THE COURT: I have the book, yeah.  12 MR. FEAMAN: On Page -- I have the 2013  13 edition.  14 THE COURT: Okay.  15 MR. FEAMAN: Page 1985.  16 THE COURT: Wait a minute. My Rule 4-1.8 the  17 comments are on a different page, but what's the  18 heading of the comment?  19 MR. FEAMAN: Conflict charge by an opposing  20 party.  21 THE COURT: Okay. Got that. Let me read it.  22 MR. FEAMAN: It says, the second sentence, in  23 litigation a court may raise the question when  24 there is reason to infer that the lawyer has  25 neglected the responsibility.</p>	<p style="text-align: right;">67</p> <p>1 can do or not do. That's not what's involved  2 here. So here when -- Eliot was first in time,  3 right?  4 MR. PANKAUSKI: Yes, Your Honor.  5 THE COURT: You agree with that?  6 MR. FEAMAN: Yes.  7 THE COURT: So Eliot sees Mr. Pankauski, or  8 his office does what he does -- we may be talking  9 about that in a few moments. And then the  10 question becomes where Mr. Pankauski then  11 continues to -- or chooses to represent someone  12 else, Ted Bernstein, it looks like Rule 4-1.18,  13 subsection (c) applies. A lawyer subject to  14 subdivision (b) shall not represent a client with  15 interest materially adverse to those of a  16 prospective client in the same or substantially  17 related matter. And it goes on to talk about  18 that.  19 So is that the rule that you say applies?  20 MR. FEAMAN: Yes, Your Honor.  21 THE COURT: You agree that rule would apply?  22 MR. PANKAUSKI: Yes, Your Honor.  23 THE COURT: I think Rule 4-1.9, which is the  24 other conflict of interest rule, is where --  25 arises where there actually is a situation where</p>
<p style="text-align: right;">66</p> <p>1 THE COURT: Okay. Let me read the entire --  2 what subsection of 4-1.8 do you say applies,  3 Mr. Feaman?  4 MR. FEAMAN: Well, our motion speaks to  5 4-1.18.  6 THE COURT: Eighteen. Okay. Say that again  7 4 --  8 MR. FEAMAN: 4-1.18.  9 THE COURT: Let me look at that, it's  10 different.  11 Okay. That's duties to prospective  12 client. Let's read.  13 MR. FEAMAN: Right.  14 THE COURT: Let me read that.  15 MR. FEAMAN: Okay.  16 THE COURT: Let me look at the comments for a  17 second.  18 Okay. So I think there is maybe a little  19 overlap here. If Eliot Bernstein is a  20 prospective client, the way the rule starts,  21 there is a focus about when he purportedly  22 consults with Mr. Pankauski and he's a  23 prospective client, if Mr. Pankauski has some  24 lawyer-client relationship with someone else at  25 the time, then there are rules that say what he</p>	<p style="text-align: right;">68</p> <p>1 Eliot Bernstein is then called a former client,  2 and then Mr. Pankauski would represent Ted. And  3 then subsection (a) there almost uses the exact  4 same language.  5 So I'm not sure if Eliot is a former  6 client or a prospective client, but if he's  7 first in line, then the rule is almost  8 identical about when Mr. Pankauski then can  9 represent Ted Bernstein in the same or  10 related -- substantially related matter. The  11 language is the same, true?  12 MR. PANKAUSKI: Yes, Your Honor.  13 THE COURT: You agree?  14 MR. FEAMAN: True.  15 THE COURT: All right. So let me get passed,  16 though, the procedural aspect as to whether  17 William can bring that without -- William  18 Stansbury -- can bring this complaint in  19 connection with the motion to disqualify when  20 Eliot doesn't. If Eliot is the purported party  21 who is harmed by the potential conflicts of  22 interest, either as a prospective client of  23 Mr. Pankauski or former client, if it got that  24 far.  25 MR. FEAMAN: Our argument, Your Honor, on</p>

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1 behalf of Mr. Stansbury, is that because Eliot  
 2 Bernstein's interests are more closely aligned  
 3 with Mr. Stansbury's, and are clearly adverse to  
 4 Ted Bernstein, and Mr. Stansbury's interests are  
 5 clearly adverse to Ted Bernstein, that if Eliot  
 6 Bernstein transmitted information as a prospective  
 7 client to the attorney who's now Ted Bernstein's  
 8 lawyer, and we're adverse to him, it's our  
 9 position that we're harmed as a result of that.  
 10 THE COURT: Well -- but it's not harm  
 11 that's -- the rule is not a harm. The rule is a  
 12 conflict of interest. And the conflict of  
 13 interest has to be between Eliot and Ted. I'm not  
 14 sure how it could be otherwise.  
 15 MR. FEAMAN: Yes, as a result of that  
 16 conflict of interest --  
 17 THE COURT: Well, okay. But I still have  
 18 to --  
 19 MR. FEAMAN: -- we're hurt.  
 20 THE COURT: But if Eliot says -- because  
 21 there could be waivers, says here in the rule --  
 22 4-1.9 says a lawyer who has formerly represented a  
 23 client shall not thereafter represent another  
 24 person, okay, unless -- and then there's unleses  
 25 [sic] -- and one of those things are clearly in

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1 this case Eliot could not complain about it.  
 2 MR. ELIOT BERNSTEIN: May I interject, Your  
 3 Honor?  
 4 THE COURT: You're objecting?  
 5 MR. ELIOT BERNSTEIN: No, can I interject?  
 6 THE COURT: What do you want to say?  
 7 MR. ELIOT BERNSTEIN: I politely asked him  
 8 and told him that he was conflicted, and I felt  
 9 harmed by it.  
 10 THE COURT: That's evidence, though. That's  
 11 potential evidence you want to interject, but you  
 12 haven't filed this motion.  
 13 MR. ELIOT BERNSTEIN: I didn't learn that  
 14 until yesterday, so if I have to, I'll do another  
 15 day.  
 16 THE COURT: So let me ask this. If -- the  
 17 motion is filed, it's in written form, it's filed  
 18 by Mr. Stansbury. I think it needs to be joined,  
 19 if not independently, at least joined by Eliot  
 20 Bernstein. So what's your position -- and that's  
 21 clearly what Eliot wants to do, he just doesn't  
 22 know it yet. What about that, Mr. Pankauski? Can  
 23 I treat this motion and go forward based upon it  
 24 being joined by Eliot?  
 25 MR. PANKAUSKI: No, Your Honor. Mr. Eliot

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1 Bernstein received notice of that. He's chosen to  
 2 go without counsel. He's chosen not to seek any  
 3 affirmative relief.  
 4 THE COURT: But that -- that's to the case.  
 5 But I'm talking about the motion to disqualify  
 6 you.  
 7 MR. PANKAUSKI: Yes, that's what I am  
 8 speaking about.  
 9 THE COURT: So I mean -- I could do one of  
 10 two things. I can tell Eliot go over to the  
 11 library and start writing out -- Xeroxing this  
 12 motion, sign it yourself, and bring it in, and  
 13 then, you know --  
 14 MR. PANKAUSKI: You just want an oral joinder  
 15 right now?  
 16 THE COURT: Yeah --  
 17 MR. PANKAUSKI: That's fine.  
 18 THE COURT: -- that's what I'm getting at.  
 19 MR. PANKAUSKI: Yes. Sorry, Judge.  
 20 THE COURT: Okay. What's your position on  
 21 that?  
 22 MR. PANKAUSKI: But Mr. Stansbury can't do  
 23 it. Eliot could do it.  
 24 THE COURT: I think Eliot needs to be the  
 25 complaining party. Now, I'm not saying you can't

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1 participate as counsel to maybe help steer the  
 2 evidence. I'm probably thinking that would be  
 3 okay, but I think we need Eliot to join.  
 4 Mr. Pankauski doesn't have an objection. What do  
 5 you say?  
 6 MR. FEAMAN: I have no objection to Mr. Eliot  
 7 Bernstein joining. I'm just not going to be in a  
 8 position of encouraging him to do something and  
 9 violate my neutrality.  
 10 THE COURT: You are not -- you don't  
 11 represent him.  
 12 MR. FEAMAN: That's correct.  
 13 THE COURT: So Eliot is pro se.  
 14 MR. FEAMAN: Correct.  
 15 THE COURT: You know, there is a burden that  
 16 is on Eliot to start, but since he's joining your  
 17 motion, I'm going to allow -- just because for  
 18 judicial economy and so we don't have to like come  
 19 back on this matter and everyone is ready to go  
 20 forward -- for you to help, almost be second chair  
 21 counsel, standby counsel, although, I know you  
 22 represent William, to just help bring out the  
 23 evidence. So I'm going to allow that.  
 24 Okay. So Eliot, this is your motion.  
 25 MR. ELIOT BERNSTEIN: Okay.

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1 THE COURT: So come on up and sit here so I  
 2 can look at you and Judge your credibility when I  
 3 hear things that are going on. So sit right there  
 4 in the middle.  
 5 So whether -- again, I'm not -- I'm not  
 6 sure, I won't know til the end, what rule I  
 7 think this comes under, but it looks like it's  
 8 either 1-9 -- or 1.9 or 1.18, but it sounds  
 9 like it's one of those two.  
 10 So, okay, so you're up first.  
 11 MR. FEAMAN: Thank you. I would call  
 12 Mr. Eliot Bernstein to the stand.  
 13 THE COURT: I figured that would be first.  
 14 Okay. Come on, Eliot.  
 15 MR. PANKAUSKI: Opening statements.  
 16 THE COURT: He has a right to opening. So  
 17 have a seat here and I'll let Mr. Pankauski finish  
 18 his opening.  
 19 MR. PANKAUSKI: Thanks, Judge. And I --  
 20 okay. Thank you, Your Honor. So concisely, we  
 21 are traveling -- and I agree with Mr. Stansbury's  
 22 counsel -- under 4-1.18. The evidence is going to  
 23 show that my firm never had an attorney-client  
 24 relationship with Mr. Eliot Bernstein.  
 25 And if I may, let's just -- we've dealt

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1 with the standing issue of Mr. Stansbury. You  
 2 know, I'm of the position he does not have  
 3 standing. I'm also of the position that Eliot  
 4 lacks standing to participate in this estate  
 5 administration. He's not a beneficiary under  
 6 the decedent's will. He's not a beneficiary  
 7 under the decedent's revocable trust.  
 8 I do recognize that I'm coming in late to  
 9 this estate administration.  
 10 Eliot Bernstein is not an interested  
 11 person in this estate. He shouldn't even be  
 12 here.  
 13 So I need to --  
 14 THE COURT: What is Eliot Bernstein other  
 15 than the brother of Ted?  
 16 MR. PANKAUSKI: Nothing.  
 17 THE COURT: Okay.  
 18 MR. PANKAUSKI: I mean, if this was a  
 19 guardianship, he may have standing to come in and  
 20 participate in the administration of his dad's  
 21 person and property, but it's an estate. He  
 22 totally lacks standing. And because he lacks  
 23 standing, he doesn't -- he's not an interested  
 24 person and can't come in and tell Ted Bernstein  
 25 who he can hire as an attorney for an estate

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1 administration.  
 2 And that's my third point, Your Honor.  
 3 This isn't an adverse lawsuit. This isn't a  
 4 personal injury case. Mr. Ted Bernstein has  
 5 asked Your Honor if he can administer this  
 6 estate. He wants to be a fiduciary. As he is  
 7 a fiduciary --  
 8 THE COURT: Okay. But the participation of  
 9 Ted is not questioned. It's whether you can do it  
 10 for him.  
 11 MR. PANKAUSKI: Understood.  
 12 THE COURT: So Ted is -- no one is suggesting  
 13 Ted is not eligible to request that he be a PR or  
 14 curator. I mean, that wasn't objected to  
 15 yesterday.  
 16 MR. PANKAUSKI: Understood. And so, if I  
 17 may, let me go to the standard that we're  
 18 traveling under today and what we should be doing  
 19 here. Because we are going to introduce evidence  
 20 that there was no attorney-client relationship.  
 21 Evidence is going to be introduced that there was  
 22 no confidential information that Eliot Bernstein  
 23 conveyed to my law firm. The evidence is going to  
 24 show that he called up trying to find an attorney  
 25 to sue Don Tescher for malpractice regarding some

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1 estate matters of his parents.  
 2 I'm going to testify about  
 3 Mr. Bernstein's -- excuse me -- about  
 4 Mr. Stansbury's verified motion. I'm going to  
 5 testify as to what Mr. Stansbury's counsel told  
 6 me out there yesterday when you asked me to  
 7 step out. And I'm going to demonstrate the  
 8 amazing amount of inconsistencies in this  
 9 fiction that we had an attorney-client  
 10 relationship, or there is some type of  
 11 confidential information that is going to be  
 12 adverse to Mr. Eliot Bernstein.  
 13 So it's a three-fold test or three-prong  
 14 test, Your Honor. For you to disqualify this  
 15 firm -- for you to say Ted Bernstein, you can  
 16 not hire the Pankauski law firm for estate  
 17 administration. You would have first to make a  
 18 finding of fact that the interests of Ted  
 19 Bernstein are materially adverse, not just  
 20 adverse, but materially adverse to the  
 21 prospective client, Eliot Bernstein.  
 22 The second thing that you would need to  
 23 find is that I received confidential  
 24 information from Mr. Eliot Bernstein.  
 25 And then the third thing that you would



<p style="text-align: right;">77</p> <p>1 have to find is that I am going to use that 2 information, that confidential information, to 3 the disadvantage of Mr. Eliot Bernstein in an 4 estate. 5 THE COURT: That you are going to or could? 6 I mean, it couldn't be going to -- 7 MR. PANKAUSKI: That I could. Thank you, 8 Your Honor. 9 So that's the standard under 4-1.18. What 10 does our Fourth District say about this? 11 THE COURT: I kind of want opening and not 12 closing. So I got that part. 13 MR. PANKAUSKI: Okay. So the standard that I 14 would direct our attention to is the Coolis 15 (phonetic) case. You would need to find -- and 16 again, it's a finding of fact -- that I had actual 17 knowledge of material confidential information. 18 What the Fourth has described as protected 19 information. The burden is on Eliot. 20 Finally, because disqualification of a 21 party's counsel is such an egregious 22 punishment, that we can't resort to 23 speculation. Mr. Eliot Bernstein needs to 24 prove by a greater weight of the evidence those 25 three prongs that I described in 4-1.18.</p>	<p style="text-align: right;">79</p> <p>1 don't volunteer, because that's important. Okay. 2 THE WITNESS: Sure. 3 BY MR. FEAMAN 4 Q Is your brother Ted Bernstein presently a 5 beneficiary under the trust established by the estate 6 documents, if you know? 7 A I don't believe so. 8 Q That would be Ted Bernstein? 9 A That would be. 10 Q And are your interests with Ted Bernstein 11 adverse in connection with the estate of Simon Bernstein? 12 A Yes, sir. 13 Q And how so? 14 A Well, I'm pursuing Ted in a number of legal 15 actions, criminal actions, for -- 16 THE COURT: So focus on the question. Okay. 17 He didn't ask anything about criminal actions. 18 So, you know, you're a witness now -- 19 THE WITNESS: We're adverse to each other. 20 THE COURT: You need to pay -- let me 21 finish -- you need to pay attention carefully to 22 the question. Listen. Let me finish. 23 THE WITNESS: Uh-huh. 24 THE COURT: Okay. And not ramble outside the 25 scope of the question. Because Mr. Feaman's</p>
<p style="text-align: right;">78</p> <p>1 Thank you, Your Honor. 2 THE COURT: Okay. All right. Let's get the 3 evidence. Then we can talk about the law once we 4 see what the evidence is. 5 Okay. Raise your right hand. 6 (Thereupon, ELIOT BERNSTEIN was duly sworn 7 by the court) 8 DIRECT EXAMINATION 9 BY MR. FEAMAN 10 Q Thank you. Please state your name. 11 A Eliot Ivan Bernstein. 12 Q Your residence address? 13 A 2753 NW 34th Street, Boca Raton, Florida. 14 Q And you are the son of the late Simon 15 Bernstein? 16 A I am. 17 Q And you reside in Florida presently? 18 A I do. 19 Q And are your children beneficiaries under the 20 estate as it presently is structured? 21 A I'm not a hundred percent sure at this point. 22 Q Okay. 23 A I believe I am. 24 THE COURT: So do this, though. That may be 25 true, but let's make sure you're asked a question,</p>	<p style="text-align: right;">80</p> <p>1 questions are designed to be tailored for this 2 case. 3 Go ahead. 4 BY MR. FEAMAN 5 Q Thank you, Your Honor. 6 How is your interest in the estate of your 7 father directly, or through the trust, established by 8 your father's will, in conflict with that of Ted 9 Bernstein? 10 A I believe we're at conflict because Ted and I 11 differ if Ted and his children are part of the estates. 12 Q Okay. And what do you believe -- what is your 13 understanding, as you sit here today, as to whether Ted 14 and his children -- whether they should inherit under the 15 estate, what is your understanding? 16 MR. PANKAUSKI: Objection. Lack of 17 foundation. 18 THE COURT: I'll let you cross on that, or it 19 may be brought out by his answer. Go ahead. 20 THE WITNESS: I don't believe they should be. 21 BY MR. FEAMAN 22 Q And have you had discussions with Ted 23 concerning this? 24 A Yes. 25 Q And has Ted Bernstein disagreed with you?</p>

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1 A Yes.  
 2 Q How so? What has he indicated to you?  
 3 A He believes his children should be included  
 4 in the estate.  
 5 Q Do you disagree with that?  
 6 A I do.  
 7 Q And did you, in September of last year,  
 8 approach, with your wife, the law offices of  
 9 Mr. Pankauski?  
 10 A Yes, sir.  
 11 Q Do you recall about when that was?  
 12 A September 20th or so, around that area.  
 13 Q And was the approach in person or by phone?  
 14 A By phone.  
 15 Q Okay. And who called?  
 16 A I believe my wife initiated the call.  
 17 Q Okay. Were you present when she made the phone  
 18 call?  
 19 A I don't believe so.  
 20 Q Okay. And how long did she -- withdrawn. As a  
 21 result of that phone call, was there an e-mail sent to  
 22 your -- to Mr. Pankauski's office?  
 23 A Yes, sir.  
 24 Q Do you know to whom it was sent?  
 25 A I believe to Mr. Pankauski and his assistant,

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1 doesn't fit the question.  
 2 MR. FEAMAN: Okay. Thank you. Hold on.  
 3 BY MR. FEAMAN  
 4 Q Are you aware that your wife sent an e-mail to  
 5 Mr. Pankauski's office?  
 6 A Yes.  
 7 Q And after that e-mail, did you personally have  
 8 a conversation with Mr. Pankauski's office?  
 9 A Yes.  
 10 Q With whom did you speak?  
 11 A Mr. Pankauski.  
 12 Q Directly?  
 13 A Yes.  
 14 Q Was this by telephone?  
 15 A Yes.  
 16 Q For how long?  
 17 A An hour or so.  
 18 Q Was this shortly after -- or within a few days  
 19 after the e-mail was sent by your wife?  
 20 A Yes, sir.  
 21 Q And was he in possession of documents that had  
 22 been transmitted by your wife to him?  
 23 A Yes, sir.  
 24 Q And did you discuss with Mr. Pankauski anything  
 25 that you would consider to be confidential?

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1 Michelle Morley.  
 2 MR. PANKAUSKI: Objection, speculation. He's  
 3 believing.  
 4 THE COURT: Okay. Try to avoid belief, tell  
 5 me what you know. Can you reanswer?  
 6 THE WITNESS: Yes. We sent information to  
 7 both Mr. Pankauski and his assistant.  
 8 BY MR. FEAMAN  
 9 Q And were you -- did your wife send an e-mail as  
 10 a follow-up to that telephone conversation?  
 11 A Yes.  
 12 Q Okay. And were you copied on that e-mail?  
 13 A Yes.  
 14 Q Okay. Let me show you what's been marked as  
 15 Exhibit A, ask you if this is a true copy of the e-mail  
 16 that was sent by your wife, in which you were copied,  
 17 after the initial conversation that she had with  
 18 Mr. Pankauski's office?  
 19 THE COURT: So just -- because I think I have  
 20 the Exhibit A at the top part of that doesn't  
 21 apply, correct? Because that's February 10th.  
 22 MR. FEAMAN: Correct.  
 23 THE COURT: So if the other -- your question  
 24 is, what did Candice send. But this is an e-mail  
 25 from Michelle. So it doesn't -- the e-mail

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1 A Yeah, confidential and adverse to the  
 2 information about my brother.  
 3 Q Like what?  
 4 A Like what we thought about my brother's  
 5 actions with the other attorneys. The fact that there  
 6 was forgery going on. We believed he was working with  
 7 the attorneys who resigned yesterday, Tescher and  
 8 Spallina. That Tescher and Spallina had brought them  
 9 in, had business dealings, et cetera. We gave him a  
 10 lot of confidential information, I feel.  
 11 Q Did you discuss Mr. Pankauski's law firm  
 12 representing you?  
 13 A Yes, sir.  
 14 Q And was a retainer asked for?  
 15 A It was.  
 16 Q And what were the terms of the retainer that  
 17 you recall?  
 18 A To -- he wanted us to pay money and to retain  
 19 his services. And we couldn't afford it. And I  
 20 basically told him we couldn't afford it.  
 21 THE COURT: That's not the question.  
 22 THE WITNESS: Oh, okay. Yeah, a retainer was  
 23 sought.  
 24 BY MR. FEAMAN  
 25 Q Was a retainer discussed?

<p style="text-align: right;">85</p> <p>1 A Yes, sir.</p> <p>2 Q And was it an amount of money that you didn't</p> <p>3 presently have at that time?</p> <p>4 A Yes.</p> <p>5 Q And did you set about to try to obtain the</p> <p>6 retainer?</p> <p>7 A I told him I would try to get it from the</p> <p>8 court, and make a petition to the court, which I filed</p> <p>9 with the court. And I've been waiting for an answer on</p> <p>10 that. And then I would have called him back and got</p> <p>11 the money for him.</p> <p>12 Q All right. Did you ever receive any</p> <p>13 communication from Mr. Pankauski saying he was</p> <p>14 affirmatively not going to represent you?</p> <p>15 A No.</p> <p>16 Q When did you hear that Mr. Pankauski had been</p> <p>17 retained by Mr. Ted Bernstein?</p> <p>18 A Oh, week or two ago.</p> <p>19 Q And did you review the notice of appearance</p> <p>20 that was filed by Mr. Pankauski in this case?</p> <p>21 A I did.</p> <p>22 Q When did you receive that?</p> <p>23 A Oh, no, I don't think I've ever reviewed a</p> <p>24 notice of appearance from him.</p> <p>25 Q Okay. And when you found out that</p>	<p style="text-align: right;">87</p> <p>1 A Violated, you know.</p> <p>2 Q What is it?</p> <p>3 A Violated.</p> <p>4 Q Why?</p> <p>5 A Because it's a big risk. You know, he was</p> <p>6 also referred to me by Joel Weissman, who has very</p> <p>7 intimate knowledge of our case and what's going on in</p> <p>8 my life, and information regarding my brother. And</p> <p>9 I've had conversations with Mr. Weissman about that.</p> <p>10 And he was trying to help me out. And I, you know, I</p> <p>11 feel violated, that's all I can say.</p> <p>12 MR. FEAMAN: Okay. No further questions.</p> <p>13 THE COURT: Cross-examination.</p> <p>14 MR. PANKAUSKI: Thank you, Your Honor.</p> <p>15 CROSS EXAMINATION</p> <p>16 BY MR. PANKAUSKI</p> <p>17 Q Good afternoon, Mr. Bernstein.</p> <p>18 A Good afternoon, sir.</p> <p>19 Q In addition to contacting my law firm, you</p> <p>20 contacted Joel Weissman's law firm?</p> <p>21 A Joel Weissman was referred to us.</p> <p>22 Q Is that a yes?</p> <p>23 A Yes.</p> <p>24 Q And you contacted Norman Fleisher?</p> <p>25 A I might have.</p>
<p style="text-align: right;">86</p> <p>1 Mr. Pankauski was coming in on behalf of Mr. Ted</p> <p>2 Bernstein, what was your reaction?</p> <p>3 A I contacted him and said that I felt that he</p> <p>4 was conflicted. And -- that was the first contact.</p> <p>5 Q Did you send him an e-mail in that regard?</p> <p>6 A I did.</p> <p>7 Q And did you express any desire that he not</p> <p>8 represent Mr. Bernstein?</p> <p>9 A Yes, sir.</p> <p>10 Q Okay. And what was his response?</p> <p>11 A He didn't see eye to eye with me, basically.</p> <p>12 I sent him then the Bar rules that I felt applied, as a</p> <p>13 follow-up e-mail. Then, you know, I figured I'd come</p> <p>14 here and talk to the judge or something.</p> <p>15 Q So this motion is not something that you have</p> <p>16 expressed to Mr. Pankauski prior to today, is that</p> <p>17 correct?</p> <p>18 A No. No, I asked him politely to disqualify,</p> <p>19 you know, under ethical rules.</p> <p>20 Q Okay. And, obviously, you felt that request</p> <p>21 was rejected, correct?</p> <p>22 A Correct. He's here.</p> <p>23 Q How do you feel as a result of his continuing</p> <p>24 this case in terms of your personal involvement in this</p> <p>25 case?</p>	<p style="text-align: right;">88</p> <p>1 Q You did contact Norman Fleisher?</p> <p>2 A Are you telling me I did?</p> <p>3 Q I'm asking you.</p> <p>4 A No, you were telling me. But I don't know.</p> <p>5 Who is Norman Fleisher?</p> <p>6 Q And you contacted attorney Amy Beller?</p> <p>7 A I might have.</p> <p>8 Q And you contacted Brandon Pratt?</p> <p>9 MR. FEAMAN: Outside the scope of direct.</p> <p>10 THE COURT: Overruled.</p> <p>11 THE WITNESS: I retained Brandon Pratt.</p> <p>12 BY MR. PANKAUSKI</p> <p>13 Q Please tell us what other --</p> <p>14 A The children retained Brandon Pratt.</p> <p>15 Q Your children are minors, correct?</p> <p>16 A Yes.</p> <p>17 Q Please tell us who the other attorneys in Palm</p> <p>18 Beach County are that you contacted regarding this</p> <p>19 matter?</p> <p>20 A No.</p> <p>21 MR. PANKAUSKI: Your Honor, the witness is</p> <p>22 refusing to answer my question and he hasn't --</p> <p>23 THE COURT: I'm sorry.</p> <p>24 THE WITNESS: I answered. I said no.</p> <p>25 THE COURT: I thought he said none.</p>

<p style="text-align: right;">89</p> <p>1 THE WITNESS: I said no.  2 THE COURT: No, you weren't going to answer  3 or no --  4 THE WITNESS: No, I don't know to tell him  5 who I've contacted in Palm Beach County.  6 THE COURT: Okay.  7 BY MR. PANKAUSKI  8 Q I'm sorry, let me ask you again because I don't  9 think we were clear. Besides the attorneys that I've  10 mentioned, sir, please tell us what other attorneys  11 you've contacted in Florida regarding this matter.  12 A I don't know.  13 MR. FEAMAN: Objection. I think that's  14 confidential.  15 THE WITNESS: And it is. I feel it's  16 confidential too.  17 THE COURT: I'll overrule that. Good ahead.  18 So you can answer if you know of others that you  19 did contact. If not, say so.  20 THE WITNESS: I think I've contacted others,  21 I don't know who. I didn't bring a list of who I  22 contacted and who I haven't.  23 BY MR. PANKAUSKI  24 Q You contacted between 6 and 12 attorneys to  25 represent you in this matter?</p>	<p style="text-align: right;">91</p> <p>1 the estate and has been working closely with them and  2 to block us from getting proper notices and notices of  3 his supposed titles and information and accountings and  4 everything else too. And, you know, so I feel that we  5 have a differing interest in the outcome of the  6 estates. And I've expressed that to you and told you  7 about the documents, and what I thought about him  8 working with Spallina and Tescher and all of those  9 things. So that's stuff I don't normally tell somebody  10 unless they're asking -- and all my documents were  11 marked confidential that I sent you, all my e-mails  12 were marked confidential, et cetera.  13 Q You sent me e-mails?  14 A Me or my wife.  15 Q Okay. You don't remember if you sent me  16 e-mails?  17 A I don't recall at this moment.  18 Q In fact, you never --  19 A I have sent you e-mails. Yes, I have.  20 Q You sent me, John Pankauski, e-mails?  21 A Yes, sir.  22 Q Do you have any of those with you today?  23 A I believe the ones I just sent you last week,  24 weren't those e-mails?  25 Q Okay. Other than February 10th and</p>
<p style="text-align: right;">90</p> <p>1 A Possibly.  2 Q Okay. And you've provided those attorneys that  3 you've contacted with the information that you provided  4 to my law firm?  5 A Not all of them. Only the ones that  6 requested information under confidentiality.  7 Q And which lawyers --  8 A Similar to you.  9 Q And which lawyers are those?  10 A I can't recall.  11 Q Okay. Mr. Feaman asked you whether you were  12 adverse to your brother Ted, and you said yes?  13 A Yes.  14 Q How are you adverse to your brother Ted?  15 A We have differing interests in the outcomes  16 out of the estate.  17 Q Can you explain what the differing outcomes  18 are?  19 A Yeah. I believe that there's been fraud in  20 the estate by the estate planners and Ted to change  21 beneficiaries in the estate. I've asserted those  22 claims in the courts and in criminal authorities. And  23 I believe that there's now evidence that certain  24 documents were signed postmortem for my father and  25 myself illegally. Ted brought these attorneys in to</p>	<p style="text-align: right;">92</p> <p>1 February 12th, other than those two, did you send me any  2 e-mails?  3 A I believe my wife did.  4 Q Let's get this straight now. Your wife Candice  5 sent me, personally, John Pankauski, e-mails?  6 A Sorry, your law firm.  7 Q Okay. So let's get this straight. And I'm  8 sorry, but this is important.  9 A No, I don't mind the badgering.  10 THE COURT: Wait. Wait. Stop. Eliot,  11 that's not badgering.  12 THE WITNESS: Okay. Sorry.  13 THE COURT: Okay. So just answer a straight  14 question and this will go smoother.  15 Go ahead.  16 BY MR. PANKAUSKI  17 Q Mr. Bernstein -- Mr. Eliot Bernstein -- you  18 personally, not Candice, you personally never sent an  19 e-mail to my law firm?  20 A I did.  21 Q Other than February 10th and February 12th?  22 A I don't believe so.  23 Q Thank you.  24 Okay. You've read your dad Simon's will?  25 A Yes, sir.</p>

<p style="text-align: right;">93</p> <p>1 Q You are not mentioned in the will as a 2 beneficiary? 3 A Which will? 4 Q Your dad's will. The one that's before this 5 court. 6 A I don't believe so. 7 Q May I approach the witness with a copy of 8 Simon's will? 9 THE COURT: You're allowed to do that. 10 BY MR. PANKAUSKI 11 Q Would you like to take a look at it. If you 12 can just look through your dad, Simon's, will, which I 13 just handed to you, can you just confirm, please, that 14 you are not a beneficiary under your dad's will? 15 A I was convinced under this one I wasn't. But 16 I was told by Spallina and Tescher that I was a 17 personal property beneficiary or something. 18 Q So, you know, are you a beneficiary under your 19 dad's will that I just handed to you? 20 THE COURT: So the date of the will? 21 MR. FEAMAN: Objection, asked and answered. 22 THE COURT: Yeah. Sustained. Date of the 23 will? 24 MR. PANKAUSKI: The date of the will is 25 July 20 -- looks like first -- 2012.</p>	<p style="text-align: right;">95</p> <p>1 A. Do you see that that looks like an e-mail from your 2 wife Candice? 3 A Yes, sir. 4 THE COURT: No, that's -- but that's on 5 February 10th. Is that what you're getting at? 6 MR. PANKAUSKI: Yes, the date doesn't matter. 7 THE COURT: Okay. 8 BY MR. PANKAUSKI 9 Q What is mentioned in line item three? 10 A Copies of revised wills, trusts for Simon 11 Bernstein. 12 Q Thank you. 13 A That means it's an amended and restated trust 14 of Simon, not the trust of Simon that you asked about, 15 just for your edification. 16 Q And, in fact, his amended trust is your dad's 17 last trust, correct? 18 A If you believe what they are saying. 19 Q So you have seen your dad's trust? 20 A No, I've never seen my dad's trust. I've 21 seen an amended and restated trust. The original 22 trust, I believe, has me and my two sisters as 23 beneficiary, and Ted and his children wholly excluded 24 with my sister Pam as the only non-beneficiaries in 25 this whole thing.</p>
<p style="text-align: right;">94</p> <p>1 THE COURT: Okay. Next question. 2 BY MR. PANKAUSKI 3 Q And you are not a beneficiary of your father, 4 Simon's, revocable trust? 5 A I've never seen that. That's been withheld 6 and suppressed and denied by former counsel -- 7 THE COURT: So is the answer I don't know? 8 THE WITNESS: No, it's I've never seen it. 9 THE COURT: Okay. Straight answer, we'll 10 move through this. 11 BY MR. PANKAUSKI 12 Q Your testimony is you've never seen your dad, 13 Simon's, revocable trust? 14 A That's correct. 15 Q Do you have Exhibit A in front of you that 16 Mr. Feaman asked you about earlier? 17 A No. 18 Q And Exhibit A was attached to the verified 19 motion filed by Mr. Stansbury? 20 A No. 21 Q Okay. May I approach the witness? 22 THE COURT: Yeah. 23 BY MR. PANKAUSKI 24 Q I'm going to hand you my verified motion and 25 I'm going to ask you to direct your attention to Exhibit</p>	<p style="text-align: right;">96</p> <p>1 Q You earlier testified that you sent an e-mail 2 to me, Pankauski, and my assistant. Do you recall that 3 testimony? 4 A I believe it was my wife sent an e-mail to 5 your firm. 6 Q Yes. But I'd like to correct that. 7 A Okay. 8 Q Your wife Candice sent an e-mail to my 9 assistant, not to me? 10 A Correct. 11 Q And my assistant followed up with Candice by 12 e-mail? 13 A Well, actually, you requested that your 14 assistant get the documents for your meeting with me. 15 That's how I recall it. Candice came and asked me, and 16 we sent you the information to your assistant for your 17 review for our meeting because you were in California 18 or something. 19 Q Let's be clear. I've never spoken to your wife 20 Candice? 21 A Correct. 22 Q I have never asked Candice for any documents? 23 A Except your assistant asked Candice for 24 documents for our meeting, correct. 25 Q Correct. You said that you had one</p>

<p style="text-align: right;">97</p> <p>1 conversation with me for an hour or so. Do you remember 2 that testimony? 3 A Yeah. And I believe it was two conversations 4 I had with you total. 5 Q Now, it's two conversations? 6 A Yeah. You called me back to tell me you had 7 found a way to pay for your bill. 8 Q And when were those two conversations? 9 A September something. I don't have it in 10 front of me today. I can check my calendar. 11 Q Do you have your calendar with you? 12 A I don't. 13 Q Okay. And how far apart were those two 14 conversations? 15 A Shortly thereafter, I believe. 16 Q And they were in the evening, right? 17 A I believe. 18 Q Both of them were? 19 A I believe. 20 Q And you said the first one lasted an hour or 21 so. Do you recall how long this supposed second 22 conversation lasted? 23 A I believe it was rather brief. 24 Q Less than five minutes? 25 A Maybe more.</p>	<p style="text-align: right;">99</p> <p>1 read that, Mr. Bernstein? 2 A Mr. Pankauski -- 3 Q No, I'm sorry, I meant just read it to 4 yourself, so... 5 A All right. 6 MR. PANKAUSKI: I'm sorry, I don't. I 7 should, but I don't. If you'd like to come over 8 here, you're more than welcome to look at it with 9 me. 10 MR. FEAMAN: May I approach the witness? 11 THE COURT: You may. 12 BY MR. PANKAUSKI 13 Q Do you see about -- in your e-mail -- one, two, 14 three, four, five, six -- bless you, Mr. Rose -- seven 15 lines up from the bottom? 16 A Correct. 17 Q You see that as of February 10th, 18 Mr. Bernstein, your story was that I proposed a retainer 19 of \$200,000? 20 A Correct. 21 Q Okay. So let me go on from there. You were 22 asked whether you had -- whether you discussed 23 confidential information to me, and you said yes? 24 A Correct. 25 Q And you said that it involved forgery and</p>
<p style="text-align: right;">98</p> <p>1 Q And I asked you for -- your belief is that I 2 asked you for a \$200,000 retainer? 3 A No. My belief -- 4 THE COURT: No. No. Wait. Next question. 5 THE WITNESS: Okay. 6 BY MR. PANKAUSKI 7 Q Isn't it your belief that -- strike that. 8 What's your understanding of how much I asked for a 9 retainer? 10 A I don't recall the exact amount for the 11 retainer. 12 THE COURT: Then stop. That's your answer. 13 Next question. 14 BY MR. PANKAUSKI 15 Q You sent me an e-mail on February 10th? 16 A Correct. 17 Q Okay. May I approach the witness. And this is 18 a copy of the February 10th e-mail that you sent to me, 19 correct? 20 A Correct. 21 MR. FEAMAN: Do you have another copy of 22 that? 23 MR. PANKAUSKI: Yeah, I should. 24 BY MR. PANKAUSKI 25 Q And while I'm looking, could you just please</p>	<p style="text-align: right;">100</p> <p>1 Tescher and Spallina, correct? 2 A Yes. 3 Q Any other confidential information? 4 A Yeah, all kinds of stuff. 5 Q Okay. 6 A We talked about in the course of our 7 conversation about you representing us. 8 Q Well, please tell us what that is. 9 A You know, I believe we spoke mainly about the 10 problems in the estate with the forgeries and the 11 notary public, the police investigations that we were 12 launching against Ted, Tescher, et cetera. I believe 13 we talked about the various aspects of our legal 14 strategy in, you know, against the estates and Ted, et 15 cetera, and were looking to retain you. 16 Q Is your testimony that you and I had a 17 conversation about a legal strategy against the estate? 18 A Against -- yes, against the estates, and the 19 people in charge, Tescher, Spallina, the personal 20 representatives, getting rid of them, et cetera. 21 Q And is it your testimony that I discussed trial 22 strategy with you about suing your brother Ted? 23 A Removing the personal representative and Ted 24 from having any interest in the estates. 25 Q I had a discussion with you about removing</p>

<p style="text-align: right;">101</p> <p>1 Ted's interest in your dad's estate?  2 A In all the estates.  3 Q Okay.  4 A That I told you I believe these documents of  5 2012 were forged and fraudulent and that we had  6 evidence, you know, I went into all that.  7 Q Sir, do we agree Ted is not a beneficiary of  8 your dad's estate and that there would be nothing to  9 remove him from?  10 A It's his children, excuse me.  11 Q Isn't it true that you spoke to me about filing  12 a malpractice action?  13 A Excuse me, let me correct that. I did want  14 you to remove Ted. Because Ted was representing that  15 he was trustee of this trust of my father's. And I  16 expressed to you that he hadn't sent out the proper  17 forms. He hadn't followed any of the rules. And that  18 he was acting in bad faith as an alleged fiduciary  19 under alleged documents.  20 Q You spoke to me about a potential malpractice  21 action against Don Tescher?  22 A That was only a small part.  23 Q In fact, you told me that you --  24 A Excuse me, in fact, you are the one -- we  25 just told you that you should fund your bill from</p>	<p style="text-align: right;">103</p> <p>1 BY MR. PANKAUSKI  2 Q So you and I did discuss malpractice against  3 Mr. Tescher?  4 A Correct.  5 Q Okay. When I asked you about confidential  6 information a moment ago, you were talking about some  7 criminal inquiries, you were talking about some  8 forgeries. You and I discussed a postdated or backdated  9 notary clause?  10 A No.  11 Q We didn't discuss a notary clause that was  12 presented to this court whose notary seal was improper?  13 A Not only the notary seal, but the signatures.  14 Q Okay. So forgive me. You and I had a  15 discussion about a deficient notary clause, correct?  16 A A forgery and deficient notary on a forged  17 document, yes.  18 Q Correct. And when you spoke with me in  19 September of 2013, the notary clause information was  20 already before this court?  21 A Part of it.  22 Q Yeah, it was public information?  23 A Some of it.  24 Q And the criminal matters that you're talking  25 about, those were -- there was already an ongoing</p>
<p style="text-align: right;">102</p> <p>1 Kimberly Moran's forgery and fraud, which Mr. Tescher  2 and Spallina were responsible under Florida law for the  3 acts of their notary who committed postmortem forgery  4 of my father's signature, et cetera.  5 Q You told me that you had been looking for a  6 lawyer to sue Mr. Tescher, but you couldn't find one?  7 A Did I?  8 Q Well, that's my question to you.  9 A Oh, that was a statement.  10 THE COURT: He asked you the question. You  11 can answer.  12 THE WITNESS: What was the -- how --  13 BY MR. PANKAUSKI  14 Q You told me that you were trying to find an  15 attorney to sue Don Tescher for malpractice?  16 A No.  17 Q You didn't tell me that you were looking for an  18 attorney to sue Don Tescher for malpractice? What did  19 you tell me about the malpractice?  20 A Well, you contacted me and said --  21 THE COURT: Listen to the question.  22 THE WITNESS: Okay. In regards to the  23 malpractice, I said that case against Tescher and  24 Spallina should be the point of funding for an  25 attorney to get their fees paid for.</p>	<p style="text-align: right;">104</p> <p>1 investigation by the time you and I chatted in September  2 of 2013?  3 A And I don't know if anybody else knew about  4 that, et cetera.  5 Q Is that a yes?  6 A Yes. There were several investigations  7 going.  8 THE COURT: Try not to volunteer,  9 Mr. Bernstein.  10 BY MR. PANKAUSKI  11 Q The matters that you spoke to me about in  12 September of 2013, you had spoken to -- you had spoken  13 about with other individuals?  14 A I had.  15 Q And, in fact, most of that information was  16 public record because much of it was going on right here  17 in this estate proceeding?  18 A No.  19 Q What wasn't a public record?  20 A I don't want to disclose it. I mean, it was  21 confidential information I gave you at the time.  22 That's -- I still feel it's confidential and feel that  23 I'm -- you might be exposing that stuff.  24 Q What's the confidential information?  25 A Just information about the documents we're</p>

<p style="text-align: right;">105</p> <p>1 discussing in this case.  2 Q What information about the documents?  3 A I don't want to --  4 THE COURT: Okay. He's objecting.  5 Sustained.  6 BY MR. PANKAUSKI  7 Q The February 10th e-mail from Candice to me  8 that's in front of you.  9 A Uh-huh.  10 Q You would agree that those documents, 1 through  11 4, are the only documents that Candice provided to my law  12 firm?  13 MR. FEAMAN: Objection, form.  14 Mischaracterizes the date of the e-mail.  15 MR. PANKAUSKI: Is it February 12th?  16 MR. FEAMAN: It's September 20th -- September  17 19th.  18 MR. PANKAUSKI: Thank you.  19 BY MR. PANKAUSKI  20 Q Thank you. I'm not even close. Thank you.  21 The e-mail that I handed you, the  22 September 20, 2013 e-mail.  23 THE COURT: September 19th.  24 BY MR. PANKAUSKI  25 Q Thank you. September 19, 2013 --</p>	<p style="text-align: right;">107</p> <p>1 Bernstein will 2008, Simon Bernstein --  2 MR. FEAMAN: Got to go slower because the  3 court reporter --  4 THE WITNESS: Sorry, sir. Okay. Shirley  5 Bernstein trust, 2008. Shirley Bernstein will,  6 2008. Simon Bernstein amended trust, 2012. Simon  7 Bernstein will, 2012. Waivers unnotarized and  8 notarized, transcripts part 2, 2013, 09/13,  9 Bernstein Holdings, LLC, 2008, last pages,  10 Bernstein Holdings, LLC, Shirley Bernstein  11 petition for discharge.  12 BY MR. PANKAUSKI  13 Q Bernstein, LLC, you were not a member of that  14 entity, correct?  15 A I don't know.  16 Q Okay. So those are the --  17 A I believe I am a member.  18 Q Okay. So those are all the documents that  19 Candice provided to my law firm?  20 A I believe so.  21 Q Okay. And you did not provide any other  22 documents to my law firm?  23 A I do not believe so.  24 Q So all the documents that were provided to my  25 law firm were documents that are either public documents</p>
<p style="text-align: right;">106</p> <p>1 A It's not in front of me.  2 Q I'm sorry. Is it --  3 THE COURT: That's the Exhibit A that is  4 attached to the motion.  5 MR. PANKAUSKI: Thank you, Judge. May I  6 approach the witness?  7 THE WITNESS: But I don't have that.  8 THE COURT: Okay. He'll give you a copy. Go  9 ahead.  10 BY MR. PANKAUSKI  11 Q Okay. Mr. Bernstein, so I'm handing you what  12 is Composite Exhibit A, the first page of that, and  13 that's attached to the verified motion of Mr. Stansbury.  14 That's the e-mail that you previously identified sent to  15 my law firm from your wife, Candice, correct?  16 A Correct.  17 Q Okay. And you would agree that the documents  18 listed 1 through 4 are the documents that Candice  19 provided to my law firm?  20 A No.  21 Q Okay. What documents did Candice provide to  22 this law firm?  23 A It's on the next page.  24 Q Okay. And what documents are those?  25 A Shirley Bernstein trust 2008, Shirley</p>	<p style="text-align: right;">108</p> <p>1 or which have been filed with this court?  2 A No.  3 Q Okay. What's not a public document from that  4 list?  5 A Bernstein, LLC stuff.  6 Q And where did you obtain those documents?  7 A I don't recall.  8 Q You obtained them from Tescher and Spallina,  9 didn't you?  10 A I don't think so. I didn't.  11 MR. PANKAUSKI: May I approach and get that?  12 Thanks.  13 Your Honor, I'd like to move Composite  14 Exhibit A into evidence.  15 THE COURT: Any objection?  16 MR. FEAMAN: No objection.  17 THE COURT: Okay. That's the February 19  18 letter?  19 MR. PANKAUSKI: Yes.  20 THE COURT: From Michelle Morley to Candice,  21 correct?  22 MR. PANKAUSKI: Forgive me, it's the Monday,  23 February 10th, 2014, Candice Bernstein e-mail  24 to -- it's not even to Michelle --  25 MR. FEAMAN: That's the heading because it's</p>



<p style="text-align: right;">109</p> <p>1 how it was transmitted, but it's the September 19, 2 2013 e-mail from Michelle Morley to 3 Mrs. Bernstein. And then the follow-up e-mail 4 from Mrs. Bernstein. 5 THE COURT: September 19 e-mail from Michelle 6 to Candice is 1. 7 (Thereupon, Exhibit Number 1 was marked in 8 evidence) 9 MR. PANKAUSKI: Thank you. 10 THE COURT: Number 2 will be the 11 September 20, 2013 e-mail from Candice to 12 Michelle. 13 (Thereupon, Exhibit Number 2 was marked in 14 evidence) 15 MR. PANKAUSKI: Thank you. 16 THE COURT: So I'll need stamps on them 17 eventually. 18 MR. PANKAUSKI: Yes. 19 THE COURT: I have them here. 20 BY MR. PANKAUSKI 21 Q Do you remember when Mr. Stansbury's counsel 22 questioned you about you receiving a letter from 23 Pankauski saying there was no representation? 24 A What do you mean? 25 Q I'm just asking you if you remember that</p>	<p style="text-align: right;">111</p> <p>1 lawyers and you are not a client? 2 A Yeah. 3 Q You received this letter from my office within 4 a day or two of September 24, 2013? 5 A I never got it. 6 Q Okay. 7 A I've never seen that letter in my life. 8 How did you send it? 9 MR. FEAMAN: You don't get to ask questions. 10 THE WITNESS: Oh, sorry. 11 Can I show that to my wife? 12 BY MR. PANKAUSKI 13 Q Mr. Stansbury's counsel, in his opening 14 statement, said that a relationship was formed between 15 you and me. You have never signed a legal services 16 contract with my law firm? 17 A Correct. 18 Q You've never provided an initial fee or 19 retainer to my law firm? 20 A Correct. 21 MR. FEAMAN: We'll stipulate, Your Honor, 22 there is -- 23 THE COURT: Stipulation accepted. Got it. 24 MR. FEAMAN: -- no formal relationship. 25 BY MR. PANKAUSKI</p>
<p style="text-align: right;">110</p> <p>1 Mr. Stansbury's counsel asked you did you ever receive a 2 letter from Pankauski saying I don't represent you? 3 A Correct. 4 Q And you replied in the negative. You said you 5 never received the letter? 6 A Correct. 7 MR. PANKAUSKI: May I approach the witness, 8 Your Honor? 9 THE COURT: Yes. 10 BY MR. PANKAUSKI 11 Q Mr. Bernstein, be kind enough to look at the 12 one-page document that I handed you. Do you see that it 13 is a September 24, 2013 letter addressed to you at your 14 home address? 15 A Allegedly. I've never seen it. 16 Q And do you see that it's from my law firm? 17 A I do. 18 Q And do you see in the third paragraph it 19 references a malpractice action? 20 A Yeah. 21 Q And do you see in the first sentence -- 22 A Yeah. 23 Q Excuse me, do you see in the second paragraph 24 where it says, because we have not been hired, we are not 25 doing any work on your behalf, period. We are not your</p>	<p style="text-align: right;">112</p> <p>1 Q The documents that's on Exhibit 1 that Candice 2 sent to my law firm were documents which you obtained 3 from Tescher and Spallina? 4 A No. 5 Q Who did you obtain those from? 6 A Christine Yates. 7 Q And who's Christine Yates? 8 A She's an attorney at Tripp Scott law firm. 9 Q Okay. And how did you get those documents on 10 Exhibit 1 from the Tripp Scott law firm? 11 MR. FEAMAN: Objection, attorney-client 12 privilege. 13 THE COURT: I don't know that there is one. 14 THE WITNESS: Okay. I'll object on that 15 ground, too. 16 THE COURT: Well -- 17 THE WITNESS: That means she is my attorney 18 for me and my children. 19 THE COURT: Okay. I'm going to overrule. I 20 think you need to say how you got the documents. 21 THE WITNESS: She transmitted them to me. 22 THE COURT: All right. 23 BY MR. PANKAUSKI 24 Q Where did she receive them from? 25 A No idea.</p>

<p style="text-align: right;">113</p> <p>1 Q Okay. So you also hired Tripp Scott to 2 represent you regarding your mom and dad's estate? 3 A I hired them to represent us, my children and 4 I. And then I had to split it out to just my children 5 because of the conflicts. 6 Q Tripp Scott still does not represent you? 7 A No, they don't now. 8 Q Because you can't pay them? 9 A Partially. 10 Q And Brandon Pratt doesn't represent you because 11 you can't pay him? 12 A No. 13 MR. FEAMAN: Objection, relevancy. 14 THE COURT: Yeah, sustained. 15 THE WITNESS: I actually overpaid him. 16 THE COURT: Don't do that. Eliot, you know 17 the rules. 18 THE WITNESS: Sorry, sir. 19 MR. PANKAUSKI: May I approach the witness, 20 Your Honor? 21 THE COURT: May you what? 22 MR. PANKAUSKI: Approach the witness. 23 THE COURT: Sure. You don't have to ask me. 24 BY MR. PANKAUSKI 25 Q Mr. Bernstein, I'm going to hand you a</p>	<p style="text-align: right;">115</p> <p>1 MR. FEAMAN: I have a relevancy objection to 2 number 4, the batch of documents. 3 THE COURT: Let's get through the ID part of 4 it first, though. 5 MR. FEAMAN: Okay. 6 BY MR. PANKAUSKI 7 Q So Mr. Bernstein, you recognize that I've 8 handed you a 74-page e-mail? 9 A Yes, sir. 10 Q And that was an e-mail that you prepared? 11 A I'd have to read it all and check that 12 nothing has been changed. But -- 13 Q Well, I -- 14 A Looks like it could be. 15 Q I'm sorry? 16 A I said it looks like it could be, but I'd 17 have to check. There's been a lot of document 18 tampering going on, so I'm not going to attest to it a 19 hundred percent. I haven't had time to review it. 20 Q Okay. Would you turn to Page 2, please? 21 A Yes. 22 Q And I'm directing this question to you about 23 your claim that you shared confidential information with 24 my firm. So please keep that in mind when I ask you 25 these questions. On Page 2 -- excuse me. Go back to</p>
<p style="text-align: right;">114</p> <p>1 composite exhibit, a number of documents -- forgive me, 2 it's not a composite document. It's one e-mail. And 3 Mr. Bernstein, you recognize that as an e-mail that you 4 sent to Ted Bernstein and a number of other people? 5 THE COURT: Okay. Can I ask one thing before 6 you do. You were talking about a September 24 7 letter that wasn't introduced into evidence, is 8 that -- I think that you were short copies of 9 that. 10 MR. PANKAUSKI: Yes, Your Honor. Thank you. 11 The September 24, 2013 letter, I'd like to move 12 into evidence. 13 THE COURT: Any objection. 14 MR. FEAMAN: No objection. 15 THE COURT: All right, number 3. I'll give 16 you these things to stamp, here's one, two and -- 17 you'll have three. 18 (Thereupon, Exhibit Number 3 was marked in 19 evidence) 20 MR. PANKAUSKI: Thank you. May I grab the 21 stamp? 22 MR. FEAMAN: I do. 23 THE COURT: Let him finish stamping them and 24 then -- so next one will be purportedly number 4, 25 but we're not there yet.</p>	<p style="text-align: right;">116</p> <p>1 Page 1 for a moment. In this e-mail you not only sent it 2 to Ted Bernstein, but you sent it to everybody after the 3 to, T-O, colon, correct? 4 A Is the date missing on that? 5 MR. FEAMAN: That's my objection; improper, 6 lack of foundation. Wait. Excuse me. 7 THE WITNESS: Sorry. 8 THE COURT: Let me see it. 9 MR. FEAMAN: My objection is lack of 10 predicate, foundation. 11 THE COURT: I need to see it, so. This is 12 I.D. Number 4. Are you moving this into evidence? 13 Because you need to do that if you're going to 14 refer to it. 15 MR. PANKAUSKI: Most probably. Yes, Your 16 Honor. 17 THE COURT: Okay. But Mr. Feaman, Eliot 18 Bernstein identified this as his e-mail. He just 19 said he didn't have a chance to look at all the 20 pages to make sure there weren't any documents 21 that were snuck in, in essence. 22 THE WITNESS: Without the date, I would say 23 it's not my e-mail. 24 MR. FEAMAN: Excuse me, Mr. Bernstein, if I 25 may.</p>

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1 THE WITNESS: Sorry.

2 MR. FEAMAN: Without a date, Your Honor, you

3 can't connect confidential -- he's offering it for

4 the purpose that somehow it was --

5 THE COURT: First thing is to identify it. I

6 haven't determined more than that right now. So

7 this is -- it's being shown to Eliot Bernstein,

8 purportedly, to be an e-mail from him to others.

9 MR. FEAMAN: Correct.

10 THE WITNESS: Well, now that it's missing the

11 date, I would say it's not my e-mail.

12 THE COURT: Okay. So are you sure you want

13 me to believe that part of your testimony? Listen

14 to me carefully. Because if I don't believe it,

15 I'm likely not to believe anything else you say.

16 THE WITNESS: Okay. I'll believe it.

17 THE COURT: Look at the e-mail. Let's not

18 play games with me.

19 THE WITNESS: I'm not.

20 THE COURT: Well, that was a game playing --

21 THE WITNESS: Well, I notice right off the

22 bat my normal stamp on my e-mails isn't here.

23 That scared me. So I said --

24 THE COURT: So is I-V-I-E-W-I-T --

25 THE WITNESS: Yeah. Yeah. That's all good.

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1 give -- the weight I give it, I'm not sure. If

2 there is an issue about when it was sent. So do

3 you remember when you sent this e-mail?

4 THE WITNESS: Looks like maybe shortly after

5 December 26 in response to letters from Tescher

6 and Spallina that are attached.

7 THE COURT: Of what year?

8 THE WITNESS: 2013.

9 THE COURT: Okay. All right. So objection

10 overruled. This is Number 4.

11 (Thereupon, Exhibit Number 4 was marked in

12 evidence)

13 MR. PANKAUSKI: Your Honor, may I get that

14 copy back and use this one?

15 THE COURT: All right.

16 MR. PANKAUSKI: I'll stamp it.

17 THE COURT: Okay.

18 BY MR. PANKAUSKI

19 Q Mr. Bernstein, would you be good enough to turn

20 to Page 2, please?

21 A Yes, sir.

22 Q And so you see on Page 2 that in this

23 communication to all these people, this e-mail?

24 A Yes, sir.

25 Q You're discussing forgery and fraud?

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1 THE COURT: I mean, that's you, right? I

2 mean, if we go ahead and pull your hard drive,

3 will we find this e-mail?

4 THE WITNESS: No. No. We can go on that

5 assumption.

6 THE COURT: Okay. That's -- okay. All

7 right. But I don't know the date of it, and you

8 can ask questions about that. But the subject is

9 response to Ted and Donald letters, re, emergency

10 distributions. And then there's a whole bunch of

11 other things there. Okay. And then there's some

12 other dates that are in the body of this exhibit.

13 So Mr. Feaman, your objection is what?

14 MR. FEAMAN: Without an establishment of a

15 date on the e-mail it has no probative value as to

16 whether the communications that Eliot made with

17 Mr. Pankauski in September were confidential or

18 not.

19 THE COURT: Okay. So let me think about

20 that. I'm looking here at the documents and

21 they -- that are contained in this e-mail -- and

22 there are a bunch of dates there. I see 2012,

23 2013 dates, court proceedings before me at some

24 point in 2013. And so admissibility versus

25 weight -- it's admissible. I mean, I may have to

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1 A Yes, sir.

2 Q And you're discussing wills and trusts of

3 Simon's estate, correct?

4 A Well, this is all after our conversation by a

5 long time, I believe.

6 Q Is that a yes?

7 A Yes.

8 Q And you're discussing a power of appointment,

9 right?

10 A Yes.

11 Q And you're talking about grandchildren and

12 beneficiaries, correct?

13 A Correct.

14 Q And if you turn back to one, you sent this to

15 attorney Mark Manceri?

16 A Yes, sir.

17 Q And you sent it to attorney Caroline Rogers?

18 A Yes, sir.

19 Q Mark Garber?

20 A Yes, sir.

21 Q You sent it to lawyers at Plaster Greenberg?

22 A Yes, sir.

23 Q In fact, you sent it to, what, a dozen or so

24 attorneys?

25 A Yes, sir.

<p style="text-align: right;">121</p> <p>1 Q Okay.</p> <p>2 THE COURT: I need the Exhibit 4 so I can see</p> <p>3 it. As well as the other exhibits if you've</p> <p>4 stamped them.</p> <p>5 MR. PANKAUSKI: Yes, I think we did. I'll</p> <p>6 complete them before we leave.</p> <p>7 Thank you.</p> <p>8 BY MR. PANKAUSKI</p> <p>9 Q Mr. Bernstein, just a couple questions about</p> <p>10 your interest in this estate of your father. You</p> <p>11 mentioned that -- I believe you testified that you</p> <p>12 believe you inherit from your dad Simon's estate, is that</p> <p>13 accurate.</p> <p>14 A I do.</p> <p>15 Q Okay. And you don't want to have Ted be the</p> <p>16 personal representative of the curator because your</p> <p>17 interests are adverse to Ted's?</p> <p>18 A And because Ted's been involved in a lot of</p> <p>19 confidential information, I discussed with you on the</p> <p>20 phone.</p> <p>21 Q The truth is, is that you've asked Ted for</p> <p>22 money to live on and Ted won't give you that money?</p> <p>23 A That's your interpretation.</p> <p>24 THE COURT: Listen to the question. Try to</p> <p>25 answer it.</p>	<p style="text-align: right;">123</p> <p>1 done this before and you're experienced in this.</p> <p>2 I've warned you --</p> <p>3 THE WITNESS: I have never done it.</p> <p>4 THE COURT: Listen to the question. Okay.</p> <p>5 You don't understand the question, ask that it be</p> <p>6 repeated. Mr. Feaman is a really good trial</p> <p>7 lawyer. He's not objecting. That means it's a</p> <p>8 proper question. And limit your answer to the</p> <p>9 question. But when you do a narrative, I block it</p> <p>10 out. I don't pay attention to anything you're</p> <p>11 saying. You are not helping your cause. You're</p> <p>12 hurting yourself.</p> <p>13 THE WITNESS: I'm sorry, it's my first time</p> <p>14 ever being --</p> <p>15 THE COURT: So it's your first time wanting</p> <p>16 to hurt yourself.</p> <p>17 THE WITNESS: No, now that you've explained</p> <p>18 it --</p> <p>19 THE COURT: So your answer is stricken. If</p> <p>20 the reporter will read back the question, we can</p> <p>21 get a clean answer. And don't give a rambling</p> <p>22 narrative, please.</p> <p>23 THE WITNESS: Okay. I apologize.</p> <p>24 (Record read)</p> <p>25 THE WITNESS: Yes, sir.</p>
<p style="text-align: right;">122</p> <p>1 BY MR. PANKAUSKI</p> <p>2 Q Yes or no? Is that a yes?</p> <p>3 A I have been forced to ask Ted, yes.</p> <p>4 Q You've asked Ted to pay your -- the expenses of</p> <p>5 your residence?</p> <p>6 A What happened was --</p> <p>7 THE COURT: No. No. Listen. Stop. Stop.</p> <p>8 THE WITNESS: Yeah.</p> <p>9 THE COURT: Listen. Your question has to be</p> <p>10 narrow to the -- your answer has to be narrow to</p> <p>11 the --</p> <p>12 THE WITNESS: I was directed to Ted to pay</p> <p>13 those bills.</p> <p>14 BY MR. PANKAUSKI</p> <p>15 Q And Ted has refused?</p> <p>16 A Ted has denied that Janet Craig at</p> <p>17 Oppenheimer directed that he volunteer to pay the</p> <p>18 bills. And I was supposed to deal with Ted only, since</p> <p>19 she had -- he had volunteered to become manager of a</p> <p>20 company which he didn't have legal rights to and she</p> <p>21 didn't have the --</p> <p>22 THE COURT: Stop. Stop.</p> <p>23 THE WITNESS: Sorry, Your Honor.</p> <p>24 THE COURT: Your answer is stricken. So,</p> <p>25 Eliot, here's the last -- you know, I mean, you've</p>	<p style="text-align: right;">124</p> <p>1 BY MR. PANKAUSKI</p> <p>2 Q And Ted's refused to?</p> <p>3 A No.</p> <p>4 Q Okay. You've asked your brother Ted to pay</p> <p>5 your children's tuition?</p> <p>6 A I've asked him to pay the expenses of</p> <p>7 Bernstein Family Realty and the welfare --</p> <p>8 THE COURT: No. No. See, he didn't ask you</p> <p>9 about that.</p> <p>10 MR. FEAMAN: Wait. I have to object to the</p> <p>11 form. And it doesn't define Ted in what capacity.</p> <p>12 THE COURT: I don't know that I need a</p> <p>13 capacity for that question. It's a little</p> <p>14 different type of question. So the objection is</p> <p>15 overruled. But, again, Eliot, listen to the</p> <p>16 question. Answer it as asked.</p> <p>17 Go ahead. Let's read it back.</p> <p>18 (Record read)</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. PANKAUSKI</p> <p>21 Q You are not currently employed?</p> <p>22 A No, I am currently employed.</p> <p>23 Q Where are you employed?</p> <p>24 MR. FEAMAN: Relevancy.</p> <p>25 THE COURT: Yeah, tell me the relevancy.</p>

125	<p>1 MR. PANKAUSKI: Impeachment.</p> <p>2 THE COURT: Impeachment of what?</p> <p>3 MR. PANKAUSKI: This isn't about his brother</p> <p>4 not serving in a fiduciary capacity. It's about</p> <p>5 his wanting for money. He's unemployed. He keeps</p> <p>6 asking for money.</p> <p>7 MR. FEAMAN: Objection. Move to strike.</p> <p>8 THE COURT: Okay. So the objection to that</p> <p>9 last question is sustained.</p> <p>10 BY MR. PANKAUSKI</p> <p>11 Q You are blogging and speaking publicly about</p> <p>12 the issues that you communicated to my law firm?</p> <p>13 A Anything public I communicate to people who</p> <p>14 are watching the public record.</p> <p>15 Q Is that a yes?</p> <p>16 A Ask the question again, please.</p> <p>17 MR. PANKAUSKI: Sure. The court reporter, if</p> <p>18 you could read it back, please.</p> <p>19 (Record read)</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. PANKAUSKI</p> <p>22 Q Okay. May I approach the witness?</p> <p>23 THE COURT: You may.</p> <p>24 BY MR. PANKAUSKI</p> <p>25 Q Mr. Bernstein, I'm going to hand you a</p>	127	<p>1 Q Is that a no?</p> <p>2 A I don't believe so.</p> <p>3 Q You were contacted by a firm on behalf of Ted</p> <p>4 Bernstein to ask you to stop blogging about this case?</p> <p>5 MR. FEAMAN: Objection to the form. It's not</p> <p>6 a question, it's a statement.</p> <p>7 THE COURT: Restate what you're saying in the</p> <p>8 form of a question.</p> <p>9 BY MR. PANKAUSKI</p> <p>10 Q Were you contacted by a firm on behalf of Ted</p> <p>11 Bernstein to request that you stop blogging about this</p> <p>12 case?</p> <p>13 A I do not believe so.</p> <p>14 Q You have seen this document that's in front of</p> <p>15 you before?</p> <p>16 A No.</p> <p>17 Q It's your testimony that you have never seen</p> <p>18 the document that I just placed in front of you before,</p> <p>19 ever?</p> <p>20 A No.</p> <p>21 THE COURT: Wait. But, no, I'm not sure your</p> <p>22 testimony is you have seen it before, or you</p> <p>23 haven't?</p> <p>24 THE WITNESS: I've never seen this document</p> <p>25 before.</p>
126	<p>1 document -- would you like a copy?</p> <p>2 MR. FEAMAN: If you have one.</p> <p>3 Thank you.</p> <p>4 MR. PANKAUSKI: Your Honor, may I approach?</p> <p>5 THE COURT: This will be Number 5?</p> <p>6 MR. PANKAUSKI: Yes.</p> <p>7 THE COURT: Okay.</p> <p>8 (Thereupon, Exhibit Number 5 was marked</p> <p>9 for identification)</p> <p>10 BY MR. PANKAUSKI</p> <p>11 Q This is a blog about Ted Bernstein?</p> <p>12 A Looks like it.</p> <p>13 Q And Judge Colin?</p> <p>14 A Yeah.</p> <p>15 Q And Don Tescher?</p> <p>16 A Yeah.</p> <p>17 Q This is a blog that you published on the</p> <p>18 Internet?</p> <p>19 A Incorrect.</p> <p>20 Q Who published this blog?</p> <p>21 A Looks like investigative blogger Crystal Cox.</p> <p>22 Q You were contacted by your brother Ted</p> <p>23 beseeching you, asking you to stop blogging about this</p> <p>24 case.</p> <p>25 A I was?</p>	128	<p>1 THE COURT: Okay.</p> <p>2 BY MR. PANKAUSKI</p> <p>3 Q You know a blogger known as Crystal Cox?</p> <p>4 A I do.</p> <p>5 Q And you provide Crystal Cox with information</p> <p>6 about this case?</p> <p>7 A About several cases.</p> <p>8 Q In fact, the blog that's in front of you, the</p> <p>9 document that I just handed you, that is the product of</p> <p>10 information which you provided to blogger Crystal Cox?</p> <p>11 A I have no idea. She could have got it</p> <p>12 anywhere. Most of it's public information, looks like</p> <p>13 to me. I can take a look.</p> <p>14 Q I didn't ask you where -- about the source.</p> <p>15 What I'm trying to tell -- trying to ask you is that the</p> <p>16 information that Crystal Cox blogged on, that's in front</p> <p>17 of you, came from information which you provided to</p> <p>18 Crystal Cox?</p> <p>19 A No.</p> <p>20 Q It didn't?</p> <p>21 A Not that I know of.</p> <p>22 Q You have provided Crystal Cox information about</p> <p>23 Judge Colin.</p> <p>24 A I've provided information --</p> <p>25 MR. FEAMAN: Objection to the form.</p>

<p style="text-align: right;">129</p> <p>1 THE COURT: What's wrong with the form?  2 MR. FEAMAN: It's a statement. You have  3 provided information. You have to ask a question.  4 THE COURT: Do it in the form of a question.  5 BY MR. PANKAUSKI  6 Q Have you provided information to Crystal Cox  7 about Judge Colin?  8 A I believe so.  9 Q About this estate?  10 A I believe so.  11 Q About your mother and father's wills and  12 trusts?  13 A I don't recall.  14 Q About Ted Bernstein?  15 A Yes.  16 Q And after you provided this information to  17 Crystal Cox, Crystal Cox blogged about those things?  18 A Okay.  19 Q That's a yes?  20 A That was a statement, wasn't it?  21 Q Okay. No, that was a leading question.  22 A Okay.  23 Q Do you need it read back to you?  24 MR. FEAMAN: Objection to the form.  25 THE COURT: Go ahead.</p>	<p style="text-align: right;">131</p> <p>1 Q Okay. And was Mr. Ted Bernstein subsequently  2 appointed as personal representative of Shirley  3 Bernstein's estate after you spoke to him?  4 A Yes, sir.  5 Q Do you still wish to remove Ted Bernstein as  6 personal representative of the estate of Shirley  7 Bernstein?  8 A Yes, sir.  9 Q Do you wish to remove him as trustee of -- in  10 what -- as the apparent trustee of your father's trust?  11 A Yes, sir.  12 Q Okay. Did you discuss that with Mr. Pankauski?  13 A Yes.  14 MR. FEAMAN: No further questions.  15 THE COURT: Okay.  16 All right. Thanks. You can step down,  17 Eliot.  18 MR. FEAMAN: The e-mails are in, so I --  19 THE COURT: One through 4 is in.  20 MR. FEAMAN: So there is no need for me to  21 call Candice Bernstein to authenticate them.  22 THE COURT: They are in evidence.  23 Next witness.  24 MR. FEAMAN: No other witnesses.  25 THE COURT: Okay. Mr. Pankauski, you're</p>
<p style="text-align: right;">130</p> <p>1 MR. PANKAUSKI: Could you please read it  2 back, Mr. Reporter.  3 (Record read)  4 BY MR. PANKAUSKI  5 Q Okay. It was a yes or no question.  6 A It was? Okay. Appears she blogged about  7 certain of those things.  8 MR. PANKAUSKI: Thank you, Your Honor. I  9 don't have any more questions.  10 THE COURT: Number 5 is ID only, not in  11 evidence.  12 MR. PANKAUSKI: Thank you.  13 THE COURT: Okay.  14 MR. FEAMAN: I have one question.  15 THE COURT: Redirect, yes.  16 REDIRECT EXAMINATION  17 BY MR. FEAMAN  18 Q Mr. Eliot Bernstein --  19 A Yes, sir.  20 Q -- in September of 2013, about the time that  21 the e-mails went back and forth from Mr. Pankauski's  22 office to your wife, did you talk to Mr. Pankauski about  23 opposing Mr. Ted Bernstein as personal representative of  24 the estate of Shirley Bernstein?  25 A Yes, sir.</p>	<p style="text-align: right;">132</p> <p>1 first.  2 MR. PANKAUSKI: I'm going to testify,  3 Mr. Rose is going to examine me.  4 THE COURT: Okay.  5 MR. PANKAUSKI: Thank you.  6 MR. ROSE: Your Honor, is it okay if I  7 examine from the counsel table?  8 THE COURT: Sure. I need -- I do need the  9 Exhibits 1 through 3. I only have --  10 MR. PANKAUSKI: Yes. One, two, three.  11 Four should be here.  12 Thank you, Your Honor.  13 (Thereupon, JOHN PANKAUSKI was duly sworn  14 by the court)  15 DIRECT EXAMINATION  16 BY MR. ROSE  17 Q State your name for the record.  18 A John Pankauski.  19 Q Do you have any -- did you bring any papers  20 with you today?  21 A I did. I have an affidavit that I've had  22 executed, that I'd like to file with the court, because  23 they -- a case that says affidavits should be filed,  24 and it's my understanding that's part of the procedure.  25 I'd like to provide a copy to counsel and have it filed</p>

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1 and introduced into evidence.  
 2 THE COURT: You can file the affidavit and it  
 3 goes into the court file. You can give a copy to  
 4 Mr. Feaman and to Eliot Bernstein.  
 5 THE WITNESS: Okay. Thank you, Your Honor.  
 6 MR. FEAMAN: I object to it as evidence.  
 7 THE COURT: Yeah. No, it's --  
 8 MR. FEAMAN: It's hearsay and it's  
 9 cumulative.  
 10 THE COURT: You can file it. I don't know  
 11 what I'm going to do with it, but you're there to  
 12 testify live. So go ahead. But you can file  
 13 that, the original with the clerk, and give  
 14 copies -- I'll let you give two copies for  
 15 Mr. Feaman so he can get one for Eliot.  
 16 THE WITNESS: Thank you, I'll give those to  
 17 him now.  
 18 BY MR. ROSE  
 19 Q Can you describe and explain to the court how  
 20 you came to represent Ted Bernstein?  
 21 A I did. I was contacted by you on a Sunday  
 22 morning in January, I was on my way to the Estate  
 23 Planning Institute in Orlando, and you had asked me to  
 24 change my travel plans to meet with you and Mr. Ted  
 25 Bernstein in your office downtown.

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1 did you continue on with your trip to wherever you were  
 2 going while we interrupted it?  
 3 A After I met with you and Mr. Ted Bernstein, I  
 4 did, I went up to Orlando.  
 5 Q Okay. Did you subsequently conduct an  
 6 investigation to determine whether there was anything  
 7 that would prohibit you from representing my client, Ted  
 8 Bernstein, as a fiduciary in these matters now that his  
 9 lawyers had indicated there was a problem and they would  
 10 need to withdraw?  
 11 A Yes, I did. What I did is I went back and I  
 12 spoke to my office, I spoke to the person who does our  
 13 intake. When a prospective client calls our office,  
 14 they do not speak with an attorney, they speak with a  
 15 person who does the intake. I spoke with that person.  
 16 She said that she did recall this issue about a  
 17 backdated notary clause. She went on her computer. I  
 18 examined her computer screen with her. She revealed to  
 19 me that Candice, the wife of Eliot Bernstein, had  
 20 spoken to her about a matter involving Don Tescher and  
 21 a backdated notary clause. I had her review her  
 22 e-mails. I had her review whatever documents that were  
 23 sent. She confirmed that the only documents that were  
 24 sent were public documents, wills and trusts. I think  
 25 there was a deposition transcript from a hearing.

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1 Q Did we give you any indication as to the  
 2 subject matter of the meeting?  
 3 A You did. There was a great sense of urgency  
 4 and distraught. You had said that you were involved in  
 5 an estate matter that had been -- you had just been  
 6 informed -- your client had just been informed that  
 7 somebody evidently fabricated a trust amendment and  
 8 you'd requested to speak to me about that.  
 9 Q Did we, in fact, meet that day?  
 10 A We did. You met with me and your client, Ted  
 11 Bernstein, in your office. You began telling me about  
 12 an estate case down here involving Don Tescher. And  
 13 you told me that there had been this backdated or  
 14 post-death dated waiver or notary clause. And at that  
 15 time I conveyed to you that -- I asked you the names of  
 16 all the parties. None of the party's names rang a  
 17 bell. But when you mentioned Mr. Tescher and a  
 18 backdated notary clause, I told you that somebody had  
 19 called our office regarding Mr. Tescher and a  
 20 malpractice claim involving a backdated notary clause.  
 21 And I conveyed to you and Ted that I would need to  
 22 conduct an investigation as to whether I owed any  
 23 duties to a prospective client and the nature of that  
 24 communication with my law firm.  
 25 Q Did you -- did you have -- after our meeting,

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1 After that, I went into my own computer, I looked at my  
 2 e-mails. I didn't see any e-mails about this subject  
 3 matter. I looked in my computer and what I saw was a  
 4 one take -- one-page intake sheet from the person who  
 5 does my intakes saying she spoke with Candice on a  
 6 particular date in September. And I also found what is  
 7 Exhibit 3, which is what we call a no-rep letter. It's  
 8 a letter that my office sent to Eliot Bernstein on  
 9 September 23, 2003 [sic]. It's a standard practice in  
 10 our firm that when a prospective client calls us and we  
 11 are not retained, we send out a do-not-rep letter.  
 12 And, basically, it says that you contacted us. You  
 13 decided not to hire us. We're not your lawyers and you  
 14 are not a client. This letter went out from my office  
 15 to Eliot Bernstein on September 24, 2013.  
 16 Q Can you -- by looking at Exhibits 1 and 2, can  
 17 you tell the date the documents were sent to you?  
 18 A Yes, I just need to get them.  
 19 Q Okay.  
 20 A May I, Your Honor? Yeah, Candice and Eliot  
 21 did not e-mail me. They didn't even know my e-mail  
 22 address. They e-mailed Michelle at my firm, the intake  
 23 person. I had one conversation with Eliot, not two.  
 24 It wasn't during the day, it was during the evening.  
 25 And so Exhibit 1 was an e-mail from Michelle to, I

<p style="text-align: right;">137</p> <p>1 guess, it's Eliot's wife, Candice, on Thursday,  2 September 19, 2013. Exhibit 2 is an e-mail to Michelle  3 from Candice on Friday, September 20, 2013. The  4 September 20th is an evening e-mail from Candice to  5 Michelle, 7:10 p.m., I think that's why they're  6 confused about speaking with me in the evening. I  7 never spoke with Candice. I only spoke with Eliot once  8 and that was in the afternoon.  9 Q Do you know which day -- was it the 19th, the  10 20th or a different day, that you actually spoke with  11 him?  12 A I don't. I remember where I was. I was -- I  13 was in my office. I was at my desk. I had my headset  14 on. I don't have a headset at home. I spoke with  15 Mr. Bernstein and I remember it because he wanted to  16 sue Don Tescher. And I know Don Tescher's name. I  17 don't really know Mr. Spallina, but I know Don Tescher.  18 And he was talking about a malpractice case and he was  19 talking about a backdated notary. And this was like  20 out of a novel, so I do remember those facts. But the  21 reason for the call was to discuss a malpractice  22 action. And I even referenced that in Exhibit 3; I  23 tell him that there is a two-year statute of  24 limitations for malpractice. He did mention that the  25 malpractice was committed within the estate of his mom</p>	<p style="text-align: right;">139</p> <p>1 ten minutes I can tell whether they're adverse to an  2 existing client, what the legal issue is, and whether I  3 can help them or not. I try to politely then shift the  4 conversation to the sad realities of the business of  5 law, whether you can afford us or not. When they can't  6 afford us, the conversation gets very short. And  7 that's what happened with my conversation with Eliot  8 Bernstein. It didn't last an hour. It didn't last a  9 half an hour. It lasted less than that. And it was  10 clear that while the facts are interesting, he was not  11 going to hire us. He didn't have the money to hire us.  12 He did not reveal any confidential information to me.  13 What he did say was that there was a malpractice case,  14 there was two matters involving mom and dad's estate,  15 and his focus was Don Tescher.  16 Q If you look at the letter that you wrote  17 Mr. Bernstein declining to represent him, what's the date  18 of that?  19 A September 24, 2013.  20 Q So Friday, the 20th, was -- is the date on  21 Exhibit 2. And by the following Tuesday, the 23rd, you  22 sent him a letter declining to represent him?  23 A (witness nods head). Yes.  24 Q Okay. Did --  25 A Was September 24th a Monday?</p>
<p style="text-align: right;">138</p> <p>1 or his dad. We didn't talk about removing Ted as  2 trustee. What he told me was, he had been calling up  3 lawyers and he couldn't find anyone to take his case.  4 And that he had called me -- and what he wanted to know  5 was, do you have a conflict with Don Tescher? Will you  6 sue Don Tescher? I said, I don't have a conflict with  7 Don Tescher. I know the gentleman, but he's not a  8 friend. I don't do any business with him. So I was  9 open to that. Mr. Bernstein later contended that I  10 asked for a \$200,000 retainer. I have never in my life  11 asked for a \$200,000 retainer. I hope to get there one  12 day, but I'm not there just yet. Our standard  13 retainer -- and we don't even use the word retainer --  14 it's initial fee, it's \$15,000. When Mr. Bernstein --  15 Eliot Bernstein -- to his credit -- told me that he  16 couldn't afford to pay us and he wanted this on some  17 type of a contingency, the conversation got short very  18 fast. Our firm receives literally sometimes dozens of  19 calls a month. And if I listen to everyone's story and  20 read every single document that they want us to read, I  21 would have no time to practice law. So I have a  22 practice, I have a custom, I have a procedure, I do not  23 spend a lot of time on the phone with a prospective  24 client. I give them up to 30 minutes free of charge  25 and that's it. The reason for that is within five to</p>	<p style="text-align: right;">140</p> <p>1 Q Friday the -- if you look --  2 A Friday was the 20th, Saturday was the 21st,  3 Sunday is the 22nd, Monday is 23rd. So this went out a  4 Tuesday, September 24th. So if Candice communicated  5 with Michelle on September 20th, I probably spoke with  6 Eliot on Monday or Tuesday because I remember my -- my  7 immediate reaction to Michelle, who does my intake,  8 was, there is nothing here to represent. We are not  9 representing Eliot Bernstein, he can't afford us.  10 Q Could you just describe generally the nature of  11 your law practice?  12 A Yeah. We handle estate litigation and  13 administration. Predominantly restricted to estates,  14 trusts, guardianships, wills, inheritances. That's all  15 we do.  16 Q Are you aware that our law firm does not do  17 trusts and estate administration work?  18 A Yes, that's why you called on me. You  19 originally went to another lawyer, but he was  20 conflicted out, and that's why you've asked our firm to  21 assist Ted Bernstein with the administration of trusts  22 and estates.  23 Q Before you agreed to become the lawyer for Ted  24 Bernstein in this case, did you undertake, in your view,  25 a thorough and detailed analysis of your ethical duties</p>



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1 that might be owed to Mr. Eliot Bernstein as a  
 2 prospective client?  
 3 A I did. I did that twice. I mean, I did it  
 4 when you contacted me and I met with Mr. Bernstein  
 5 subsequently to our initial meeting, which was on a  
 6 Sunday. That's the procedure and that's the  
 7 investigation that I conducted with Michelle in my  
 8 office. And then subsequently I filed a motion to have  
 9 Mr. Ted Bernstein appointed as curator. Within 48  
 10 minutes I received an e-mail from Eliot Bernstein  
 11 saying, hey, Pankauski, you can't represent Ted. I'm  
 12 going to disqualify you. When that happened, I went  
 13 back to Michelle and I said we need to discuss this  
 14 again. We re-examined everything that I've already  
 15 described. I found no e-mails from Ted Bernstein or  
 16 Candice Bernstein. I felt -- I found no confidential  
 17 information. I found no documents that were -- excuse  
 18 me -- I found no documents that were Eliot Bernstein's.  
 19 The only documents that Eliot Bernstein provided were  
 20 someone else's that had been shared with others, like  
 21 wills and trusts. I, again, came to the conclusion  
 22 that my representation of Ted Bernstein would not  
 23 violate any duty that I owed a prospective client; such  
 24 as, Eliot Bernstein. I reviewed 4-1.18. I called the  
 25 ethics hotline of the Florida Bar. I also did a

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1 Westlaw search for cases and authority regarding this  
 2 issue.  
 3 Q You mentioned an e-mail you received from  
 4 Mr. Bernstein. Do you have a copy of that with you?  
 5 A I do. There's two of them.  
 6 Q May I approach, Your Honor?  
 7 A I've got a February 10th, 2014 from Eliot  
 8 Bernstein to me at 5:52 p.m.  
 9 Q Do you have more than one copy of that?  
 10 A There should be a few copies there. Oh, you  
 11 know what, I have the extra copy.  
 12 So on Monday, February 10th, 2014, Eliot  
 13 Bernstein's --  
 14 Q Before you do that, what number are we up to,  
 15 6?  
 16 A This would be --  
 17 THE COURT: Six.  
 18 MR. ROSE: Can we mark this as 6 for  
 19 identification, Your Honor?  
 20 (Thereupon, Exhibit Number 6 was marked  
 21 for identification)  
 22 THE COURT: Yes.  
 23 BY MR. ROSE  
 24 Q Is this an e-mail you received from Eliot  
 25 Bernstein on February 10th?

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1 A Yes, 2014.  
 2 MR. ROSE: I move this into evidence, Your  
 3 Honor?  
 4 THE COURT: Any objection?  
 5 MR. FEAMAN: No objection.  
 6 THE COURT: Okay. Number 6.  
 7 (Thereupon, Exhibit Number 6 was marked in  
 8 evidence)  
 9 BY MR. ROSE  
 10 Q If you look at Exhibit Number 6, Mr. Pankauski,  
 11 this was received by you at 5:52 p.m. on February 10th?  
 12 A Yes.  
 13 Q And if you turn to the Page 2, it appears to be  
 14 in response to a letter you sent Mr. Bernstein on  
 15 February the 10th at 5:06 p.m.?  
 16 A Yes. The letter was, I believe, the motion  
 17 to appoint Ted Bernstein as curator.  
 18 Q Forty-six minutes later you get this e-mail  
 19 from Mr. Bernstein?  
 20 A Yes.  
 21 Q And in response to receiving this e-mail you  
 22 undertook the second investigation you just told us  
 23 about?  
 24 A Correct.  
 25 Q Are there things in this e-mail that you find

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1 to be inaccurate?  
 2 A Yes. There's a number of them. In his  
 3 second line, he says I -- the end of the first line,  
 4 beginning of the second line -- I sent you over private  
 5 and confidential, highly sensitive information. He  
 6 didn't. He never communicated with me. He didn't send  
 7 over any confidential information. He didn't send me  
 8 anything. His wife Candice sent some of Simon and  
 9 Shirley's wills and trusts to Michelle in my office.  
 10 He also said we've had, quote, several correspondences  
 11 on the phone, close quote. We didn't. Candice called  
 12 Michelle. I spoke with Eliot Bernstein one time. He  
 13 thinks it was in the evening, it was in the afternoon  
 14 before the sun was setting. He said there was a series  
 15 of e-mails with you. That's inaccurate. Eliot  
 16 Bernstein never sent an e-mail to me, nor did Candice.  
 17 And several members of your office. Inaccurate. He --  
 18 his wife, Candice, sent e-mails to Michelle who handles  
 19 my intake. He also said -- he says, complete removal  
 20 of any papers filed in conflict -- strike that. He  
 21 says, I'm uncertain how you can forget our meetings.  
 22 We never had any meetings. We had one phone  
 23 conversation for less than 30 minutes. He says, that  
 24 you even told me and Candice once you reviewed the  
 25 volumes of materials sent to you. I never spoke with

<p style="text-align: right;">145</p> <p>1 Candice. He didn't send me volumes of material. He  2 sent Michelle those four or five documents that  3 Mr. Eliot Bernstein previously identified when he  4 testified.  5 Q Did you ever agree to review the materials he  6 sent you?  7 A No.  8 Q Did you, in fact, ever review the materials he  9 sent you?  10 A I did not.  11 Q Once you sent the letter on February 24  12 declining to represent him, you took no further action?  13 A Correct.  14 Q I didn't mean to interrupt you, you can  15 continue, if you see anything else in the letter.  16 A Yes. He says you also proposed a retainer of  17 \$200,000. I've never proposed a retainer of \$200,000.  18 Our retainers -- our standard retainer is \$15,000.  19 Q You asked Mr. Bernstein that question today and  20 he denied that he indicated you demanded the \$200,000  21 retainer?  22 MR. FEAMAN: Object to form. Repetitive.  23 THE COURT: Sustained.  24 BY MR. ROSE  25 Q Anything else in the letter that's inaccurate?</p>	<p style="text-align: right;">147</p> <p>1 THE COURT: Yeah, I would.  2 MR. ROSE: I apologize for not having the  3 prior one.  4 (Thereupon, Exhibit Number 7 was marked in  5 evidence)  6 BY MR. ROSE  7 Q So 5:23 on February 11th, the day after you  8 received the e-mail from Mr. Bernstein, you wrote him and  9 indicated that you disagreed with his objection to you?  10 A I did. I said, I disagree with the substance  11 and content of your e-mail. My firm intends to remain  12 as counsel to your brother, Ted.  13 Q You received a response from Eliot Bernstein  14 the following day at 3:07 in the afternoon?  15 A Yeah. And you know who he cc'd on that?  16 Crystal Cox, the blogger.  17 Q I guess he cc'd Crystal L. Cox and Crystal L.  18 Cox at liquidating trustee?  19 A Yes.  20 Q Have you ever heard that name before?  21 A No.  22 Q Have you seen information about you published  23 on the Internet?  24 A I have. Nothing --  25 MR. FEAMAN: Objection, relevancy.</p>
<p style="text-align: right;">146</p> <p>1 A Just a moment, please. He said, I informed  2 you I would be working on raising those monies to  3 retain you. Absolutely not. He never told me that.  4 He said he didn't have the money. That's why the  5 conversation got cut short. That's why we sent him the  6 September 24, 2013 letter saying we don't represent  7 you. He said -- he references your promise of  8 confidentiality. I've never made a promise of  9 confidentiality to anybody. And I certainly didn't  10 make any promise of confidentiality to Mr. Eliot  11 Bernstein.  12 Q Did you respond to Mr. Eliot Bernstein's  13 e-mail?  14 A I did.  15 Q May I approach. I --  16 A I responded to him on February 11th, the next  17 day, I believe, just before 6 p.m. And that's  18 reflected on a two-page document that's in front of me.  19 And then Mr. Eliot Bernstein responded to that response  20 on Wednesday, February 12, 2014.  21 MR. ROSE: I would move this in evidence as  22 Exhibit 7, Your Honor.  23 THE COURT: Any objection?  24 MR. FEAMAN: No objection.  25 MR. ROSE: Would you like a copy, Your Honor?</p>	<p style="text-align: right;">148</p> <p>1 THE COURT: Yeah. Sustained.  2 THE WITNESS: I have never known --  3 THE COURT: Sustained. I sustained the  4 objection. Next question.  5 BY MR. ROSE  6 Q Are there any inaccuracies in Mr. Bernstein's  7 e-mail to you dated February 12 at 3:07, which is in  8 evidence as Exhibit 7?  9 A Yes. His first line of his e-mail of  10 Wednesday, February 12, 2014 to me, he says, I think  11 applied to our discussions, plural, to retain your  12 firm. We didn't have discussions. Candice spoke to my  13 intake person. I spoke with Eliot once, for less than  14 a half an hour. He talks about the transfer of highly  15 confidential sensitive information and strategies. I  16 discussed no trial strategy with Eliot Bernstein. I  17 know that when a prospective client calls up, that my  18 responsibility and custom and practice is to take in a  19 minimum amount of facts to determine whether I can  20 provide assistance to that client or not. Trial  21 strategies comes later. Eliot Bernstein did not share  22 any trial strategies with me or any litigation  23 strategies with me. He says, I believe we had several  24 phone calls with you directly and others with your  25 staff. That's inaccurate. There were not several</p>

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1 phone calls. He had one call with me. Then he says,  
 2 including several lengthy conversations between my wife  
 3 and your employees. And, again, a large amount of  
 4 information and strategies were given to members of  
 5 your office as well. Entirely inaccurate. His wife  
 6 sent my intake person copies of Shirley's and Simon's  
 7 estate planning documents. There was no large amount  
 8 of information. He didn't speak with any employees  
 9 other than me once. I don't think he even spoke with  
 10 Michelle, I think that was Candice. Again, he says I  
 11 promised him confidentiality. I didn't do that.  
 12 And that concludes my testimony about this  
 13 e-mail, Exhibit 7.  
 14 THE COURT: You need to really move it along,  
 15 we're going to run out of time.  
 16 THE WITNESS: Okay.  
 17 BY MR. ROSE  
 18 Q Did you have a conversation with Mr. Feaman  
 19 outside of the courtroom yesterday at the judge's  
 20 request?  
 21 A I did. And I have my notes that I took  
 22 contemporaneous with that conversation.  
 23 MR. FEAMAN: Objection, relevancy.  
 24 THE COURT: Well, hold on.  
 25 MR. FEAMAN: Materiality.

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1 THE COURT: Well, the only thing right now is  
 2 the answer that he took notes. I don't even know  
 3 what the next question is, so let's wait.  
 4 MR. ROSE: I'll mark this as Exhibit 8 -- may  
 5 I approach?  
 6 THE COURT: Okay. I don't want to see notes  
 7 yet.  
 8 BY MR. ROSE  
 9 Q Are these notes you took yesterday in  
 10 discussion with Mr. Feaman?  
 11 MR. FEAMAN: I object to any testimony  
 12 concerning notes that he took in a conversation  
 13 that you requested us to have out in the hall  
 14 yesterday, Your Honor.  
 15 THE COURT: Okay. So objection sustained.  
 16 MR. FEAMAN: Can I just proffer?  
 17 THE COURT: That was not for the purpose of  
 18 using that conversation as something to fully  
 19 regurgitate either side's idea of what was said.  
 20 It wasn't recorded. It was not in my presence.  
 21 There was no court reporter there. The purpose  
 22 was to be informal, so that we'd be able to  
 23 determine whether this hearing was necessary.  
 24 So objection sustained.  
 25 BY MR. ROSE

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1 Q In what capacity do you represent Ted  
 2 Bernstein?  
 3 A I represent him in his fiduciary capacity.  
 4 Ted Bernstein is the trustee of his dad Simon's rev  
 5 trust. He's the PR of his mom's estate. He's the  
 6 trustee of his mom's trust.  
 7 THE COURT: I got to write this down.  
 8 THE WITNESS: Sorry, Your Honor.  
 9 THE COURT: Trustee of Simon's.  
 10 THE WITNESS: Simon's trust.  
 11 THE COURT: Okay.  
 12 THE WITNESS: Personal representative of  
 13 Shirley's estate, trustee of Shirley's trust.  
 14 THE COURT: Okay.  
 15 THE WITNESS: And he's seeking to be  
 16 appointed as personal representative of Simon's  
 17 estate.  
 18 THE COURT: Okay. Got it.  
 19 BY MR. ROSE  
 20 Q Do you represent Mr. Bernstein individually in  
 21 any matters?  
 22 A I do not.  
 23 Q Do you anticipate representing Mr. Bernstein  
 24 individually in any matters?  
 25 A I do not.

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1 Q Are you familiar with the estate plan of  
 2 Shirley Bernstein and Simon Bernstein?  
 3 A Yes.  
 4 Q Do you want to -- can you tell us the short  
 5 version of how you --  
 6 A Eliot doesn't inherit. I mean, you gave  
 7 me --  
 8 MR. FEAMAN: Objection, relevancy.  
 9 THE COURT: Well, it goes to the issue of  
 10 whether Eliot is an interested person under 731.  
 11 So that's relevant.  
 12 MR. FEAMAN: Okay. Go ahead.  
 13 THE WITNESS: Eliot doesn't inherit under  
 14 Simon's estate plan. You provided those documents  
 15 to me, it's my understanding that his mom and dad  
 16 provided for him outside of those estate plans  
 17 through the use of trusts and gifts.  
 18 THE COURT: You folks really need to wrap it  
 19 up. I want to try to finish this and then,  
 20 depending on what I rule, deal with the other  
 21 issue, so you can have some direction from me. So  
 22 time is of the essence.  
 23 BY MR. ROSE  
 24 Q You feel you have learned anything from -- from  
 25 your one telephone conference with Eliot Bernstein in any

<p style="text-align: right;">153</p> <p>1 way compromises his position or materially disadvantages 2 him when you will be representing Ted as the beneficiary 3 in these matters? 4 A Absolutely not. 5 Q Do you anticipate there being some litigation 6 in this trust? 7 A Yeah, I do, on the trust. Not necessarily 8 the estate. In the trust. I think that Ted is going 9 to file a dec action and ask Judge Colin for 10 instructions on how property under the trust should be 11 distributed or not distributed. 12 Q And as counsel, is it your intention to file a 13 dec action and follow the instructions of the court? 14 A Absolutely. 15 MR. ROSE: I have nothing further, Your 16 Honor. 17 THE COURT: All right. Mr. Feaman. 18 MR. FEAMAN: I'll try to be as brief as I 19 can. 20 THE COURT: Okay. Thanks. 21 CROSS EXAMINATION 22 BY MR. FEAMAN 23 Q If I understood your testimony, Mr. Pankauski, 24 are you taking the position that there is a difference 25 between documents received by your office that you didn't</p>	<p style="text-align: right;">155</p> <p>1 Q Now, the -- you actually spoke to this 2 particular prospective client, correct? 3 A Yes. 4 Q And you would agree with me that Mr. Eliot 5 Bernstein was, in fact, a prospective client, correct? 6 A Yes. 7 Q Okay. You said the focus was on Don Tescher. 8 But could you take a look at Exhibit 3? 9 A Sure. 10 Q That's your rejection letter right there? 11 A Yes. 12 Q The reference makes no reference to 13 Mr. Tescher, does it? It says, Estate of Shirley 14 Bernstein and Estate of Simon Bernstein, correct? 15 A Yes. 16 Q Only. And the documents that you received, 17 which are shown on Exhibit 2, which was the e-mail from 18 Candice Bernstein to Michelle of your office -- by the 19 way, how long has she worked for you? 20 A Oh, Michelle has been with us probably three 21 to four years. 22 Q Okay. And you received documents that included 23 the Shirley Bernstein trust, the Shirley Bernstein will, 24 back to 2008, correct? 25 A Michelle from my law office received those</p>
<p style="text-align: right;">154</p> <p>1 see and, therefore, you didn't see those documents? Are 2 you making a distinction? 3 A Yeah. The only distinction I'm making is in 4 the testimony from Mr. Eliot Bernstein; he said that he 5 sent me documents. He didn't. His wife sent documents 6 to my intake person. 7 Q All right. And so you are taking the position 8 that, therefore, you didn't see them? 9 A No, my position is I didn't read them. There 10 is no therefor. I didn't read those documents that he 11 sent -- that Candice sent to my intake person. 12 Q You don't deny your office received them? 13 A No, not at all. 14 Q And you are familiar, I would assume, with Rule 15 of Professional Conduct 4-5.3 (c) which states that 16 although paralegals or legal assistants may perform the 17 duties delegated to them by the lawyer without the 18 presence or active involvement of the lawyer, the lawyer 19 shall review and be responsible for the work product of 20 paralegals or legal assistants? You would agree with 21 that, correct? 22 A For existing clients, absolutely. Not for 23 prospective clients. There is no duty on my behalf to 24 review any number of things that come in from dozens of 25 prospects.</p>	<p style="text-align: right;">156</p> <p>1 documents on Exhibit 2. 2 Q Okay. And the Simon Bernstein Amended Trust of 3 2012, correct? 4 A Yes. 5 Q Have you now seen the Simon Bernstein original 6 trust? Before it was allegedly amended in 2012? 7 A The 2008? 8 Q I don't know. 9 A Yeah, when you say original, I don't know 10 what you mean by that. 11 Q Okay. 12 A I looked at Mr -- 13 Q The trust which this amendment purportedly 14 amends? 15 A I don't know if I've looked at it. I've 16 looked at Simon Bernstein's trust that Mr. Rose gave 17 me, I believe it's the 2012 document. 18 Q Now, you said you were familiar with the estate 19 plan. And all of the documents that are listed here 20 would be necessary documents that would make you familiar 21 with the estate plan, correct? 22 A Necessary, no. I believe the 2012 trust 23 amendment revokes all prior amendments, which would 24 make prior ones a non-issue. 25 Q There is also documents here that have no</p>

<p style="text-align: right;">157</p> <p>1 relationship to the -- as far as you can tell -- the  2 estate plan, like the Bernstein Holdings, LLC?  3 A I don't think that's accurate. It's my  4 understanding from Ted Bernstein and Mr. Rose that  5 Bernstein Holdings, LLC was an entity that Simon  6 created to own a house that Eliot lives in. So where  7 Eliot lives, that's actually owned by an LLC created by  8 his dad, Simon. And the members of the LLC are three  9 trusts. So I think that's all part of Simon's estate  10 plan, you know, that's one way he helped out Eliot.  11 Q By your cross-examination of Mr. Eliot  12 Bernstein, when you asked about whether he had asked Ted  13 Bernstein for money, that would be money that would be  14 due either Eliot Bernstein's children or Eliot Bernstein  15 through those trusts, correct?  16 A I don't know if they're due through that  17 trust. It's my understanding the residence that Eliot  18 lives in is owned in the LLC, which is responsible for  19 paying the real estate taxes, the maintenance and  20 everything like that. I think Eliot Bernstein asked  21 the trustees of those trusts for money and they've run  22 out of money, so he asked Ted for more money.  23 Q And the LLC is, in fact, the Bernstein  24 Holdings, LLC?  25 A Yes.</p>	<p style="text-align: right;">159</p> <p>1 Bernstein.  2 Q So even though you didn't learn about it then,  3 they still sent to you the Bernstein Holdings, LLC for a  4 reason I guess you have no idea, is that right?  5 A Yeah. I don't know why Eliot's wife,  6 Candice, sent Michelle Bernstein Holdings, LLC other  7 than she wanted someone to review them.  8 Q That's certainly -- I'm sorry, I don't mean to  9 interrupt --  10 A That's all right, you're doing a great job.  11 You know, when prospective probate clients call you,  12 they won't do a document dump. They want to open up,  13 they want to talk to you for hours, and they want you  14 to read everything in the world. We don't do that. We  15 don't have the time or the patience to do it.  16 Q You would agree with me that the Bernstein  17 Holdings, LLC certainly has nothing to do with the  18 malpractice action against Don Tescher, isn't that  19 correct?  20 A I wouldn't say absolutely, no. I'm not  21 trying to be evasive. I don't think that's an element  22 of the purported malpractice by Tescher and Spallina.  23 Q Okay. Thanks.  24 A Sure.  25 THE COURT: All right.</p>
<p style="text-align: right;">158</p> <p>1 Q Correct?  2 A Yes.  3 Q Okay. And you received those documents back in  4 September, correct?  5 A Michelle did, yes.  6 Q Okay. And you are aware that there is a  7 dispute over payments from the LLC from Mr. Ted Bernstein  8 to Mr. Eliot Bernstein, correct? You asked about it on  9 cross-examination?  10 A There is a dispute over payments to the LLC.  11 Q Payments from the LLC to either Mr. Eliot  12 Bernstein or his kids or for the support of the house?  13 A You're confusing the LLC with the trust.  14 Q Okay. So the trust should be making payments  15 to the Bernstein Holdings, LLC, is that your  16 understanding?  17 A No. Eliot wants money from Ted individually  18 and Ted as trustee of either Shirley or Simon's trust.  19 And Shirley and Simon's trust don't permit  20 distributions to Eliot.  21 Q You first found out about the issue -- that  22 dispute between Mr. Eliot Bernstein and Mr. Ted Bernstein  23 about the money when you spoke to him in September of  24 2013, didn't you?  25 A No, I learned about it from Alan Rose and Ted</p>	<p style="text-align: right;">160</p> <p>1 MR. FEAMAN: Okay.  2 MR. ROSE: Two questions?  3 THE COURT: Yes, that's it.  4 RE-DIRECT EXAMINATION  5 BY MR. ROSE  6 Q Bernstein Family Realty is not a beneficiary of  7 the estate, the will, the trust, is that correct?  8 A That's correct.  9 Q Absolutely nothing to do with what proceedings  10 are going to be before Judge Colin, as far as you know?  11 A Absolutely correct.  12 MR. ROSE: Thank you, Your Honor.  13 THE COURT: Okay. Have a seat.  14 THE WITNESS: Thank you, Your Honor.  15 THE COURT: Any other witnesses on your end?  16 MR. PANKAUSKI: No, Your Honor.  17 THE COURT: Okay. I have just a question.  18 In the estate case, where you're representing Ted,  19 that's the one where Mr. Feaman you're  20 representing the creditor, correct?  21 MR. FEAMAN: Yes.  22 THE COURT: Eliot is representing himself.  23 Okay. I'll let you do this, Mr. Feaman. What's  24 pending in that case now, anything? Other than  25 the motion to appoint a curator.</p>

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1 MR. FEAMAN: In the estate itself?

2 THE COURT: Yeah.

3 MR. FEAMAN: I am only aware of the motion to

4 appoint Ted Bernstein as the --

5 THE COURT: PR.

6 MR. FEAMAN: -- personal representative.

7 THE COURT: Okay.

8 MR. FEAMAN: But I have not reviewed the

9 file.

10 THE COURT: All right. And so is there an

11 action filed with respect to Simon Bernstein's

12 trust?

13 MR. PANKAUSKI: No -- I'm sorry.

14 MR. FEAMAN: Not yet.

15 THE COURT: All right. Okay. Have a seat.

16 Can I see the motion that --

17 Mr. Pankauski -- that you filed on behalf of

18 Ted to be appointed PR and the motion that asks

19 for -- and I think it was both counsel,

20 including Mr. Glasko -- for a curator instead.

21 MR. PANKAUSKI: Yes, Your Honor.

22 THE COURT: Let me see those physically.

23 MR. PANKAUSKI: This is my motion for

24 appointment. And I can get you the response in

25 opposition.

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1 THE COURT: Okay. I remember seeing the

2 response, but -- okay. So here's -- everyone

3 finished, ready for me to rule? I'm ready to rule

4 on everything.

5 MR. FEAMAN: The only thing I would add, Your

6 Honor, would be the case that we faxed to you

7 earlier today, and to everybody else, Metcalf v.

8 Metcalf, 785 So. 2d. 747, which states, quote, in

9 considering whether the attorney-client privilege

10 applies to disqualify an attorney from opposing a

11 former client, the focus is on the perspective of

12 the person seeking out the lawyer, not on what the

13 lawyer does after the consultation.

14 THE COURT: Okay. I agree that's the law.

15 All right. So -- yes.

16 MR. GLASKO: Judge, are you making a ruling

17 on the appointment of curator today?

18 THE COURT: I am. I'm doing it in like about

19 a minute or two.

20 MR. GLASKO: I would like to ask the court --

21 because we wanted to lodge an ore tenus objection

22 to that. And I think the court needs --

23 THE COURT: Why?

24 MR. GLASKO: -- the court needs to hear some

25 information with regard to Ted's ability to be

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1 appointed as personal representative.

2 THE COURT: Well, hear what I'm going to do,

3 and then you'll see if you want to do that.

4 MR. GLASKO: Yes, sir.

5 THE COURT: Okay. Motion to disqualify is

6 denied.

7 The burden is on Eliot. And I'm treating

8 this as really being Eliot's motion to show

9 that he's an interested person under 731.20.

10 He has not carried that burden. And so that

11 would disqualify him from being someone who has

12 an interest in trying to stop Mr. Pankauski

13 from representing Ted.

14 And, you know, I agree with the law that

15 counsel -- Mr. Feaman just cited. This is

16 really a view of Eliot from a subjective point

17 of view as to -- as a prospective client of

18 Mr. Pankauski, now that Mr. Pankauski is

19 venturing to represent Ted, which is a

20 subsequent representation. Mr. Pankauski is

21 barred from representing Ted if there are

22 interests that -- in the estate -- that

23 materially -- that are materially adverse to

24 those of Eliot, and the rest of the rule. I

25 find that Eliot has not carried his burden of

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1 proof on that, even from a light most favorable

2 to him, which I'm giving him.

3 So motion to disqualify denied.

4 Ted's motion for appointment of himself as

5 curator or administrator ad litem, denied.

6 William Stansbury and -- your client is

7 who?

8 MR. GLASKO: Excuse me, my client is Lisa and

9 Jill.

10 THE COURT: Okay. Are they -- are they a

11 moving party in a formal sense?

12 MR. GLASKO: They are the children of the

13 decedent, Judge.

14 THE COURT: But have they filed -- I don't

15 have all the paperwork, I want to make sure I

16 do -- have they filed requesting a -- that there

17 be a curator other than Ted.

18 MR. GLASKO: No, sir, I've only made an ore

19 tenus motion.

20 THE COURT: The ore tenus motion is denied

21 only -- not on the merit because I'm not doing

22 this -- but I don't have to because William is an

23 interested person, able to, as a secured creditor,

24 who does have an interest under the case law and

25 under the statute in having this estate, which is

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1 Simon Bernstein's estate administered, taking  
 2 himself as a creditor into consideration.  
 3 That motion is granted.  
 4 So you are going to have the following  
 5 choices: Within x days, you'll tell me, in a  
 6 moment, you're going to tell me how much time  
 7 you, Pankauski, Feaman, Glasko, need, to tell  
 8 me who you want as curator. If that person is  
 9 a lawyer, the fees are capped at \$350 an hour  
 10 and cannot exceed \$5,000 in any increment  
 11 without coming before the court and telling me  
 12 why I should raise that cap incrementally.  
 13 We're putting a cap on this situation.  
 14 Okay. So you may need to make sure you  
 15 can find someone who is willing to serve in  
 16 that capacity.  
 17 If you can't agree on someone, Pankauski,  
 18 you're going to write two names out; Feaman,  
 19 you're going to write two names out;  
 20 Mr. Glasko, you'll write two names out on a  
 21 little piece of paper. We're going to put them  
 22 in a jar and you three will come in on UMC  
 23 after -- if you, unfortunately, can't agree  
 24 upon someone, my judicial assistant will come  
 25 out, and in your presence, shake the jar and

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1 into something that is not or shouldn't be.  
 2 Okay. So who's going to write up orders?  
 3 MR. FEAMAN: As to two of the motions, I  
 4 believe your ruling was that -- just that they  
 5 were denied, and I have blank orders on that.  
 6 That would be the order on the verified motion to  
 7 disqualify counsel. And it says the motion of  
 8 Eliot Bernstein.  
 9 THE COURT: Okay.  
 10 MR. FEAMAN: Because --  
 11 THE COURT: But you can do it for reasons I  
 12 mentioned on the record. So if someone --  
 13 MR. FEAMAN: For reasons mentioned on the  
 14 record.  
 15 THE COURT: Yeah, that's a good way of doing  
 16 it. That way you don't have to start recreating  
 17 it. I gave reasons on there.  
 18 MR. FEAMAN: And then I have a blank order on  
 19 a motion for appointment of curator or  
 20 administrator ad litem, which you denied, by Ted  
 21 Bernstein.  
 22 THE COURT: Okay. That's denied.  
 23 MR. FEAMAN: And then the other order on  
 24 Mr. Stansbury -- not sure how much detail you want  
 25 to get in there.

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1 pick. So I'll have nothing to do with the  
 2 actual person because it will be someone that  
 3 one of the three of you picks. They all -- the  
 4 only way that that won't work out is if one of  
 5 the people you pick are obviously not  
 6 qualified, but I assume that's not going to be  
 7 the case.  
 8 So you need to -- if we go that route, on  
 9 the two names that each side of the three sides  
 10 are going to pick, make sure that they are  
 11 willing to serve in advance.  
 12 Okay. The reason I don't want Ted is  
 13 because under 733.501 I take a position that  
 14 given where this case is, and the hype that --  
 15 we're achieving a disconnect between what  
 16 should be involved and what could be a sensible  
 17 straightforward estate administration on the  
 18 estate portion of the case -- because that's  
 19 all that's before me right now. And not get  
 20 carried on into a whole bunch of other things  
 21 that aren't yet before me or not yet filed.  
 22 So we're going to take this in nice small  
 23 steps. This order applies to the estate case  
 24 because there is no other case before me.  
 25 So we're not going to let this blossom

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1 THE COURT: Well, you're going to enter that  
 2 order once you folks talk now. Okay.  
 3 MR. FEAMAN: Okay.  
 4 THE COURT: Right now. And Eliot is  
 5 included in that conversation of whether you can  
 6 agree upon someone. Because, I mean, I am not  
 7 suggesting that you, you know, you can't, but you  
 8 should be able to. I mean, especially -- and you  
 9 may want to say here's name one, here's name two,  
 10 here's name three, just to make sure that the  
 11 people that you now talk about will accept the  
 12 assignment. Then don't give me the order yet. Go  
 13 actually speak to these people, make sure they  
 14 accept, and then under the conditions that I'm  
 15 mentioning. And then we're going to go from  
 16 there. And then you put the name in the order.  
 17 Okay?  
 18 MR. PANKAUSKI: Yes, Your Honor.  
 19 THE COURT: Understand?  
 20 MR. PANKAUSKI: Understood.  
 21 THE COURT: All right. Understand, Eliot?  
 22 MR. ELIOT BERNSTEIN: Yes, sir.  
 23 THE COURT: Okay. Great. So speak now. I'm  
 24 going to stay, but I'm going to ask you to  
 25 start -- go outside because we need to kind of

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1 close the court -- but I'm going to stay here and  
2 let the lawyers and Eliot come back in to tell me  
3 what you've agreed to.

4 Okay. Thanks.

5  
6 (Thereupon, the proceedings  
7 were concluded at 5:03 p.m.)  
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1  
2 CERTIFICATE  
3

4 THE STATE OF FLORIDA  
5 COUNTY OF PALM BEACH.

6  
7 I, DAVID L. MARSAA, Professional Reporter,  
8 State of Florida at large, certify that I was  
9 authorized to and did stenographically report the  
10 foregoing proceedings and that the transcript is a  
11 true and complete record of my stenographic notes.

12 Dated this 5th day of July, 2014.  
13  
14

15  
16 \_\_\_\_\_  
17 DAVID L. MARSAA, COURT REPORTER  
18  
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