

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.

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.

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

DATE: FEBRUARY 18, 2014

TIME: 1:32 P.M. - 2:38 P.M.

2

1 APPEARING ON BEHALF OF PETITIONER:
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 3 Boca Raton, Florida 33434
 4

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 P.A.:
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 7 TESCHER & SPALLINA, P.A.
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 8 Boca Raton, Florida 33431
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10 APPEARING ON BEHALF OF ROBERT L. SPALLINA:
 11 Robert L. Spallina, Esq.
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14 APPEARING ON BEHALF OF DONALD R. TESCHER:
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18 APPEARING ON BEHALF OF TED S. BERNSTEIN:
 19 Alan B. Rose, Esq.
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 21 West Palm Beach, Florida 33401
 22

23 John J. Pankauski, Esq.
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 24 West Palm Beach, Florida 33401
 25

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1 THE COURT: All right. So good afternoon,
 2 folks. I'm Judge Colin. This is case number
 3 2012CP004391, Estate of Simon Bernstein.
 4 Counsel, make your appearances, please.
 5 MR. BLOCK: Irwin Block and Donald Tescher
 6 for Donald Tescher.
 7 MR. GLASKO: William Glasko on behalf of
 8 Jill Iantoni and Lisa Freidman.
 9 THE COURT: Spell that last name.
 10 MR. GLASKO: G-l-a-s-k-o.
 11 THE COURT: No, not --
 12 MR. GLASKO: Iantoni, I-a-n-t-o-n-i. And
 13 F-r-e-i-d-m-a-n.
 14 MR. TESCHER: Donald Tescher on behalf of
 15 Tescher & Spallina, P.A.
 16 MR. FEAMAN: Good afternoon, Your Honor.
 17 Peter Feaman on behalf of the claimant against
 18 the Estate of Simon Bernstein, Mr. William
 19 Stansbury. With me in the courtroom today is
 20 Nancy Guffey of my office.
 21 THE COURT: Okay. Welcome.
 22 MR. PANKAUSKI: Good afternoon, Your
 23 Honor. John Pankauski. I'm joined by attorney
 24 Alan Rose. We represent Ted Bernstein, who is
 25 to our right.

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1 APPEARING ON BEHALF OF CREDITOR WILLIAM
 STANSBURY:
 2 Peter M. Feaman, Esq.
 Nancy E. Guffey, Esq.
 3 PETER M. FEAMAN, P.A.
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6 APPEARING ON BEHALF OF LISA SUE FRIEDSTEIN
 AND JILL IANTONI:
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 9 Palmetto Bay, Florida 33157
 10

11 William M. Pearson, Esq.
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 13

14 ALSO PRESENT:
 15 Ted S. Bernstein
 William Stansbury
 16 Candice Bernstein
 David Roth, Esq.
 17

18 BE IT REMEMBERED, that the following
 19 proceedings were taken in the above-styled cause
 20 before Judge Martin H. Collin, at the South County
 21 Courthouse, 200 West Atlantic Avenue, Courtroom 2,
 22 City of Delray Beach, County of Palm Beach, State of
 23 Florida, beginning at 1:32 p.m., on Tuesday, the
 24 18th day of February, 2014, to wit:
 25

5

1 THE COURT: Okay.
 2 MR. BERNSTEIN: Good afternoon, Your
 3 Honor. Eliot Bernstein, pro se.
 4 THE COURT: Okay.
 5 All right. First matter is motion to
 6 discharge and to withdraw, correct?
 7 MR. BLOCK: Petition for resignation and
 8 discharge as co-PRs. And I represent
 9 Mr. Tescher. And I think Robert is here as a
 10 co-PR representing himself.
 11 And, to my knowledge, there are --
 12 THE COURT: Excuse me. Can I see a
 13 courtesy copy, --
 14 MR. BLOCK: -- no objections.
 15 THE COURT: -- copy of the motion, please?
 16 Thanks.
 17 Okay. So starting with all the interested
 18 persons -- you're standing, is there a reason
 19 for that?
 20 MR. BLOCK: I have a proposed order.
 21 THE COURT: Okay. Hold on to that for a
 22 second.
 23 It's represented that there may not be any
 24 objection to the petition for resignation and
 25 discharge. So tell me if that's the case from

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1 all interested persons and their counsel.
 2 MR. PANKAUSKI: Good afternoon, Your
 3 Honor. On behalf of Defendant Bernstein, the
 4 trustee of the decedent's revocable trust, we
 5 stipulate that you may accept the resignation
 6 of the two co-personal representatives.
 7 In their prayer for relief they ask Your
 8 Honor to handle everything else at a later date
 9 and we consent to that. Clearly, we can't have
 10 a petition for discharge. We can stipulate --
 11 or, excuse me, we can agree that you can accept
 12 their resignations and later appoint another
 13 personal representative.
 14 THE COURT: Okay.
 15 MR. FEAMAN: Peter Feaman, Your Honor, on
 16 behalf of Mr. Stansbury, interested person.
 17 We have no objection to the petition.
 18 There is a proposed order that was submitted to
 19 us this morning. We have only one objection to
 20 the proposed order when Your Honor is ready to
 21 consider that.
 22 THE COURT: Okay. Counsel.
 23 MR. GLASKO: Judge, William Glasko. There
 24 is a few motions set for today. And I just
 25 want to make a comment about the bigger issue,

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1 attorneys for Ted, who is the personal
 2 representative of that estate.
 3 If the Judge, Your Honor, let's them out,
 4 I would ask that there be provisions in the
 5 order such that the Court retains jurisdiction
 6 over them, that they don't walk away
 7 discharged, that they are still before Your
 8 Honor to the extent that if it is determined
 9 that there was some sort of problem with the
 10 drafting of the will, with the administration
 11 of the estate, or any other of these issues
 12 that they're still --
 13 THE COURT: Well, did you see their
 14 wherefore clause?
 15 MR. GLASKO: I'm sorry?
 16 THE COURT: Did you see their wherefore
 17 clause?
 18 MR. GLASKO: Yes, sir.
 19 THE COURT: It says they wanted me to
 20 accept their resignation, revoke their letters,
 21 and reserve on all issues relating to
 22 discharge.
 23 MR. GLASKO: Okay. And I don't have an
 24 objection to them getting out. I haven't seen
 25 the proposed order.

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1 which is that this law firm represented Simon
 2 Bernstein and prepared his will. My
 3 understanding is that there are issues of
 4 forgery. There have been some criminal cases
 5 opened as a result of some forgeries that
 6 relate to estate documents.
 7 My understanding is that in discovery
 8 there were two trust amendments to the mother's
 9 trust, which there is some question as to
 10 whether or not there is a forgery in that. We
 11 believe that there is an undue influence and/or
 12 tortious inference case.
 13 My firm was just retained last night. And
 14 I've had a limited ability to review these
 15 documents. But based on what I've seen and
 16 what I've heard, we intend to open an action
 17 for undue influence, single tortious
 18 interference in this case as it relates to the
 19 father's will, which was drafted by Tescher &
 20 Spallina.
 21 My concern, Judge, is that if you let
 22 these lawyers out as co-personal
 23 representatives. And, again, what I've seen is
 24 a second notice of hearing on mom's estate
 25 where they're asking to withdraw as the

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1 THE COURT: Okay. I thought -- I heard it
 2 was circulated. Maybe you didn't get it to
 3 him. Have him take a look at it.
 4 MR. TESCHER: He may not have.
 5 MR. PANKAUSKI: I haven't seen it either,
 6 Your Honor.
 7 THE COURT: Okay. Take a look. This is
 8 the time to do it.
 9 And Eliot is pro se. Can someone give him
 10 a copy, as well?
 11 MR. TESCHER: I believe Mr. Bernstein did
 12 get one.
 13 THE COURT: Did you get a copy, Eliot?
 14 MR. BERNSTEIN: I've got so many things in
 15 the last few days.
 16 THE COURT: Well, okay, but did you get a
 17 copy of the proposed order?
 18 MR. BERNSTEIN: Can I see it? I don't
 19 think so.
 20 THE COURT: If you have one for me that
 21 would be helpful. I can look at it at the same
 22 time.
 23 MR. BERNSTEIN: I don't recall ever seeing
 24 this.
 25 THE COURT: Say it again.

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1 MR. BERNSTEIN: I don't recall ever seeing
 2 this.
 3 THE COURT: Okay. Well, look at it.
 4 Thank you.
 5 MR. GLASKO: I have no objection to that,
 6 Judge.
 7 THE COURT: Okay. So there's no objection
 8 from Mr. Glasko for his clients.
 9 Mr. Feaman, you said there was one area,
 10 you had an objection to the form of the order?
 11 MR. FEAMAN: Yes, Your Honor, if it please
 12 the Court.
 13 THE COURT: Where is that?
 14 MR. FEAMAN: Paragraph six recites, Your
 15 Honor, that the successor personal
 16 representative or curator is authorized to pay
 17 blank dollars retainer.
 18 I respectfully suggest to the Court that
 19 that should be left up to the discretion of the
 20 successor personal representative or the
 21 curator, as the case may be, to make that
 22 decision. I don't think, at this time, that we
 23 need to be in the position to anticipate or go
 24 that far.
 25 THE COURT: Okay. I understand what

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1 MR. BERNSTEIN: Oh, okay.
 2 THE COURT: They're not being discharged,
 3 they're resigning and their letters to revoke.
 4 MR. BERNSTEIN: Okay. Thank you.
 5 THE COURT: Okay. So why do we need to,
 6 in this order, fund what the successor PR or
 7 curator is to perhaps --
 8 MR. BLOCK: We have no objection to
 9 striking that paragraph.
 10 THE COURT: Okay. I'm striking it.
 11 MR. GLASKO: Striking the entire paragraph
 12 six?
 13 THE COURT: Number six out, yeah.
 14 MR. GLASKO: Thank you, sir.
 15 THE COURT: I'm going to add, though, a
 16 new number six which is that -- and here's the
 17 language. I'll write it for myself and then
 18 I'll tell you what I'm going to do.
 19 Okay. Number six says, The Court reserves
 20 jurisdiction to enforce this order.
 21 Okay. I've signed it with the changes.
 22 MR. TESCHER: Your Honor, there is one
 23 blank --
 24 THE COURT: Oh, so hold on. Paragraph
 25 two, there is a blank there. What is it that

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1 you're saying.
 2 MR. FEAMAN: Other than that, I have no
 3 objection.
 4 THE COURT: Okay. Mr. Pankauski?
 5 MR. PANKAUSKI: No objection, Your Honor.
 6 THE COURT: Okay. And Eliot Bernstein?
 7 MR. BERNSTEIN: Just the objections I
 8 raised in the filing on February 14th.
 9 THE COURT: That's -- okay. So I don't
 10 know what those are. Right now the only
 11 question is do you agree with the form of the
 12 order?
 13 MR. BERNSTEIN: Yeah.
 14 THE COURT: Okay.
 15 MR. BERNSTEIN: Except the part that he's
 16 saying about the amount.
 17 THE COURT: Number six?
 18 MR. BERNSTEIN: And is there bonding or
 19 surety?
 20 THE COURT: Well, there is no bond on a
 21 discharge.
 22 MR. BERNSTEIN: We're not discharging him
 23 yet, are we?
 24 THE COURT: Yeah, I'm sorry, no bond on a
 25 resignation.

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1 the moving party is asking that I put in there
 2 where it says within blank days, business days?
 3 MR. BLOCK: What do you want, 60 days?
 4 MR. TESCHER: It's the later of, I think,
 5 the date of the order or when the successor is
 6 appointed, if I'm not mistaken. Thirty days to
 7 60 days would be fine.
 8 THE COURT: Okay. Counsel.
 9 MR. FEAMAN: That sounds too long to me,
 10 Your Honor.
 11 THE COURT: Well, give me the --
 12 MR. FEAMAN: I would say five business
 13 days he can begin the process of turning
 14 everything over.
 15 THE COURT: Well, this doesn't say begin
 16 the process. This says, shall deliver. That's
 17 all the property. That's everything. That
 18 would be by next Monday every single thing in
 19 the estate is to be turned over to a successor,
 20 who I haven't even named yet.
 21 MR. FEAMAN: And assuming that you don't
 22 name a successor today, then I would like to
 23 see that done within 10 business days so we can
 24 move this along, Your Honor.
 25 THE COURT: Okay. What do you say,

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1 Mr. Pankauski?

2 MR. PANKAUSKI: I think you need more like

3 a couple weeks, 14, 15.

4 MR. GLASKO: No objection to 14.

5 MR. BLOCK: We would like 15 days.

6 THE COURT: You would like what?

7 MR. BLOCK: Fifteen.

8 THE COURT: Fifteen. Okay. So I have 10,

9 14, 15.

10 Eliot, what do you want? You want

11 tomorrow, right?

12 MR. BERNSTEIN: Yesterday.

13 THE COURT: Okay. Sure.

14 MR. BERNSTEIN: Thank you.

15 THE COURT: Okay. I don't want you folks

16 to argue about what a business day is. It's

17 going to be March 4th. It can be sooner.

18 All right. I'll get you copies.

19 Okay. What's next?

20 MR. TESCHER: Your Honor, there is a

21 companion order, petition and order to withdraw

22 as counsel on the Simon Bernstein estate.

23 THE COURT: Any objection?

24 MR. GLASKO: Once again, Judge, I just

25 want to make sure that the reservation of

16

1 prior lawyers without the specific reservation.

2 What I was asking for was a specific

3 reservation just so that it's clear to all

4 parties that these lawyers are still part of

5 this litigation, in as much as there are live

6 and actual circumstances being litigated right

7 now that relate to their conduct.

8 So what I don't want is just a clean

9 order.

10 THE COURT: Okay. So give me the legal

11 authority for what you're asking. Give me the

12 statute or the case that says that what you

13 want is appropriate in an order on a motion to

14 withdraw.

15 MR. GLASKO: I just wanted to clarify. I

16 don't have a statute or a case.

17 THE COURT: Any authoritative basis from

18 any source for that?

19 MR. GLASKO: Judge, I think the Court has

20 jurisdiction and discretion to clarify in the

21 order that the attorneys are not being let go.

22 THE COURT: Okay.

23 MR. PANKAUSKI: Excuse me, Your Honor.

24 THE COURT: Yes.

25 MR. PANKAUSKI: The firm of Tescher &

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1 jurisdiction is in the order with regard to the

2 attorneys and any part that they may have in

3 subsequent litigation.

4 THE COURT: I'll take a look at the order.

5 Show it to him.

6 So if you wouldn't mind, Mr. Spallina, to

7 circulate the order to everybody.

8 Well, Mr. Pankauski, you're going to be

9 representing Ted; is that correct?

10 MR. PANKAUSKI: Yes, Your Honor, along

11 with Mr. Rose.

12 THE COURT: Okay. So, I mean, they could

13 do this by an order or by a stipulation for

14 substitution, either one.

15 So tell me the legal basis for what you

16 want added to this order.

17 MR. GLASKO: Well, Judge, what I want --

18 THE COURT: Tell me what the law -- give

19 me the law first, because I'll just allow a

20 stipulation. People are just allowed to always

21 substitute one lawyer for another.

22 MR. GLASKO: If there were a stipulation

23 of substitution of counsel and the Court

24 entered the order, I think the Court, I think

25 the Court would have jurisdiction over the

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1 Spallina and Mr. Spallina represent Mr. Tescher

2 and Mr. Spallina as co-personal representatives

3 of the estate. They don't represent Ted

4 Bernstein.

5 I think what the order was intended to say

6 was that Tescher & Spallina and Robert Spallina

7 are authorized to withdraw as the attorneys for

8 the co-personal representatives.

9 THE COURT: Or for Ted Bernstein in his

10 personal representative capacity?

11 MR. PANKAUSKI: No, Mr. Bernstein isn't

12 personal representative of the Simon Bernstein

13 estate.

14 THE COURT: Okay. So what's --

15 MR. PANKAUSKI: Mr. Spallina individually

16 and Mr. Tescher individually were the

17 co-personal representatives.

18 THE COURT: Well, I'm sorry, I'm confused.

19 They say in their motion and order that they

20 represent Ted Bernstein. That's not true in

21 this case?

22 MR. PANKAUSKI: That's correct, in the

23 Estate of Simon Bernstein.

24 THE COURT: Okay. Who do you represent in

25 the Estate of Simon Bernstein?

<p style="text-align: right;">18</p> <p>1 MR. TESCHER: We represent ourselves. 2 THE COURT: Okay. Well, that's not what 3 the order says. 4 MR. TESCHER: You are correct, that is... 5 THE COURT: So what should the order say? 6 MR. TESCHER: Withdrawal of counsel for 7 personal representatives, Donald R. Tescher and 8 Robert Spallina. 9 THE COURT: All right. So do you have a 10 different position now that they've said that? 11 MR. GLASKO: No, Judge. I actually 12 thought we were all on the order where they 13 were asking to withdraw as attorneys in the 14 Shirley estate. 15 THE COURT: No. We're still on Simon's 16 case. 17 MR. GLASKO: So they've asked to be let go 18 as personal representatives and the second 19 order is discharged as the attorneys for 20 themselves? 21 THE COURT: Right. 22 Okay. That's granted. 23 And, Mr. Spallina, you're the attorney for 24 yourself in this case, correct? 25 MR. SPALLINA: Yes, sir.</p>	<p style="text-align: right;">20</p> <p>1 the attorney for Ted Bernstein? 2 MR. TESCHER: Yes, Your Honor. 3 THE COURT: Okay. Any objection? 4 MR. GLASKO: Again, Judge, I would ask for 5 a reservation of jurisdiction. 6 THE COURT: Okay. Do you have 7 authoritative position on that? 8 MR. GLASKO: I don't. 9 THE COURT: That request is denied, 10 because if you want to have a request like 11 that, have authority to support it. 12 MR. GLASKO: Yes, sir. 13 THE COURT: Just asking without authority 14 won't do it. 15 Okay. Granted. 16 MR. TESCHER: Your Honor, that concludes 17 the three motions that we had filed for hearing 18 at 1:30. 19 THE COURT: So I know there are more 20 motions. Do you folks want them to stay around 21 for the next series of motions? 22 MR. BLOCK: No, sir. 23 THE COURT: No, I'm asking the other 24 people who are moving parties. 25 MR. PANKAUSKI: No, Your Honor, they're</p>
<p style="text-align: right;">19</p> <p>1 THE COURT: And you're also the attorney 2 for the -- and the law firm is attorney for 3 who? For themselves, for itself? 4 MR. SPALLINA: For the co-PRs of the 5 estate. 6 THE COURT: And who is that? 7 MR. SPALLINA: Donald Tescher and Robert 8 Spallina. 9 THE COURT: Okay. And you're withdrawing 10 as attorneys for yourselves in your capacity as 11 co-PR? 12 MR. TESCHER: Yes, Your Honor. 13 THE COURT: All right. Go ahead. 14 MR. TESCHER: Your Honor, the third motion 15 that we set for today was on the Shirley 16 Bernstein estate for an order on a motion to 17 withdraw as counsel. 18 THE COURT: Okay. Any objection? 19 MR. PANKAUSKI: I'm sure I don't. I just 20 need to see the order, Your Honor. 21 THE COURT: Okay. Here you say your 22 attorney for Ted Bernstein here again. 23 MR. TESCHER: That is correct in the 24 Shirley Bernstein estate, Your Honor. 25 THE COURT: So in Shirley's estate you are</p>	<p style="text-align: right;">21</p> <p>1 not required to stay. 2 THE COURT: Okay. Thanks. We'll get you 3 copies if you wait outside. 4 MR. BLOCK: Thank you. 5 MR. BERNSTEIN: Excuse me, Your Honor. 6 Did they resign as trustees, too, as well as 7 PR? Is that in there? 8 THE COURT: No, nothing about any trust is 9 before me. 10 (Mr. Block, Mr. Tescher and Mr. Spallina 11 left the courtroom.) 12 THE COURT: Okay. So now I have a motion 13 for appointment of Ted Bernstein as curator, a 14 motion for appointment of Eliot Bernstein as 15 curator or successor PR, or, in the 16 alternative, some other motions. And I know 17 that because I have the response from 18 Mr. Feaman, but I don't have the motion itself. 19 MR. PANKAUSKI: The motion. 20 THE COURT: I need the moving -- you know 21 what, I just got some things in the mail. Let 22 me see. 23 Okay. I have Ted Bernstein's motion for 24 appointment of curator or administrator ad 25 litem. Is that the traveling pleading?</p>

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1 MR. PANKAUSKI: Yes, Your Honor.
 2 THE COURT: Okay. And I have Mr. Feaman's
 3 response in opposition.
 4 Okay. Are there any other pleadings that
 5 I am to consider?
 6 MR. FEAMAN: No. I have an ore tenus
 7 matter that I was apprised of this morning,
 8 Your Honor.
 9 THE COURT: Okay. But no one's telling me
 10 that, though.
 11 MR. FEAMAN: It's --
 12 THE COURT: Oh, it's your ore tenus
 13 motion?
 14 MR. FEAMAN: Yes, mine.
 15 THE COURT: Okay. Sure.
 16 MR. FEAMAN: I'm asking permission to say
 17 it.
 18 THE COURT: Okay. Sure.
 19 MR. FEAMAN: I found out from Eliot
 20 Bernstein this morning that he -- the ore tenus
 21 motion is an objection to Mr. Pankauski
 22 representing Ted Bernstein in this matter.
 23 The basis of the motion, and I'm prepared
 24 to call Mr. Eliot Bernstein to the stand, is
 25 that Eliot Bernstein consulted with

24

1 everybody is here, why don't I at least have a
 2 hearing on or see what's going on with the
 3 current motions. I may defer on entering an
 4 order until I determine what the merits are of
 5 your motion to disqualify.
 6 MR. FEAMAN: Yes, sir.
 7 THE COURT: Any objection to that
 8 procedure?
 9 MR. PANKAUSKI: No, Your Honor.
 10 MR. GLASKO: No, sir.
 11 THE COURT: Okay. All right. So now on
 12 Simon's estate, because I let go the prior PRs,
 13 are we now in a situation where there is no PR
 14 or curator of Simon's estate; is that true?
 15 MR. PANKAUSKI: Yes, Your Honor.
 16 THE COURT: Everyone agree with that?
 17 MR. FEAMAN: Yes.
 18 THE COURT: So does everyone agree we need
 19 to have someone take their place, that is
 20 Tescher and Spallina?
 21 MR. FEAMAN: Yes, sir.
 22 MR. GLASKO: Yes, sir.
 23 MR. PANKAUSKI: Yes, Your Honor.
 24 THE COURT: So let me go around the room.
 25 Mr. Pankauski, what is your request for

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1 Mr. Pankauski to represent him and had a couple
 2 of one-hour telephone conversations concerning
 3 the representation of Mr. Pankauski, supplied
 4 him documents, which were very germane to
 5 Mr. Bernstein, Eliot Bernstein's position in
 6 this case, which are not aligned with Mr. Ted
 7 Bernstein.
 8 And so I'm prepared to go forward and
 9 present evidence today.
 10 THE COURT: Okay. All right. But a
 11 motion for disqualification of counsel has to
 12 be in writing. You may have just learned about
 13 it, but that definitely has to be reduced to
 14 writing.
 15 MR. FEAMAN: It does, Your Honor.
 16 However, I don't want to be in a position to
 17 have waived anything by allowing the attorney
 18 to go forward and let my silence --
 19 THE COURT: How about this, not knowing,
 20 other than what you just told me and not
 21 hearing from Mr. Pankauski, --
 22 MR. FEAMAN: Yes, sir.
 23 THE COURT: -- I'm going to let you or
 24 whoever thinks it's appropriate file that
 25 motion in writing. But, in the meantime, since

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1 relief in that area?
 2 MR. PANKAUSKI: That you appoint Ted
 3 Bernstein as curator.
 4 THE COURT: And, Mr. Feaman, what's your
 5 position there?
 6 MR. FEAMAN: Our position is that we
 7 suggest Eliot Bernstein or, in the alternative,
 8 an attorney that I've suggested to counsel is
 9 Brian O'Connell from the law firm of Casey,
 10 Ciklin -- I guess it's Ciklin, Lubitz now, a
 11 Board-certified probate wills and trust
 12 attorney for over 20 years to be a curator.
 13 THE COURT: I know Mr. O'Connell.
 14 MR. FEAMAN: Okay. Until we can get this
 15 straightened out, Your Honor.
 16 THE COURT: What do you say?
 17 MR. GLASKO: Judge, I would like to see an
 18 independent curator appointed. We believe that
 19 both Ted and Eliot are going to be fact
 20 witnesses with regard to the issues that are
 21 going forward in this case.
 22 The attorneys were common to Ted and the
 23 decedent Simon with regard to a will that was
 24 drafted subsequent to the original will with
 25 regard to trust modifications and so forth, so.

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1 THE COURT: So when you say an independent
 2 curator, you mean someone other than the person
 3 suggested by Mr. Feaman?
 4 MR. GLASKO: Neither Ted nor Eliot, but an
 5 independent. These people are fact witnesses
 6 and I believe there is a conflict, particularly
 7 with Ted.
 8 THE COURT: All right. So how do -- I
 9 mean, this is a pick a name out of the hat type
 10 situation?
 11 MR. GLASKO: I'm sorry?
 12 THE COURT: When you say an independent,
 13 how is that independent person going to be
 14 derived?
 15 MR. GLASKO: Well, I would suggest that
 16 the Court could appoint somebody.
 17 THE COURT: No, I don't do that anymore,
 18 because the last time I did that and that
 19 curator or PR or trustee actually sought fees,
 20 the issue came up, well, I may be more
 21 favorable to that person because I appointed
 22 them.
 23 MR. GLASKO: Yes, sir.
 24 THE COURT: So I don't have any active
 25 involvement in the selection any longer of the

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1 person in that position.
 2 MR. GLASKO: Then I would ask the Court to
 3 direct all counsel to agree to somebody.
 4 THE COURT: Okay. So --
 5 MR. GLASKO: May I make one more point,
 6 Judge?
 7 THE COURT: Go ahead.
 8 MR. GLASKO: I wanted to make sure that
 9 the Court understands, I just came into this
 10 case, so I know you know more than I do or at
 11 least I believe you know the case.
 12 The original estate plan was -- there are
 13 five children, three were going to receive.
 14 The will --
 15 THE COURT: You want to just tell me
 16 something ahead of what everyone else wants to
 17 tell me now. You want this be your opening
 18 statement?
 19 MR. GLASKO: No, that's fine, Judge.
 20 THE COURT: Because I'm ready to go into
 21 hearing your positions. No, I'm going to let
 22 everyone be heard.
 23 Okay. So, Mr. Pankauski, you want Ted.
 24 Mr. Feaman wants an independent, but he says
 25 Brian O'Connell. Mr. Glasko says independent

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1 who we kind of pick by consensus of the moving
 2 parties or some other neutral method.
 3 Is this a case that -- why shouldn't that
 4 position be the one that I take on this as
 5 opposed to having an interested person such as
 6 Ted involved?
 7 MR. PANKAUSKI: Your Honor, Mr. Bernstein
 8 is uniquely qualified to serve and he's willing
 9 to serve without compensation.
 10 He also has personal knowledge about
 11 litigation which the estate is involved in. He
 12 also has personal knowledge about the assets
 13 and liabilities of the decedent, his father.
 14 THE COURT: So let me -- did Simon die
 15 testate or intestate?
 16 MR. PANKAUSKI: He died with a will,
 17 testate.
 18 THE COURT: And who were the designated
 19 PRs?
 20 MR. PANKAUSKI: The designated PRs were
 21 Mr. Tescher and Mr. Spallina, who have now
 22 resigned.
 23 THE COURT: Okay. And no one else?
 24 MR. PANKAUSKI: Correct. No successor was
 25 named in the will.

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1 THE COURT: Is there a preference of
 2 appointment that someone has at this stage?
 3 MR. PANKAUSKI: Well, nobody has a
 4 majority in interest of the rev trust
 5 beneficiaries, no.
 6 THE COURT: Everyone agree with that?
 7 MR. FEAMAN: That's correct.
 8 THE COURT: No preference, okay.
 9 All right. So it's Ted against the world.
 10 Okay. So I got it.
 11 Well, no, you want Eliot or who, Mr.
 12 Feaman?
 13 MR. FEAMAN: Eliot or independent.
 14 THE COURT: Or independent. Okay.
 15 MR. BERNSTEIN: Excuse me, Your Honor.
 16 THE COURT: And, Eliot, who do you want?
 17 MR. BERNSTEIN: I'm happy with Peter's.
 18 I'm happy with the independent. I'd like to be
 19 a co-personal representative and I'll, you
 20 know, bow out of any conflict situation that I
 21 would see and feel obligated to.
 22 THE COURT: Okay. All right.
 23 So, Mr. Pankauski, you're up on your
 24 motion.
 25 MR. PANKAUSKI: Thank you, Your Honor.

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1 Mr. Ted Bernstein, my client, is not a
 2 beneficiary under the estate. He also is
 3 trustee of his father's revocable trust.
 4 And I'm prepared to call Ted to ask him
 5 questions so you have a record.
 6 THE COURT: Okay. Your first witness.
 7 MR. FEAMAN: Your Honor, if it please the
 8 Court, I have prepared an opening statement, if
 9 Your Honor would allow it.
 10 THE COURT: Okay.
 11 MR. FEAMAN: It's fairly brief.
 12 THE COURT: Okay. Go ahead.
 13 MR. FEAMAN: All right. Thank you, Your
 14 Honor.
 15 If I may approach the --
 16 THE COURT: Sure.
 17 MR. FEAMAN: I represent Mr. Stansbury.
 18 And I want to set a little predicate as to who
 19 Mr. Stansbury is. He's a creditor of the
 20 estate, because he's a plaintiff and the estate
 21 is one of the defendants.
 22 However, Your Honor, Mr. Stansbury is a
 23 lot more than that as it relates to Ted
 24 Bernstein. Because before the passing of Simon
 25 Bernstein, which brings us here today,

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1 Mr. Stansbury brought suit against Simon
 2 Bernstein, but also his son Ted Bernstein, both
 3 in their individual capacities and various
 4 corporations that they controlled.
 5 During the time that Mr. Stansbury, who is
 6 in the courtroom today, did business with the
 7 Bernsteins through life insurance companies.
 8 Now, the claims in the underlying estate are
 9 for breach of fiduciary duty against both
 10 father and son, breach of contract, fraud in
 11 the inducement.
 12 And while it may seem on the surface that
 13 as co-defendants their interests are aligned,
 14 it's not, because it's a multi-count complaint,
 15 Your Honor. And one of the iterations of the
 16 complaint is attached to our submission.
 17 We have a second complaint. The second
 18 complaint, Your Honor, which is more relevant.
 19 The second amended complaint --
 20 THE COURT: And these are circuit civil
 21 actions, correct?
 22 MR. FEAMAN: Yes, Your Honor. They're in
 23 Judge Peter Blanc's division.
 24 And the second amended complaint, which is
 25 actually the operative document. I apologize,

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1 Your Honor, the amended complaint was attached.
 2 May I approach?
 3 THE COURT: Sure.
 4 MR. FEAMAN: Thank you. And it's marked
 5 as Stansbury's Exhibit B, Your Honor.
 6 I'd like to draw your attention first to
 7 Count IV of the second amended complaint,
 8 because Count IV is a count against Mr. Ted
 9 Bernstein, but it's not against Simon
 10 Bernstein.
 11 And there are other claims throughout
 12 this complaint which show that while they're
 13 co-defendants, as discovery progresses, Your
 14 Honor, it can easily come to pass that there
 15 could be cross-claims between the co-defendants
 16 for indemnification or contribution depending
 17 on the degree of negligence that a jury may
 18 assign at some point.
 19 So we would ask that because of that, Your
 20 Honor, there is clear conflict of interest that
 21 would -- that arises because Mr. Ted Bernstein,
 22 should he become appointed as the either
 23 curator or successor personal representative,
 24 as an individual defendant and managing the
 25 affairs of the estate, there can easily be

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1 overlap.
 2 The estate could be used to pay his
 3 individual attorney's fees and it creates, I
 4 think, a whole host of conflicts that the
 5 children certainly, it seems to me, would be
 6 very weary of. Children of the other siblings
 7 of Mr. Simon Bernstein and the grandchildren.
 8 Now, in addition to that, Your Honor,
 9 there are emails which are attached to our
 10 response. And we would intend to offer those
 11 as exhibits today.
 12 The email shows a concerted effort by Ted
 13 Bernstein to keep assets that might otherwise
 14 be payable to the estate to go directly to the
 15 children of Simon Bernstein, specifically for
 16 the purpose of avoiding Mr. Stansbury as a
 17 creditor.
 18 And, as Your Honor knows, one of the jobs
 19 of the personal representative is to watch out
 20 for all of the interested parties in the
 21 estate, which would include Mr. Stansbury as a
 22 creditor. And the emails show that
 23 Mr. Stansbury is even mentioned by name.
 24 They filed a lawsuit up in Chicago in
 25 order to have the insurance company Heritage

<p style="text-align: right;">34</p> <p>1 direct the proceeds of the life insurance 2 policy on Simon Bernstein's life directly to 3 the kids rather than to the estate. 4 Right there that sets up a terrible 5 conflict of interest based on his past conduct. 6 THE COURT: Who is the beneficiary of the 7 life insurance? 8 MR. FEAMAN: Well, that's what's in 9 dispute, Your Honor, because they claim that 10 there is an insurance trust that set up the 11 children as the beneficiaries. However, the 12 insurance trust is lost and nobody can find it. 13 So Heritage said, in the absence of a 14 designated beneficiary, as you know, it should 15 go to the estate. 16 So there is an impleader action going on 17 up in the Northern District of Illinois. And 18 that is in direct response of Ted Bernstein 19 trying to direct those -- and, by the way, it's 20 not an insubstantial sum, Your Honor, it's 21 \$1.7 million. My client's claims against the 22 estate are that and more. 23 So this is very significant that 24 Mr. Bernstein would try to redirect that, which 25 certainly he has the -- if he thinks he has the</p>	<p style="text-align: right;">36</p> <p>1 THE COURT: I've got it for opening 2 statement purposes. I understand what you're 3 saying. I'll let you present some evidence. 4 MR. FEAMAN: Thank you. 5 THE COURT: Do you have an opening, 6 counsel, that you want to give? 7 MR. GLASKO: No, sir. 8 THE COURT: All right. So let me ask 9 this. Mr. Pankauski, Mr. Feaman suggested 10 through an oral motion, which I'm not going to 11 act on, that there may be grounds to disqualify 12 you from representing Ted Bernstein and sort of 13 discussed it a little bit in open court. 14 I've already said and he's required by the 15 rule to put it in writing. He suggested that 16 there may have been some prior representation 17 of Eliot Bernstein. 18 I want to do something right now that I 19 think is appropriate. I'm going to recess for 20 a few minutes and I want you to talk to Mr. 21 Feaman outside so there is no record of this 22 discussion, because I want, if a motion is 23 filed, I want it to be in writing. 24 But I think what I want you to do, 25 Mr. Feaman, is tell him as much as you know</p>
<p style="text-align: right;">35</p> <p>1 right to do, Your Honor. 2 I don't blame Mr. Bernstein in his 3 individual capacity to try to keep money out of 4 the estate if he's a beneficiary of the estate, 5 but once he crosses that line as the personal 6 representative -- 7 THE COURT: You're kind of going out of 8 opening statement to closing argument. 9 MR. FEAMAN: Thank you, Your Honor. I'll 10 move on. 11 And then further, Your Honor, the law is 12 such that Ted Bernstein has made 13 misrepresentations to this Court and others in 14 the past in connection with the Shirley 15 Bernstein estate and in connection with this 16 estate and other governmental authorities' 17 evidence we would put on, which would show that 18 Ted Bernstein is, outside of the conflict of 19 interest, is not otherwise qualified based on 20 his basic character in how he has conducted 21 himself in the past, which, as Your Honor 22 knows, since there is no preference, Your Honor 23 is allowed to take in the totality of the 24 situation as to whether Mr. Bernstein should be 25 appointed as a personal representative.</p>	<p style="text-align: right;">37</p> <p>1 about the situation. And then you, having 2 heard it, let me know whether you still think 3 it's appropriate to go forward with 4 representing Ted or that there's a bona fide 5 reason that under the conflict of interest 6 rules you can't. 7 MR. PANKAUSKI: Understood. 8 THE COURT: So go ahead. Let's do that 9 first and then we'll get back. 10 Just let my bailiff know when you are 11 ready. 12 (Brief recess taken.) 13 THE COURT: Okay. So were you able to 14 have that informal conversation? 15 MR. PANKAUSKI: Yes, Your Honor. 16 MR. FEAMAN: Yes, Your Honor. 17 THE COURT: So are you still going to go 18 forward with that written motion? 19 MR. FEAMAN: Yes. 20 THE COURT: Okay. And is there a bona 21 fide basis for the filing of the motion? 22 MR. PANKAUSKI: No, Your Honor. In fact, 23 I'm content to have you decide whether I'm 24 disqualified right here and right now. 25 THE COURT: Yeah, but I can't do that</p>

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1 without it in writing. I just did a little
 2 research on that, because I think I've had this
 3 issue come up one time before that actually got
 4 this far. And I think, one, it has to be in
 5 writing because there is some verification
 6 requirements.
 7 MR. FEAMAN: Right.
 8 THE COURT: So the form of it is
 9 important.
 10 I dealt with this issue in a family law
 11 case, but it was long enough ago that I tried
 12 to pull the order that I wrote, but it's not
 13 imaged, so I can't get it, so I could get a
 14 better handle on what the standards were, given
 15 that the representation was that you had
 16 consulted with another party, that is Eliot
 17 Bernstein, in some form.
 18 And that was exactly the issue in this
 19 other case that I dealt with. If you want, I
 20 can tell you what the other case is in a few
 21 moments.
 22 The only thing I'm thinking about, though,
 23 is with a motion to disqualify, I'm not certain
 24 now whether it's appropriate to go forward on
 25 these motions that are left. And I think not,

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1 because that's what I also double-checked,
 2 because when a motion to disqualify comes,
 3 whether of counsel or of a court, if it was a
 4 judge, you have to stop and do that without
 5 question. It's a little bit less certain on a
 6 lawyer, but the word is that it's a better
 7 practice to dispose of those immediately.
 8 I mean, it has to be writing. I don't
 9 think they could ever get it written that
 10 quickly that I could get it served on
 11 everybody, so I'm going to have to hear those
 12 first before I can hear the remaining motions.
 13 What I will do is, if you tell me, Mr.
 14 Feaman, how quickly you can get it, I'll set
 15 this right away. I'll set it now. And I'll
 16 set the motion to appoint a curator for the
 17 same time.
 18 We're leaving enough time so we can hear
 19 the motion to disqualify. And then if it's
 20 granted, it's granted. And then we're not
 21 going to probably be able to go forward on
 22 their motion because Ted would be pro se. And
 23 there is no competing motions, correct?
 24 MR. FEAMAN: Ted is also represented by
 25 Mr. Rose here, so he is not without counsel.

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1 THE COURT: Okay. Well, Mr. --
 2 MR. FEAMAN: But I don't know if he's --
 3 THE COURT: Right, but he wants
 4 Mr. Pankauski for purposes of this motion.
 5 MR. FEAMAN: I'll file that motion
 6 tomorrow, Your Honor. I have no interest in
 7 trying to delay.
 8 THE COURT: Sure, I understand that. So
 9 let me just see how -- now we have this new
 10 calendaring system. Let me see how this thing
 11 works.
 12 Okay. All right. So, I mean, what I'm
 13 going to say now would take everyone to want to
 14 be able to do this. If you can literally get
 15 it done immediately, I have time tomorrow
 16 afternoon that opened, if everyone can do it.
 17 MR. FEAMAN: I could file it by
 18 5:00 o'clock tomorrow, Your Honor. I can't get
 19 it done. I've got a hearing on Thursday in
 20 another court I have to prepare for. I have a
 21 meeting with a client in Delray later today.
 22 THE COURT: All right. Let me look.
 23 Hold on. This is -- I don't have, they
 24 don't let me have a book anymore. They took it
 25 away from me. And now they make the computer

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1 calendar so small I can barely read it, so I'm
 2 trying.
 3 So how about the 27th, a week from
 4 Thursday? I have two hours I can give you.
 5 MR. PANKAUSKI: Your Honor, I'm leaving
 6 for an overseas vacation next Tuesday, so I'm
 7 out till about March 15th.
 8 THE COURT: All right. Then we've got to
 9 do this before. So let's see. Let me go back
 10 to the beginning.
 11 I know it's going to be inconvenient, Mr.
 12 Feaman, but it really would be helpful. And I
 13 understand it may be an abbreviated way of
 14 doing it. Maybe your assistant can help you.
 15 Is there any way you can get it done by the end
 16 of the day or first thing in the morning?
 17 I mean, everyone is here. That way I can
 18 do it tomorrow afternoon.
 19 MR. FEAMAN: Okay.
 20 THE COURT: Okay. Because, I mean, I just
 21 don't have time and now that I know that.
 22 MR. FEAMAN: We'll try to get it done by
 23 noon?
 24 THE COURT: Okay. How about that?
 25 MR. PANKAUSKI: That's fine, Your Honor.

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1 What time would you like us here tomorrow?
2 THE COURT: Hold on, let me just go back.
3 All right. Two-thirty tomorrow. And you
4 have from 2:30 to 5:00 then. I'll expand the
5 time that you had for today. So between the
6 motion to disqualify and then the evidentiary
7 hearing on the motion to appoint.
8 MR. PANKAUSKI: Thank you, Your Honor.
9 THE COURT: Okay. We'll do that all. We
10 have two-and-a-half hours. Does that give you
11 enough time?
12 MR. PANKAUSKI: Yes, Your Honor.
13 THE COURT: You think so, everyone?
14 MR. FEAMAN: Yes, sir.
15 MR. GLASKO: You said 1:30, Judge?
16 THE COURT: Two-thirty.
17 MR. GLASKO: Judge, may I have permission
18 to appear by phone at the beginning of the
19 hearing? I'm coming down at 1:00 o'clock.
20 THE COURT: Sure. Yeah, if you'll just
21 tell counsel, I'll just call you directly from
22 my office phone until you get here. You don't
23 even have to go on CourtCall.
24 All right. So, Mr. Feaman, I'm going to
25 give you my fax number. Fax me over a copy of

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1 your motion.
2 Ready? (561)274-1418.
3 And really it's right, because now that
4 I'm looking, I have another case where there is
5 a hearing, an evidentiary hearing set for next
6 Monday, and there is a motion to disqualify
7 counsel and I have that set for Thursday.
8 And I remember why I did that, because I
9 thought the better practice was to have that
10 done before the hearing on which the matter is
11 set.
12 So, okay. So file that motion. And then
13 I'll do both of them and everything else that
14 we have to do on this tomorrow starting at
15 2:30. Okay?
16 All right. Thanks, everybody.
17 MR. PANKAUSKI: Your Honor, I feel it's
18 important that we disclose something to you.
19 THE COURT: Okay.
20 MR. PANKAUSKI: The reason the personal
21 representatives resigned is because, in the
22 course of this estate administration, evidently
23 a fabricated document was discovered. A trust
24 amendment was fabricated. And my sense is Your
25 Honor wants to know about that.

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1 THE COURT: Well, I might. And I think
2 that was brought by Eliot to my attention at
3 some point before today; isn't that true?
4 MR. BERNSTEIN: No. Well, part of it is,
5 but there was an admission to authorities by
6 Mr. Tescher of alleged, if you believe anything
7 they say anymore, but that came out that there
8 was another document on top of the forged one
9 that also tried to switch beneficiaries.
10 Which, by the way, Your Honor, Ted's
11 centrally involved in picking all these
12 attorneys who are bleeding this --
13 THE COURT: Well, that's what tomorrow's
14 hearing is. Let's not pickpocket yet.
15 Okay. Well, so, I mean, prior hearings
16 reveal the issue of forgery, I don't know what
17 documents, I don't remember them, that existed.
18 It may be more than one.
19 MR. PANKAUSKI: But I'm learning from
20 Mr. Rose and Mr. Bernstein, Ted, is Your Honor
21 dealt with a back-dated notary clause.
22 THE COURT: Okay.
23 MR. PANKAUSKI: There is another instance
24 of a trust amendment, an entire trust
25 amendment, that was evidently fabricated that

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1 was disclosed to my client back in January.
2 THE COURT: All right.
3 MR. PANKAUSKI: And so my sense is that's
4 one of the things that this Court wants to know
5 about.
6 THE COURT: Well, okay. I'll hear
7 anything that you think on the issue of -- I
8 mean, everyone is in agreement that now that
9 Tescher and Spallina are off, someone has to
10 take their place, true?
11 MR. PANKAUSKI: Yes, Your Honor.
12 THE COURT: I mean, we're not going to
13 have a vacuum there. So, I mean, this part
14 isn't too complicated. The issues are Ted,
15 Eliot, or a curator who is not related to those
16 two?
17 MR. PANKAUSKI: Yes, Your Honor.
18 THE COURT: So we can get that done
19 tomorrow afternoon.
20 Okay. Thanks. See you then.
21 MR. GLASKO: Judge, --
22 THE COURT: Yes.
23 MR. GLASKO: -- I'm sorry, I'd like to
24 ask. I only have the motions that were heard
25 today. I'd just like to ask counsel -- I'll

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1 give you my card, because I'd like to ask
2 counsel to deliver the motions for tomorrow to
3 me tonight, if you'd be so kind.

4 MR. PANKAUSKI: Well, he's filing,
5 Mr. Feaman is filing the motion for tomorrow.

6 MR. GLASKO: Whatever is being heard
7 tomorrow.

8 THE COURT: Yeah, give him an extra copy
9 of the motion -- here, take mine.

10 MR. PANKAUSKI: I've got one, Judge.

11 THE COURT: The motion for appointment you
12 can take. I have Mr. Feaman's response. Do
13 you have that already?

14 MR. GLASKO: I do not.

15 THE COURT: They'll give that to you.

16 Thank you very much.

17 (The hearing was adjourned.)
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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.

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.

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

DATE: FEBRUARY 19, 2014

TIME: 2:30 P.M. - 5:03 P.M.