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November 7, 2011

THE BENJAMIN FRANKLIN HOUSE
834 CHESTNUT STREET, SUITE 206
PHILADELPHIA, PENNSYLVANIA 19107
(215) 627-8653


Honorable Stanley R. Ott
Montgomery County Courthouse
P.O. Box 311
Norristown, PA 19404-0311

Re: In re Barnes Foundation, a Corporation
Orphans' Court Docket No. 58,788

Dear Judge Ott:

Please be advised I represent the Petitioners, Friends of the Barnes Foundation, et al. Enclosed is our Objection to the Sanctions and the amounts. We are requesting a hearing. If I could just impose on your secretary to check with me on dates and times, I do have a number of trials scheduled because things were backed up after my District Attorney race. Thank you.

Respectfully yours,



Samuel C. Stretton

SCS:jac

Enc.

Cc: Lawrence Barth, Esquire
Ralph G. Wellington, Esquire
Richard R. Feudale, Esquire
Eveyln Yaari
Sandra Bressler

SAMUEL C. STRETTON
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November 9, 2011

THE BENJAMIN FRANKLIN HOUSE
834 CHESTNUT STREET, SUITE 206
PHILADELPHIA, PENNSYLVANIA 19107
(215) 627-8653

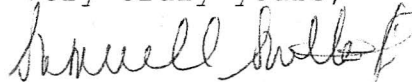
Register of Wills
and Clerk of the Orphans' Court
One Montgomery Plaza - 4th Floor
P.O. Box 311
Norristown, PA 19404-0311

Re: In re Barnes Foundation, a Corporation
Orphans' Court Docket No. 58,788

Dear Sir or Madam:

Please be advised I represent the Petitioners, Friends of the Barnes Foundation, Evelyn Yaari, Sandra G. Bressler, Hope Broker, Richard Feigen, Sidney Gecker, Dr. Walter Herman, Nancy Clearwater Herman, Sue Hood, Julia Bissell Leisenring, Robert Marmon, Toby Marmon, Costa Rodriguez, Barbara B. Rosin and Barnes Watch, in the captioned matter. Enclosed please find the original and three (3) copies of the Petitioners' Motion Requesting an Evidentiary Hearing on the Reasonableness of Fees and the Necessity of Sanctions. Attached to the Motion is a Certificate of Service. I would ask for your assistance in filing this of record. Thank you.

Very truly yours,


Samuel C. Stretton

SCS:jac

Enc.

Cc: Honorable Stanley R. Ott
Lawrence Barth, Esquire
Ralph G. Wellington, Esquire
Richard R. Feudale, Esquire
Evelyn Yaari
Sandra Bressler

VIA HAND DELIVERY

SAMUEL C. STRETTON, ESQUIRE
301 SOUTH HIGH STREET
P.O. BOX 3231
WEST CHESTER, PA 19381-3231
ATTORNEY I.D. NO. 18491
(610) 696-4243

IN RE: THE BARNES FOUNDATION, : IN THE COURT OF COMMON PLEAS
A CORPORATION : MONTGOMERY COUNTY, PENNA.
: ORPHANS' COURT DIVISION
: NO. 58,788

PRELIMINARY DECREE

AND NOW, this day of , 2011, a
Citation is directed to Barnes Foundation and the Attorney
General of Pennsylvania to show cause why the matter should not
be listed for an evidentiary hearing on the reasonableness of
fees and the necessity of sanctions. A hearing is scheduled
for the day of , 2011, in
Courtroom , Montgomery County Courthouse, Norristown,
Pennsylvania, at AM/PM.

BY THE COURT:

J.

SAMUEL C. STRETTON, ESQUIRE
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ATTORNEY I.D. NO. 18491
(610) 696-4243

IN RE: THE BARNES FOUNDATION, : IN THE COURT OF COMMON PLEAS
A CORPORATION : MONTGOMERY COUNTY, PENNA.
: ORPHANS' COURT DIVISION
: NO. 58,788

ORDER

AND NOW, this day of , 2011,
upon consideration of the Petitioners' Motion Requesting an
Evidentiary Hearing on the Reasonableness of Fees and the
Necessity of Sanctions, it is hereby ORDERED and DECREED as
follows:

BY THE COURT:

J.

SAMUEL C. STRETTON, ESQUIRE
301 SOUTH HIGH STREET
P.O. BOX 3231
WEST CHESTER, PA 19381-3231
ATTORNEY I.D. NO. 18491
(610) 696-4243

IN RE: THE BARNES FOUNDATION, : IN THE COURT OF COMMON PLEAS
A CORPORATION : MONTGOMERY COUNTY, PENNA.
: ORPHANS' COURT DIVISION
: NO. 58,788

MOTION REQUESTING AN EVIDENTIARY HEARING ON THE REASONABLENESS
OF FEES AND THE NECESSITY OF SANCTIONS

The Petitioners, Friends of the Barnes Foundation, Evelyn Yaari, Sandra G. Bressler, Hope Broker, Richard Feigen, Sidney Gecker, Dr. Walter Herman, Nancy Clearwater Herman, Sue Hood, Julia Bissell Leisenring, Robert Marmon, Toby Marmon, Costa Rodriguez, Barbara B. Rosin and Barnes Watch, by and through their counsel, Samuel C. Stretton, Esquire, pursuant to the Opinion of the Honorable Stanley Ott dated October 6, 2011, and the Order of the Honorable Stanley Ott dated November 3, 2011, hereby respectfully request a hearing on the reasonableness and/or necessity of the fees and costs and set forth the following:

1. Petitioner fought to reopen the Barnes case based on what they believed was a reasonable issue concerning standing. Based on the comments of then Attorney General Fisher, where he stated he threatened Lincoln University on the Barnes issue, in a documentary movie and based on the fact that the Attorney

General's office did next to nothing during the hearings in 2003 and 2004, the Petitioners through present counsel, raised the issue of standing based on the private Attorney General's theory and the conflict of interest of the Attorney General's office.

2. The Petitioner's theory was really quite simple. Petitioners believed they had standing through the private Attorney General's theory, which is a theory that is recognized in Pennsylvania case law as seen in the cases cited in the Petitioners' Brief. The Petitioners believed that based on Attorney General Fisher's comments, some of which were not known, that the Attorney General of Pennsylvania had a conflict and could not adequately represent the public interest, and therefore, they should be given standing under a private Attorney General theory.

3. The Petitioners attempted to introduce accounting reports at the time of the oral argument before Judge Stanley Ott to demonstrate how they would have proven that the Barnes Foundation had adequate funds to remain in the location in Montgomery County.

4. Petitioners lost that argument before Judge Ott in his Opinion on October 6, 2011.

5. Judge Ott, in his Opinion, surprisingly stated that the fact that the Petitioners raised the budget appropriation

issue should be a basis for sanctions (see page 8 of Judge Ott's Memorandum Opinion dated October 6, 2011).

6. What is surprising about Judge Ott's suggestion is that the appropriation issue was just one example of information not fully presented. The real essence of what the Petitioners alleged was new information about the Attorney General's conflict of interest and resulting standing under a private Attorney General's theory. This was the issue highlighted by the Petitioners. The appropriations issue was referenced as one example of the consequences of less than adequate representation by the Attorney General's office. A review of the Petitioner's Brief demonstrates the same.

7. What is particularly surprising is that Judge Ott said he rejected the appropriation issue in 2008. But, the 2008 hearing resulted in a dismissal based on denial of standing. Judge Ott never reached the merits of any issues raised in the 2008 proceeding since he denied standing and dismissed the case.

8. Judge Ott was not aware of the appropriations issue in the hearings in 2003 and 2004. This is clearly seen by Judge Ott's letter dated September 27, 2006 to Dr. Walter Herman wherein Judge Ott indicated he was not aware of that appropriation before September 25, 2006, almost two years after the original hearings. This letter of Judge Ott is attached and marked as Exhibit "A".

9. Since Judge Ott acknowledged he was not aware of the appropriation issue during the hearings in 2003 and 2004, it would seem very logical to reference it in the Petitioners' present Brief since the issue was never addressed or decided in the 2008 hearing because the Petition was concluded by a dismissal based on lack of standing. Judge Ott's comments that the resurrection of the budget appropriation issue renders the Petitioners' filing sanctionable makes absolutely no sense. If the issue wasn't decided, the Petitioners certainly had the right to at least reference it in their current Petition. But their current Petition's focus was not on the appropriations issue, but was on the private Attorney General's theory and what appeared to be new information concerning the Attorney General's conflict of interest. Therefore, it appears to be ill-put to suggest sanctions on what was a carefully crafted and innovative argument, which had not been addressed before.

10. In reference to the bill presented by the Schnader Law Firm for \$64,269.41, the Petitioners object that this bill is outrageously excessive under the circumstances. The objections are follows:

a.) A good portion of Schnader's bill dealt with the Richard Feudal brief. The Petitioners in no way have ever endorsed Mr. Feudal's brief or position. Mr. Feudal acted on his own. It appears that at least seventeen hours of

the time presented directly references the Feudal brief. There may also be other times in the bill that also relate to the Feudal brief. But clearly anything relating to the Feudal brief would not apply to the current Petitioners.

b.) The fee is excessive since the hourly rate of billing for three of the four lawyers is \$450.00 per hour. That is an extremely excessive fee for representing charitable organizations.

c.) The fee is very excessive since there were four lawyers working on this case. It makes no sense why four lawyers would be needed. If lawyers are billing at \$450.00 per hour, presumably they have the expertise and knowledge to handle this and there was no need for more than one attorney to do the work.

d.) The total amount of time billed of 140 hours, is extremely excessive. The issue was a very simple one. The issue was whether or not the case should be reopened because there was new information in the documentary film that suggested a conflict of interest that was undisclosed. The private Attorney General theory had never been raised before. Mr. Stretton and the Petitioners had developed evidence and had additional evidence, which they would have presented if given a hearing, to demonstrate that there were ample funds to keep the Barnes paintings in the

Montgomery County location. This was not a complex theory. It was a very basic issue in terms of fundamental fairness as to how the hearings were conducted in 2003 and 2004 due to the lack of participation of the Attorney General and lack of standing of anyone else. In 2007, there was another attempt to raise some of the issues. At that point, the full extent of the Attorney General's involvement and conflict was not known. In fact, additional evidence as to the Attorney General and governor's involvement was reflected in the letter sent by the prior attorney, Mark Schwartz, to Judge Ott on October 28, 2008. A copy of Mr. Schwartz's letter is attached and marked as Exhibit "B". This was after Judge Ott's decision dismissing the 2007/2008 petition based on lack of standing. There was absolutely no reason for the Schnader firm to spend 140.30 hours of time. That would mean the firm spent 17.5 eight hour days working only on this case. Three and a half weeks to draft the Brief is absurd. Such time is absolutely excessive. Mr. Stretton wrote his brief in approximately 5 to 10 hours. The total amount of time submitted is grossly excessive.

e.) Further, excessive hours of preparation for the oral argument was spent. There was no hearing, but just an argument. Once the brief was written, the issues would have

been know. Yet there are 5.6 hours for preparing for argument on June 23rd, 50 minutes preparing for the argument on June 29th, 30 minutes on July 8th, and hour and a half on July 11th, an hour on July 15th, 7 hours on July 19th, an hour and a half on July 20th, 40 minutes on July 21st, 1 hour and 60 minutes on July 26th, 2 hours and 10 minutes on July 28th, another 2 hours and 40 minutes on July 28th, another hour and 20 minutes on July 28th, an hour on July 29th, another 50 minutes on July 29th, another hour on July 29th, 3 hours on July 31st, 6 hours on August 1st. That is extremely excessive. Once the briefs were written, it should have been a matter of several hours for review. Mr. Stretton spent only several hours the day before reviewing for the argument. There were no additional witnesses to be presented. It would be inconceivable that so much time would be necessary for a very straight forward argument. Such time is extraordinarily excessive under any circumstance.

f.) The cost of 3,176.00 is also extremely excessive under the circumstances. There is a Lexis charge for \$2,659.00. Presumably that must be for legal research. But, most firms pay a flat fee for West Law or Lexis research. There would be absolutely no basis for a fee of \$2,659.00. Further, the \$.14 per copy for 961 copies is

extremely excessive since presumably they were using their own copy machine, and at most would cost \$.05.

11. Mr. Stretton, on behalf of the Petitioners, respectfully request this Honorable Court strike any sanctions against his clients on the basis that sanctions due to the reference to the appropriation is not warranted. Such a sanction request misreads the Petitioner's Brief, which is primarily based on the very simple concept of newly acquired evidence of the Attorney General's conflict, the authority of the Attorney General to do their job, and use of private Attorney General theory, which has been recognized in the law. Further, the Petitioners essentially were attempting to have this Honorable Court define the role of the Attorney General so there would be in the future, no such failures and/or lack of disclosure of potential conflicts. These were good and serious issues. Although this Honorable Court disagreed, they are not sanctionable issues. The appropriation issue was not the thrust of the Petitioner's Brief.

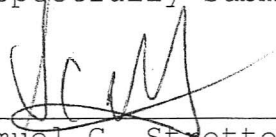
12. Further, the Petitioners relied on Mr. Stretton as their attorney. Mr. Stretton truly believed that this was an argument and issue that was appropriate based on the information in the documentary film and based on his analysis of the private Attorney General theory. This was a good faith effort and attempt to raise issues that had not been raised before. The

Petitioners had a right to rely on their attorney's advice and should not be sanctioned.

13. In the alternative, the Petitioners request any sanctions be greatly reduced since the fees and costs are excessive.

WHEREFORE, the Petitioners, by their counsel, Samuel C. Stretton, Esquire, respectfully request this Honorable Court discharge the sanction order and order no sanctions be imposed. In the alternative, the Petitioners contend that the \$61,000.00 in fees and \$3,000.00 in costs are grossly excessive under the circumstances and should not be awarded, Petitioners request a hearing on all of these issues.

Respectfully submitted,



Samuel C. Stretton, Esquire
Attorney for Petitioners,
Friends of the Barnes Foundation, et al.
301 South High Street
P.O. Box 3231
West Chester, PA 19381-3231
(610) 696-4243
Attorney I.D. No. 18491

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IN RE: THE BARNES FOUNDATION, : IN THE COURT OF COMMON PLEAS
A CORPORATION : MONTGOMERY COUNTY, PENNA.
: ORPHANS' COURT DIVISION
: NO. 58,788

CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of
Petitioners' Motion in the captioned matter upon the following
persons in the manner indicated below.

Service by First Class Mail addressed as follows:

1. Honorable Stanley R. Ott
Montgomery County Courthouse
P.O. Box 311
Norristown, PA 19404-0311
2. Lawrence Barth, Esquire
Senior Deputy Attorney General
Commonwealth of Pennsylvania
Office of the Attorney General
Charitable Trusts & Organizations Section
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
3. Ralph G. Wellington, Esquire
Schnader, Harrison, Segal & Lewis
1600 Market Street, Suite 3600
Philadelphia, PA 19103
4. Richard R. Feudale, Esquire
33 E. 3rd Street
P.O. Box 227
Mount Carmel, PA 17851-0227

5. Eveyln Yaari
35 Overhill Road
Bala Cynwyd, Pennsylvania 19004
6. Sandra Bressler
816 South 10th Street
Philadelphia, PA 19147

Respectfully submitted,

11/8/11

Date



Samuel C. Stretton, Esquire
Attorney for Petitioners
301 S. High Street
P.O. Box 3231
West Chester, PA 19381
610-696-4243
Attorney I.D. No. 18491

PRESIDENT JUDGE
S. GERALD CORSO

COURT OF COMMON PLEAS

SENIOR JUDGE
WILLIAM W. VOGEL

ASSOCIATE JUDGES

WILLIAM T. NICHOLAS
PAUL W. TRESSLER
JOSEPH A. SMYTH
STANLEY R. OTT
MAURINO J. ROSSANESE, JR.
BERNARD A. MOORE
WILLIAM J. FURBER, JR.
WILLIAM R. CARPENTER
RICHARD J. HODGSON
RHONDA LEE DANIELE
KENT H. ALBRIGHT
EMANUEL A. BERTIN
THOMAS M. DELRICCI
CALVIN S. ORAYER, JR.
R. STEPHEN BARRETT
ARTHUR R. TILSON
THOMAS G. BRANCA
TOBY LYNN DICKMAN
STEVEN T. O'NEILL
THOMAS P. ROGERS



MONTGOMERY COUNTY
THIRTY-EIGHTH JUDICIAL DISTRICT
NORRISTOWN, PENNSYLVANIA
19404

September 27, 2006

Walter Herman, MD
275 North Latch's Lane
Merion, PA 19066

Re: The Barnes Foundation

Dear Dr. Herman:

I write to respond to yours of September 25, 2006, received today. Your reference to Senate Bill 1213 of 2001 was, to my knowledge, the first I've seen or heard of same. Although there is no context provided by the single page you sent to me, I can certainly understand how the line item in question would prompt speculation.

The role of the courts generally, and the Orphans' Court Division particularly, is well defined by rules, statutes and common law. One of the longest recognized principles binding on courts is that a judge may respond only to justiciable controversies properly framed by pleadings of record. Presently, there are no pleadings relating to the Barnes proposed move before me.

Though I understand that controversial cases will invariably provoke and inspire speculation from the community at large, judges are forbidden from engaging in a public dialogue thereon. Consequently, I must respectfully decline to comment further on the effects, if any, of Senate Bill 1213.

Very truly yours,


STANLEY R. OTT

SRO:src

Exhibit A

Oct. 13 2011 01:40PM P2

PHONE NO. : 6105255534

FROM : SCHWARTZ

MARK D. SCHWARTZ
Attorney at Law
Post Office Box 330
Bryn Mawr, Pennsylvania 19010-0330

Telephone & Fax- 610 525-5534

Via Regular Mail

October 28, 2008

Honorable Stanley R. Ott
Court of Common Pleas of Montgomery County
Montgomery County Courthouse
PO Box 311
Norristown, PA 19040-0311

Re: The Barnes Foundation - No. 58,788

Dear Judge Ott:

As you may recall, I withdrew from representing certain petitioners on whose behalf I filed a Petition to Reopen Proceedings. They included one who was granted amicus standing in prior proceedings in which you ruled that the Barnes Foundation could move its collection. My withdrawal notwithstanding, I recognize that attorneys in proceedings are not only advocates but also "Officers of the Court". As I take the latter role as seriously as I do the former, I wish to bring the following fact to your attention.

In the October 16, 2008 edition of The Philadelphia Inquirer, Governor Edward G. Rendell is quoted as follows: "I think it's been 14 or 15 years since [art patron] Ray Perelman first came to me with this idea to move the Barnes." As you are aware 14 or 15 years ago takes us back to 1993 or 1994. This is many years before the so-called sudden fiscal emergency that the Barnes Foundation presented to you in its carefully choreographed presentation that prompted you to rule in 2004 that the move could be accomplished. If my memory serves me correctly from the transcripts that I read, neither Mr. Rendell nor Mr. Perelman testified on behalf of the Barnes Foundation nor was the Court made aware of their activities during that 14 or 15 year time frame.

I have reviewed your ruling of May 15, 2008 dismissing the Petition for failure of the Petitioners to have standing. However, nowhere in that ruling do you address your own powers in these continuing proceedings to reopen those proceedings when material facts may have been kept from you. The Governor's statement is really quite an interesting admission, which contradicts that carefully choreographed presentation that the Barnes Foundation made to you upon which you based your 2004 ruling.

When I attempted to demonstrate the fact that you could re-open the proceedings on your own, you accused me of grandstanding. What is more, you went on to state in

Exhibit "B"

Oct. 13 2011 01:40PM P3

PHONE NO. : 6105255534

FROM : SCHWARTZ

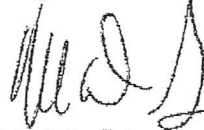
The Honorable Stanley R. Ott
(Continued-2)

your May 15, 2008 ruling that "The seventy-seven page petition filed on behalf of the Friends was a 231 page diatribe, rampant with scattershot accusations, arguments, and conjecture." Nevertheless, you may now consider the fact that Mr. Rendell's comments go quite some distance in validating what is set forth in that Petition.

You and I both know that the strength of the American Judiciary fragilely rests only upon the people's respect for its decisions. This statement from Governor Rendell, the highest elected official of the Commonwealth, himself a member of the bar, and former District Attorney, really signifies disrespect for the Judiciary in the Barnes matter. This is not something that should be disregarded and allowed to stand without inquiry by you.

Accordingly, as an Officer of the Court who wants to reinforce the respect that the Judiciary deserves, I bring his statement to your attention with a plea that you revisit what is set forth in the Petition and exercise your powers, *sui generis*, to re-open the proceedings.

Respectfully submitted,



Mark D. Schwartz, Esquire

CC: Ralph G. Wellington, Esquire (regular mail)
Honorale Phyllis Beck, Esquire (regular mail)
Lawrence Barth, Esquire (regular mail)
Carolyn Carluccio, Esquire (regular mail)
Eric F. Spade, Esquire (regular mail)