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SUPREME COURT, APPELLATE DIVISION
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June 17, 2004

BY HAND

PERSONAL AND CONFIDENTIAL

Ronald Uzenski, Motion Clerk
Supreme Court, Appellate Division
First Judicial Department
27 Madison Avenue
New York, New York 10010


Re: Matter of Rubenstein and Joao
Motion to Transfer

Dear Mr. Uzenski:

Please find submitted herewith an original and seven (7) copies of a Notice of Motion and Affirmation to transfer the complaints against the above referenced attorneys to another Judicial Department. The motion is returnable July 12, 2004.

Please note the affidavit of service upon the parties on the blueback of the original Motion.

Very truly yours,



Thomas J. Cahill

TJC/nkd

Encls:

cc: Kenneth Rubenstein, Esq.
Raymond A. Joao, Esq.
Eliot I. Bernstein

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

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In the Matter of an Attorney and
Counselor-at-Law:

NOTICE OF MOTION

Departmental Disciplinary Committee
for the First Judicial Department,

Petitioner.

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PLEASE TAKE NOTICE that upon the annexed affirmation of Thomas J. Cahill, Esq., Chief Counsel to the Departmental Disciplinary Committee for the Appellate Division, First Judicial Department (the "Committee"), a motion will be submitted to this Court at the Appellate Division Courthouse, 27 Madison Avenue, New York, New York 10010, on July 12, 2004 at 10:00 A.M. or as soon thereafter as counsel can be heard, for an order granting the Committee permission to transfer the investigation and disposition of two complaints (Docket Nos. 2003.0531 and 2003.0532) to another Judicial Department for assignment to a grievance committee that this Court deems

Rubenstein and
Joao Complaints

There has been discovered a conflict with responses by Krane for Rubenstein and for Krane. The choice of words furthers cover-up.

appropriate, on the grounds that there may be an appearance of impropriety.

DATED: New York, New York
June 17, 2004

Yours, etc.,

THOMAS J. CAHILL
Chief Counsel
Departmental Disciplinary
Committee for the First
Judicial Department
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New York, NY 10006
(212) 401-0800

To: Kenneth Rubenstein, Esq.
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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

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In the Matter of an Attorney and
Counselor-at-law:

AFFIRMATION

Departmental Disciplinary Committee
for the First Judicial Department,

Petitioner.

-----X

THOMAS J. CAHILL, an attorney duly admitted to practice
law in the State of New York, hereby affirms under the penalty
of perjury:

1. I am Chief Counsel to the Departmental Disciplinary
Committee for the First Judicial Department (the "Committee"),
and I am fully familiar with the facts and circumstances
prompting this motion.

2. This affirmation is respectfully submitted in
support of an application to transfer the investigation of two
complaints (Docket Nos. 2003.0531 and 2003.0532) to another
Judicial Department for assignment to a grievance committee
that this Court deems appropriate, on the grounds of a

Not potential, an actual, verified and confirmed conflict of Steven C. Krane. Again, false and misleading by Cahill, furthers the cover-up.



potential conflict of interest and appearance of impropriety.

3. On or about February 26, 2003 Eliot I. Bernstein ("Mr. Bernstein") filed a complaint against Raymond A. Joao, Esq. and Kenneth Rubenstein, Esq., who was represented by Steven C. Krane, Esq., ("Mr. Krane") from the firm Proskauer Rose. Since the issues alleged in the complaints were being pursued in civil court, the complaints were closed pending litigation on August 29, 2003.

4. On January 15, 2004 Mr. Bernstein asked the Committee to reconsider its decision to close the complaints pending litigation.

5. Subsequently, on April 19, 2004 the Appellate Division, First Judicial Department, appointed Mr. Krane as Referee with the Committee.

On May 25, 2004 Mr. Bernstein wrote to the Committee objecting to Mr. Krane's former connection to the Committee and representation of Kenneth Rubenstein, Esq., and requesting that the Committee strike Mr. Krane's answer on behalf of his client to his February 26, 2003 complaint.

6. In order to avoid the appearance of impropriety

Cahill was fully aware that no civil court was hearing the matters and that Joao was not a part of any civil case.

Krane information states that Krane has other First Department conflicts since 1998.


What is the "former connection", we know subsequent was Referee but Cahill fails to disclose Krane's former roles, many in conflict

Already the conflict has been caught and therefore, it is not to avoid, it is to escape the existing conflicts discovered. Cahill again is promulgating false and misleading statements to the court.

which could result from having the Committee determine the merits of the complaints, these matters should be transferred to another jurisdiction.

WHEREFORE, based upon the reasons set forth above, the Committee respectfully requests that this Court issue an order transferring Docket Nos. 2003.0531 and 2003.0532 to another Judicial Department for assignment to a grievance committee that this Court deems appropriate, and for such other and different relief as the Court deems just and proper.

Dated: New York, New York
June 17, 2004



THOMAS J. CAHILL

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