

**IN THE SUPREME COURT OF FLORIDA**

<b>ELIOT I. BERNSTEIN and</b>	)	
<b>P. STEPHEN LAMONT</b>	)	
	)	
<b>Petitioners</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>THE FLORIDA BAR</b>	)	<b>CASE NO: SC04-1078</b>
	)	
<b>Respondents.</b>	)	
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**MOTION FOR CLARIFICATION, REHEARING, AND  
CERTIFICATION UNDER SECTION 9.330**

Come now Eliot I. Bernstein and P. Stephen Lamont (collectively, “Petitioners”) to move this honorable Court to clarify, rehear, and certify its January 12, 2004 ruling of Case No SC04-1078 by Justices Wells, Anstead, Lewis, Quince, and Bell in its denial of the Petition thereof (“Ruling”), and states as follows:

- I. Rehearing, Clarification and Certification in the Ruling relating to violation of rule 3.711(i)(3)(E) of the Rules Regulating the Florida Bar as stated in the Petition against Matthew Triggs.

1. That the Petition defines one of the conflicts and affirmed violations of the Rules Regulating the Florida Bar (“Rules”), in regards to a violation of the Rules of public office against a former member of The Florida Bar (“TFB”), an agency of this Court. The violations cited center on the membership of Matthew Triggs (“Triggs”) and his membership in a TFB Grievance Committee (“Committee”) from April 1, 1999 to March 31, 2002. Wherein former Committee members are prevented from representing other attorneys in matters before TFB for a period of one year without TFB board waiver under rule 3.711 of the Rules, and wherein Petitioners have submitted factual evidence of Triggs representing his Proskauer Rose LLP. (“Proskauer”) partner, Christopher Clark Wheeler (“Wheeler”) prior to the expiration of his one year prohibition or “blackout” period in TFB File No. 2003-51, 109(c) (“Wheeler Complaint”). Where representation without waiver of anyone in a matter before TFB, except TFB, as embodied in Rule 3.7.11 (i) of the Rules, is a violation, that constitutes not merely probable cause but cause for investigation and disposition and where TFB affirmed such conflict, no further investigation was necessary to bring formal charges.

2. Where such factual evidence of the confirmed conflict comes further from TFB itself, from John Anthony Boggs (“Boggs”) in a letter dated July 9, 2004 (“Boggs Letter”) evidenced in Exhibit “A”, which states

in regards to the violation, “This is a form over substance issue. The **fact** that for a period of time Mr. Triggs represented Mr. Wheeler without a waiver does not automatically create a conflict. Waiver would have been routinely granted under standing board policy and if the situation had come to our attention...”

3. Where the rule at the time the Wheeler Complaint was filed, and it has undergone change, was that a former grievance committee member could not represent any party except The Florida Bar for a period of one year without express consent of the board. Where, in opposition to Boggs’ statement, the rule at such time **does** automatically create conflict, if procedures such as failing to get consent from the board are violated and, certainly, where no disclosure has ever been made. Where the Boggs Letter states factually that such waiver was not ever granted and that Triggs represented Wheeler without obtaining waiver for a short time. This is admission by Boggs that Triggs failed to even disclose the situation and seek any approval at that time according to rule 3.711. Where Petitioner quotes from the Rules obtained at the time Triggs began representing Wheeler, which state:

3.711 (i) Disqualification as Trier and  
Attorney for Respondent Due to Conflict.

(3) Attorneys Precluded From Representing Parties Other Than The Florida Bar. An attorney shall not represent any party other than The Florida Bar in proceedings provided for in these disciplinary rules under any of the following circumstances:

(A) If the attorney is a member or former member of the board of governors, member or former member of any grievance committee, or employee or former employee of The Florida Bar and while in such capacity participated personally in any way in the investigation or prosecution of the matter or **any related matter** in which the attorney seeks to be a representative or if the attorney, served in a supervisory capacity over such investigation or prosecution.

(E) A member of a grievance committee shall not represent any party except The Florida Bar while a member of a grievance committee **and shall not**

**thereafter represent such party for a period of 1  
year without the express consent of the board.**

4. Where it is evident from the Boggs Letter, that TFB has conceded that Triggs was representing Wheeler without express consent of the board in violation of 3.711 (i)(3)(E). Properly implemented procedures eliminate the need for speculation and the uncertainty that arises from speculation. The Boggs letter speculates that had Triggs applied for a waiver, it would have been granted; speculation only has a place in the absence of clear procedural guidelines. The fact is, Triggs represented Wheeler in violation of the Rules. He failed to obtain a waiver and failed to disclose to the board. Speculation about what *might* have happened is irrelevant.

5. Where the Boggs Letter attempts to dispel the conflict through a Standing Board Policy (“SBP”) that does not appear to be law would constitute grounds for discipline of Boggs, if such SBP were not law. Such conduct to dissuade Petitioners using SBP versus the Rules approved by this Court would seem almost conspiratorial in nature, as Boggs is senior legal counsel for TFB and well aware of the Rules and the SBP. Where confirmation from TFB complaint center in Tallahassee has confirmed that SBP 15.10 is not law that would not negate rule 3.711. If this is the case,

then the intent by Boggs in the Boggs Letter, and his conjectured attempt to dismiss the violation for Triggs on an already affirmed conflict would be void as factually incorrect and open all matters in the Triggs Complaint and the Wheeler Complaint for immediate investigation due to the violation of rule 3.711. Further, even if such SBP 15.10 had any bearing on violations of the Rules, it appears to be a policy for granting waiver for those who disclose the conflict before representation in conflict begins, and the boards policy in then determining if waiver will be granted.

WHEREFORE, Petitioner asks for rehearing, clarification, and certification, as to how the complaint filed with TFB against Triggs, citing such confirmed violation of the Rules, in TFB File No. (Not Yet Assigned) and attached to the Petition as exhibit (“Triggs Complaint”), could be dismissed without formal review or investigation. Where there is an affirmed conflict in clear violation of the Rules, which acts as cause for review, investigation and formal disposition and where it appears that charges should have been filed by TFB.

Where such clarification would aid Petitioners as to how the Boggs Letter does not even constitute cause for review and formal disposition when it affirms violation. That such clarification would be further helpful if it

addressed why no response from Triggs was requested in response to the violation. Further clarification and certification is requested from the Court to clarify the Boggs Letter, where Boggs claims that the violation is a “form over substance” response and what legal basis exists that permits Boggs to excuse violations of 3.711(i)(3)(E) and 3.711(i)(3)(A) and all other conflicts cited in the Triggs Complaint. Admission of the conflict by Boggs is clear. No law or Rule exists to support a decision to ignore a confirmed violation based on speculation. It does not appear in the public’s best interest for this Court to deny Petitioners relief in having the violation disposed of procedurally. This was not merely a speculative violation of the Rules; it was a confirmed conflict by TFB and then discarded after confirmation of the violation, without formal procedural disposition.

II. Violation of rule 3.711(i)(3)(A) Rehearing, Clarification and Certification in the Ruling relating to violation of rule 3.711(i)(3)(A) of the Rules Regulating the Florida Bar as stated in the Petition against Triggs.

6. Boggs further errs in his speculative opinion on what the board would have done if Triggs did not violate Rule 3.711(i)(E) in his response for Triggs, and fails to address other conflicts cited in the Triggs Complaint. These other conflicts cited in the Triggs Complaint are additional violations

of the Rules regarding conflict and further violations by Triggs concerning violations of his office position with TFB. These other conflicts, at the time, would also have forced Triggs to disclose and seek waiver from the board and where allowing multiple conflicts would have been less likely to be approved by the board.

7. Where contrary to the Boggs Letter that presumes a board would have granted waiver, Petitioner states that the board would have been precluded from granting Triggs waiver due to the fact that Triggs was in violation of rule 3.711 (i)(3)(A) of the Rules. Whereby Boggs admission of the first conflict caused automatic additional conflicts by Triggs, again in violation of the Rules in regards to his membership in the Committee. Whereby Triggs was also, at the time he engaged in the representation of Wheeler without board consent, involved in another related matter of a private civil litigation of Proskauer Rose LLP v. Iviewit.com, Inc. et. al., Case No. CA 01-04671 AB (Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida) (“Litigation”) that involved related matter to the Wheeler Complaint. That Triggs had been representing the Litigation throughout his active member status in the Committee and where at the time he began representing the Wheeler Complaint in conflict, as a former Committee member, and while still representing a similar and related matter

in the Litigation. Triggs therefore is in violation of rule 3.711(i)(3)(A) which further would have precluded the board from granting routine waiver with this much conflict, especially where Triggs had personal and professional interests in both cases. The board most likely would have denied such waivers, since it would have caused further conflicts and perhaps the board would have told Wheeler to find new counsel or some other remedy to avoid conflict. Petitioner requests that this Court rehear, clarify and certify its decision to support TFB to dismiss the Triggs Complaint without formal review, investigation, or charges, through denial of Petitioners relief to order an immediate investigation of Triggs. Where such clarification is requested for now the second violation and further in light of the two violations of the Rules together and where no basis of law or the Rules can be found by Petitioner for such Ruling.

### III. Violation of rule 4-1.11 Successive Government and Private Employment.

Rehearing, Clarification and Certification in the Ruling relating to violation of rule 4-1.11 of the Rules Regulating the Florida Bar as stated in the Petition.

8. Where the facts are that Rule 3.711(i)(3)(E) and 3.711(i)(3)(A) are factually violated, and where Boggs himself admits violation by Triggs

of 3.711(i)(3)(E), then Triggs is in further violation of conflicts regarding public office with this Courts agency TFB, in regards to access to private government TFB files of the Wheeler Complaint. Where such conflict is fully described in the Petition and the attached Triggs Complaint exhibited in the Petition. Where Triggs was in conflict and violation of the "blackout" period without consent, and further was representing two related cases in violation of 3.711(i)(3)(A), then Triggs could have had access, as a former Committee member, to the private and confidential TFB Wheeler Complaint files in regards to Petitioners. Where this access gained in conflicts without waiver could have given Triggs invaluable information from the TFB files, such as internal employees handling the files. With such information gained in conflict, Triggs may have begun influencing or positioning, to gain favor for the Wheeler Complaint with those handling the complaint. Where Triggs could have gained invaluable information from the TFB files to influence the Litigation or gain advantage in such proceeding. Where such conflict rules are intended to prohibit access to the files to protect the public against attorneys having access to TFB files while in related cases to prevent unfair advantage and avoid impropriety. Similarly, that such rule violated by Triggs was then ignored completely by TFB, and denied fair and impartial due process again by subterfuge of the Triggs Complaint, may

impart, intentionally or unintentionally, further the appearance of impropriety, where TFB has cause to investigate the Triggs Complaint and all rule violations.

Wherefore, Petitioner asks for clarification, certification and opinion as to how the Triggs Complaint after affirming a violation of the Rules and where other Rules are therefore automatically violated, could be supported by a TFB decision maintaining insufficient evidence to support at minimum review and further formal investigation and/or formal charges being filed. Where such conflict affirmed as fact by Boggs, triggered automatic violation of other Rules as stated in the Petition and should have constituted action by TFB for violation multiple violations of the rules including now rule 4-1.11.

That admission of the conflict by Boggs is clear and where no law or rules exist to make such decision to excuse a violation with no law or rule in support it does not appear in the publics' best interest to fail to follow procedure. Where violations exist, investigation and disposition with fair and impartial due process are essential, especially where violations of officers of this Courts agency TFB are involved. With a factual affirmed conflict that triggers a series of violations, Boggs does nothing with the Triggs Complaint, refusing to accept it formally for disposition, despite his

own admission of a violation of the Rules. Whereby Petitioner can find no legal or procedural support of such action of Boggs, to the deny to investigate, review or file formal charges for the violations, the Petitioner request this Court to rehear, clarify and certify this matter for Petitioner and in the publics interest, in regards to violations of 4-1.11.

9. Where if Boggs took no action being aware of conflict and violation of the Rules and failed to file the complaint procedurally, which is evidenced by the lack of docketing, this could be construed by the public as an attempt to suppress the facts and hide the conflicts by denying the Triggs Complaint due process. All actions inapposite the Rules and the intent of the Florida Constitution in creating TFB to create Rules and enforce them when they are affirmed to be violated. Where the affirmed conflict is in a case with allegations of public office corruption by a Committee member of this Court, caught in violation of the Rules, and where the Wheeler Complaint contains allegations of attorney misconduct charges stemming from fraud and other crimes, currently under review and investigation by federal and state authorities against the United States government and all of the following agencies, including but not limited to: the United States Patent and Trademark Office, the Small Business Administration, the Supreme Court of Florida The Florida Bar, the Supreme Court of New York Appellate

Division: First Department, the Delaware Secretary of State, the Florida Secretary of the State and others, it creates an appearance of impropriety beyond doubt and perhaps constitutes further violations of the Rules and Florida law. Boggs' actions and the actions of this Court, if they are indeed in support of such actions, could be construed as a suppression of factual violations of the Rules through suppression of the evidence. Petitioner states that the Court may have overlooked such affirmed factual conflicts in denying Petitioners relief in regards to the Triggs Complaint, and may have overlooked the failure of due process and procedure where Boggs already confirmed violations of the Rules. Where the intent of the Florida Constitution in creating the TFB was to accept public complaints and process them procedurally when cause or probable cause is exhibited and review, investigate and file charges. Where the complaint involves a member of TFB, whose complaints are then being discarded after affirming conflict, against procedure and without due process by the agency responsible for upholding the Rules, this Court in denying Petitioners relief may damage public confidence in the courts and TFB when it appears that the Rules do not apply to the rule makers.

By denying due process, Petitioners had no chance to follow further procedures, gain disclosure or have further review. Where then, this Court

was asked for relief to compel TFB to accept the complaint for formal disposition according to procedure, and was denied, apparently supporting such decision by TFB to pick and choose which violations they will follow proper procedure on when conflict is confirmed.

IV. Rehearing, Clarification and Certification in the Ruling relating to violation of rule 3.711(i)(3)(E) of the Rules Regulating the Florida Bar as stated in the Petition against Wheeler.

10. Where if this Court grants rehearing of the Triggs Complaint based on representing Wheeler without board consent and in violation of the Rules, then logically this Court must allow for further investigation of the Wheeler Complaint as the Triggs conflicts resulted in the Wheeler Complaint and has direct influence upon the Wheeler complaint. Where the response of Triggs commissioned on behalf of Wheeler was in conflict with his office rules and where such conflict causes the response of Triggs to be invalidated as it was tendered in conflict and therefore should cause default in the Wheeler Complaint response. This would cause a default by Wheeler to respond to the Wheeler Complaint as proscribed by law, and in fact in violation of the Rules, thus constituting a basis for a ruling by TFB in favor of Petitioner, of all charges against Wheeler, for his failure to file a timely

and appropriate response. Where under circumstances where the conflict was no fault of the party being represented in conflict, the response may stand and the guilty attorney reprimanded. In instances where the conflict could be shown to come from collusion between the responding attorney and the conflicted counsel, a more apropos default on the response would be likely and where both attorneys would be charged for the conflict.

11. That there is cause to believe that since both Triggs and Wheeler are partners of Proskauer, in the same Florida office, that this decision to hire Triggs was well contrived before representation began, and where surely Proskauer would have stayed away from any conflicts, even if for a second, and chosen non-conflicted counsel. Where both Wheeler and Triggs were members of TFB Committees it can also be presumed that the Rules regarding their public office positions with this Court were firmly understood by each. Where these fact patterns exist, it can be asserted that the selection of Triggs by Wheeler was in fact to gain influence and access, in purposeful conflict, with intent to deceive TFB and gain advantage over Petitioners for not only the Wheeler Complaint but also the Litigation. In fact, since Triggs fails to disclose or seek TFB board approval at the time, in violation of the Rules, it appears intent was to conceal.

12. That where Triggs fails to be compelled by TFB or this Court to disclose and seek proper waiver of the conflicts, and further TFB allows Triggs to remain the attorney, even after conflict is discovered and affirmed by Boggs, defies the Rules and allows the violation to continue without express waiver of the board.

Wherefore, Petitioner asks for rehearing, clarification and certification of such denial by this Court to compel TFB to comply with the Rules, and force Triggs to respond to the violations and seek TFB board waiver for the conflict in representing the Wheeler Complaint. Where if this has not been completed and no board waiver exists then the prior reviews of the Wheeler Complaint cannot stand as valid when the response by Triggs would be invalidated as tendered in conflict. Petitioners also request explanation as to why Triggs is still representing the Wheeler Complaint at all and he has not been compelled to withdraw formally. Petitioner asks for clarification, rehearing and certification of this continued representation of Wheeler by Triggs, once TFB found conflict to exist and without express waiver by the board and without disclosure by Triggs, all in violation of the Rules. Where Triggs has never withdrawn as counsel or sought board waiver this appears to continue to defy procedure and the Rules. Where this oversight of the Court could be seen by the public as TFB suppressing evidence of Triggs'

conflicts, in now the Wheeler Complaint, also and again denying fair and impartial due process in accordance with the Rules, and with this Courts blessing. Where the conflicts are clear violations of public office, by members of this Courts agencies, where the nexus of events against the attorney members of this Court in conflict are involved in a complaint alleging the same attorneys committing crimes against the United States, it seems in the best interest of the public to have the Rules followed to a tee, anything short, has overwhelming appearance of impropriety, where there is no violation this should be a simple process to clear the air and give the public assurance of due process.

13. That since Petitioners are merely citizens who seek fair and impartial due process according to law and the Rules, adhered to by our elected officials charged with enforcing the laws and the Rules and upholding the Florida Constitution's intent to fair and impartial due process, it further is requested that this Court rehear, opine, certify such TFB decision to dismiss the Wheeler Complaint based on review without investigation at TFB and deny the relief request by Petitioners to begin at minimum investigation and disposition. Where a support by this Court of TFB's finding of no probable cause to investigate, in light of the Triggs Complaint violation of Rule 3.711(i)(3)(E) which is cause to investigate, needs further

clarification. Where the Wheeler Complaint cannot be decided until such conflicted response and counsel is removed from the proceeding and where all prior reviews by TFB would be void.

14. Where Petitioners provided clear and convincing evidence of crime and ethical violations in the Wheeler Complaint, including perjured deposition statements with opposing evidence contradicting such statements made under deposition. Including evidence that Wheeler had perjured his statements to TFB in contrast to his sworn deposition statements in the Litigation. Where under rebuttal Wheeler even admits such false claims to TFB, attempting to minimize the damage caused by his perjured statements to TFB and whereby TFB again overlooked such perjury without investigation. Where this would have been cause for immediate investigation. Further, where witness statements and evidences were submitted that showed beyond doubt that statements made by Triggs acting as counsel for Wheeler, were false and misleading and contradicted by evidence and witnesses, TFB refused to acknowledge in their reviews any of the issues or evidences, and only addressed limited particular issues, ignoring allegations at will and with no explanation.

15. Where Boggs and subsequent reviewers of these matters have knowledge of such confirmed violations in both the Triggs Complaint and

the Wheeler Complaint, they are further compelled by obligation under the Rules to report the misconduct of another attorney. Even where only probable cause exists, the presumed violation must be reported according to the Rules and where in these instances cited as conflicts, there is factual evidence of violation, reporting to all proper tribunals for disposition should be fully complied with by anyone with knowledge of the violation. Whether or not this Court denies to compel TFB to investigate the Wheeler Complaint on behalf of Petitioners, all other reviewers of these matters who possess the knowledge of the affirmed violation of the Rules that are licensed by TFB, and under its oaths and Rules, once possessing such knowledge, have obligation to report the violations to the proper tribunals for investigation and disposition. Where Petitioner asks this Court to clarify if such compliance has taken place by all of the reviewers for both TFB and this Court and what actions were taken by each, if any, to report the affirmed violations of the Rules to all proper tribunals.

16. Where the decision made by TFB in the Wheeler Complaint was clearly erroneous in light of the proffered evidence, Petitioners respectfully request that the TFB decision be overturned, and considered for rehearing, clarification, and certification of the Ruling, in regards to denying such relief, until further review is made void of the conflicted response of

Triggs and void of any reviewers who may have been influenced due to such conflicted response.

V. Rehearing, Clarification and Certification in the Ruling relating to the denial for Petitioners relief, where such relief was requested for a default to claims asserted in the Petition that were failed to be responded to by TFB and were by this Court's prior order, a response was ordered.

17. That by order of this Court a response from TFB was ordered to address the claims of the Petition. Where TFB fails to respond to claims and allegations in the Petition, all cited in the rebuttal by Petitioners, and where default should come from the fact that TFB failed to confirm, deny or explain certain claims in the Petition. Such failure to respond to any of the claims would traditionally constitute admission of that claim and where traditionally courts would rule a default in favor of Petitioners. Where failure to respond to all claims in the Petition where this Court previously ordered response, causes Petitioners to be denied due process of the relief ordered by this Court. Even if default were not granted by this Court, at minimum, this Court should force response to each allegation and claim contained in the Petition by TFB of either admission, denial or explanation.

Wherefore, where the claims and allegations are mutually exclusive and would therefore require separate response by TFB, and where the Court ordered response to the entirety of the Petition, Petitioner asks the Court to clarify how TFB was then permitted to pick and choose which claims to respond to. Where TFB addresses only one claim of the multitudes of claims in the Petition and where the response to such claim in no way answers the remaining claims.

Where it would appear that if the Court were going to rule in favor of the defaulting party, explanation would have been provided for the decision to rule in favor of a defaulting party, when it is in regard to a failure to respond to allegations against its members, including President of TFB, Kelly Overstreet Johnson (“Johnson”) of conflict, that the Court initially ordered. Where the defaulted items are regarding public office violations and disclosure of such violations at the Court, it appears that conflict may exist in the Court precluding discipline of its members in such a widespread allegation of corruption elevating to the executive offices of TFB and where public officers of this Court are ordered by this Court to respond and then fail to provide even disclosure elevates the appearance of impropriety.

18. Where Petitioner requests that this Court clarify, certify and rehear every claim and allegation individually that TFB failed to provide response to as cited in the rebuttal to TFB's failed response of certain items and for each default cited in the Petition, clarify, certify and rehear the Courts position to deny relief to Petitioner in favor of TFB where TFB failed to respond to such claims. Where the defaulted responses are of public office violations, this clarification is necessary to provide the public assurance of fair and impartial due process in the Courts decision to rescind its prior order to answer the allegations of public office violations of members of this Court contained in the Petition.

VI. Rehearing, Clarification and Certification in the Ruling relating to the Boggs Letter as exhibited in the CD-Rom attached to the Petition.

19. Boggs' letter fails to dispel the violations of the Rules by Triggs with any supportable law or facts that have been presented to Petitioner, and relies on an unknown section SBP 15.10 that does not appear to be in the Rules. Petitioner asks this Court for clarification, certification and rehearing regarding which Rule sets precedence. Where only Rules that were in effect at the times Triggs began representation should apply. Petitioners also request all modifications to either rule since January 2000 from this

honorable Court or where to find such changes to both the rule cited and the SBP cited.

VII. Rehearing, Clarification and Certification in the Ruling regarding the denial of this Court to grant relief to Petitioners in regard to the destruction of the files by TFB of the Wheeler Complaint.

20. That, in the Court's offer of Respondent's file to Petitioners concerning the Complaint against Wheeler in the Wheeler Complaint did the Court contemplate the probability of other State and Federal agencies subpoenaing the file along with attorney work product therein, as a means to further other investigations, and if destroyed, and according to the understanding of Petitioners, that such destruction may lead to charges of obstruction of justice by other State and Federal agencies against TFB?

21. That in any subpoenaing of the file, and should it have been destroyed as a result of the Court's Ruling, did the Court contemplate the bringing of charges against the members of the Court to the Judicial Qualifications Commission of Florida, as a result of the obstruction of justice indirectly condoned by the Ruling, if any?

22. That destruction of the file as maintained in the petition may also provide investigators invaluable insight into charges filed, including

false statements to TFB and where the entirety of the file will be necessary to trace the tentacles of the alleged conspiracy and violations of public offices alleged. Where such destruction of the file could preclude investigators and courts from fully tracing such tentacles, it again appears in the best interest of the public, where allegations of public office scandals now reach to the highest level of the state agencies in New York and Florida. Where Steven C. Krane, Rubenstein and Joao have been ordered for investigation by the First Department. Where Krane is former President of the New York Bar Association and where Johnson is President of TFB and where both have been implicated in possible influence pedaling to subterfuge the complaints against Proskauer partners and where evidence has surfaced that demands full public disclosure to allegations. Where this Court ordered Johnson and TFB to respond to such allegations and no response was tendered to assure public confidence and where it now appears that this Court's Ruling attempts to destroy files that contain vital information to proving such claims, Petitioners wonder what the rush to destroy the files is. If there is nothing to hide in the entirety of the file, why does TFB and this Court, in the light of ongoing investigations which rely on information contained in such TFB work product files need to be destroyed immediately. Where Petitioners have offered storage costs to protect the

materials until such time that all investigations, federal, state and international have concluded.

23. Where it will be evidenced by the Boggs Letter herein that issues remain open for procedural disposition, sent by Boggs to Turner for disposition formally and where no disposition has yet been had. Where the files of the Wheeler Complaint again are necessary to dispose of all matters properly and procedurally. Where to destroy the Wheeler Complaint file is to destroy evidence that is necessary as exhibit in ongoing matters that have yet to be resolved by Turner. The Wheeler II file relies on the entirety of the Wheeler Complaint file as exhibit, including bar work product files.

Wherefore, Petitioner requests that this honorable Court to clarify this question of fact in its Ruling wherein it seemingly condones TFB's destruction of the Wheeler File. Petitioners request clarification, rehearing, and certification to the Court's decision to destroy the file aware of the ongoing investigations that may rely on the entirety of the file, including TFB work files, and ask what file retention rule the Court has used in determining the date and rationale for destruction, according to public policy record retention laws. Further, clarification is requested regarding the meaning of the Ruling when it states that Petitioner can have the Wheeler Complaint file, does this include TFB work files and all other evidences

contained therein or is it merely the files of Petitioners that have been submitted. Finally, where the Wheeler Complaint file in entirety has been attached to a complaint against Eric M. Turner (“Turner”) a TFB employee as exhibit, and where such complaint relies on bar work product to determine the validity of the claims, Petitioner asks this Court if such entire file has been made attachment to the Turner Complaint for exhibit by TFB. Where if such attachment has been made as exhibit as requested by Petitioner to the Turner Complaint, then Petitioners ask for clarification and certification as to what the date of file destruction for the Turner Complaint, treated by Boggs according to the Boggs Letter as an employee internal affairs complaint and what file record retention rules apply. If such file has not been made exhibit then one wonders how the charges against Turner could be evaluated and what basis in law destroying a file that is exhibited in an internal affairs matter would allow such destruction, where again record retention rules appear to show that such records be maintained for several years as fully described in the Petition.

VIII. Rehearing, Clarification and Certification in the Ruling regarding various other matters caused by the Ruling.

24. That, in the Court's Ruling denying Petitioners' request for declaratory relief as to the nature of the position(s), including the dates of tenure, held by Wheeler, Triggs, and Spencer Sax ("Sax") with Respondents, please clarify this honorable Court's Ruling, in light of Petitioners need for Court ordered relief to further investigate the tentacles of the influence that may have been caused by Triggs in the violations of public office roles, cited in the Triggs Complaint exhibited in the Petition and the influence such conflicts may have had on the Wheeler Complaint.

25. That in the Court's Ruling denying Petitioners' request to move the Wheeler Complaint and all related complaints (i.e., the Triggs complaint and the complaint against Eric Montel Turner ("Turner")) to the next highest level of review, void of conflicts and appearances of impropriety, please clarify whether this honorable Court relied on the response of Respondents and/or the rebuttal of Petitioners, or did this Court conduct its own review of the Wheeler, Triggs, and the Turner matters?

Wherefore, Petitioners requests that this honorable Court clarify this question of fact in its Ruling wherein it seemingly denies Petitioners relief to

elevate the complaints against Wheeler, Triggs, and Turner to the next highest level of review and for such other and further relief that this Court deems just and equitable.

Wherefore, Petitioners requests that this honorable Court clarify this question of law in its Ruling wherein it seemingly denies Petitioners relief to begin the immediate investigation of the Wheeler Complaint and where such clarification would be helpful to Petitioners to include explanation of how the Triggs conflicts and the evidences presented in the Wheeler Complaint, do not warrant immediate investigation and where it is in the publics interest where conflicts are affirmed concerning members of this Court's agency TFB for full and complete disclosure from the conflicted parties and for such other and further relief that this Court deems just and equitable.

26. That in the Court's Ruling denying Petitioners' request to begin the immediate investigation of a second complaint against Wheeler ("Wheeler Complaint II") based on the conflict presented by the response to the Wheeler Complaint formulated by Triggs, please clarify whether this honorable Court relied on the response of Respondents and/or the rebuttal of Petitioners, or did this Court conduct its own review of the Wheeler Complaint II?

27. Where it can be evidenced from the Boggs Letter that the Wheeler Complaint II and the Triggs Complaint were forwarded to Turner for formal procedure and due process according to the last paragraph of the Boggs Letter. Where Turner was to get back to Petitioners with disposition, did the Court's order now further cause such subterfuge of the complaints indirectly by refusing to allow final disposition by Turner of matters in the complaints turned over to him for disposition? Where since no formal disposition regarding these violations has been concluded one wonders how the Court's Ruling can shutdown ongoing investigations now requiring Turner to formally respond per the Boggs Letter, to allegations that have impact on the complaints. How can review be terminated and files destroyed where Boggs admits further cause for investigation by Turner and Turner fails to ever complete such disposition? Petitioners beg this Court for clarification, rehearing and certification of under what rules of procedure, constitute this Court's denial of review and disposition of matters forwarded to Turner for disposition by Boggs, without first formally disposing of all issues contained in the Wheeler Complaint, Wheeler Complaint II and the Triggs Complaint.

Wherefore, Petitioners requests that this honorable Court clarify this question of law in its Ruling wherein it seemingly denies Petitioners relief to

begin the immediate investigation of the Wheeler Complaint II, Wheeler Complaint and Triggs Complaint based on the fact that investigation items remain open and unanswered and where formal procedure has been alluded. Where this Court's order precludes such answers to questions in ongoing investigations and where even Boggs' sees reason to transfer the issues for disposition to Turner.

28. In clarification of the Ruling's denial of each of Petitioners' requests, please do so in light of the recent ruling of the Commissioner of Patents and Trademarks of the United States Patent and Trademark Office to place Petitioners' patent applications into their second, six month state of suspension as a result of the same nexus of events as are found in the Wheeler Complaint.

29. In clarification of the Ruling's denial of each of Petitioners' requests, please do so in light of the recent ruling of the Supreme Court, Appellate Division: First Department to begin the immediate investigation of the complaints against Steven C. Krane, Raymond A. Joao, and Kenneth Rubenstein as a result of the same nexus of events as are found in the Wheeler Complaint.

30. In clarification of the Ruling's denial of each of Petitioners' requests, please do so in light of the recent ruling of the European Patent

Office to conduct an investigation of Petitioners' patent applications as a result of the same nexus of events as are found in the Wheeler Complaint.

31. In clarification of the Ruling's denial of each of Petitioners requests, please do so in light of the recent information of the Federal Bureau of Investigation that they have contacted the United States Attorney's Office for the Southern District of Florida to determine whether Petitioners' claims are tryable, as a result of the same nexus of events as are found in the Wheeler Complaint.

32. In clarification of the Ruling's denial of each of Petitioners requests, please do so in light of the recent investigation of the Boca Raton Police Department that passed information to the United States Securities and Exchange Commission, as a result of the same nexus of events as are found in the Wheeler Complaint.

I express a belief, based upon a reasoned and studied non-professional judgment as a Pro Se party without legal background, that a written opinion will provide a legitimate basis for Supreme Court review because of all of the following issues contained in the Petition and exhibits submitted to this Court including the CD-Rom submitted with the rebuttal:

1. The Ruling will constitute grounds for review by the Supreme Court under the laws regarding denial of due process in Amendments V and XIV of the United States Constitution in violation of Petitioners' rights under the United States Constitution.

2. The Ruling will constitute grounds for review by the Supreme Court due to conflicting state Supreme Court rulings regarding the inclusion of Iviewit Holdings, Inc. into petitions as a petitioner in similar filings in New York and Florida. Whereby New York allowed Iviewit Holdings, Inc. to be a petitioner and where Florida denied such inclusion of Iviewit Holdings, Inc. as a petitioner.

3. The Ruling will constitute grounds for review by the Supreme Court under Article I Section VIII Clause VIII where certain Petitioners in this case are inventors, whose rights to their inventions is threatened further by the denial of due process in this Ruling as stated in the Petition.

4. Where time after time, Petitioners are denied due process in pressing claims with the bar agencies through conflict and the appearance of impropriety that has caused New York Supreme Court Appellate Division; First Department to order investigations into related cases against certain of the alleged, including Steven C. Krane (former President of the NYSBA), Kenneth Rubenstein (Proskauer patent counsel for Petitioners) and Raymond

Joao and where in similar claims against Wheeler and Triggs TFB has refused to even acknowledge or file charges where conflicts have been confirmed by TFB. Where the Supreme Court may find basis of review if the conflicts have led to such investigations in one instance where conflict has been found and determine why similar steps have not been taken in Florida by this Ruling, after affirmed violation of the Rules, to move the complaints to the next highest level of review void of conflict for investigation and disposition or file formal charges.

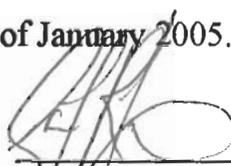
5. The Ruling will constitute grounds for review by the Supreme Court under the laws regarding suppression of evidence, where this Ruling would appear to suppress evidence of attorney misconduct involving conflicted members of this Court's agency TFB and where such is in violation of Petitioners' rights under the United States Constitution.

6. That Supreme Court review would also be predicated on special circumstances and where the nexus events described in the Petition and the underlying complaints with TFB provide factual evidence of attorney misconduct starting with theft of intellectual properties by attorneys representing Petitioners at the United States Patent and Trademark Office and others. Where upon filing a counter complaint of such allegations, it appears that Judicial Canons were violated to eliminate Petitioners counsel

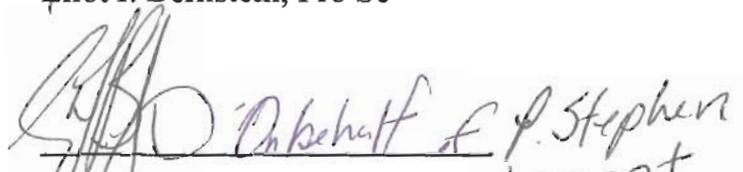
moments before a trial. Where upon bringing attorney complaints to TFB for fair and impartial review, it is learned that conflicts exist in the representation of the main protagonist and where such affirmed conflicts are further denied fair and impartial due process by TFB. Where this Court in its Ruling appears to deny relief to grant due process Petitioners where confirmed conflict exists. Where it appears that no matter what court, what forum or what counsel Petitioners' take their claims to, sooner or later become corrupted by those attempting to evade investigation and prosecution. Where those evading investigation through conflict and abuse of public offices, are large law firms, with Petitioners royalties accruing to them, who have been able so far to perverse the legal system to prevent fair and impartial due process from occurring.

These and perhaps other legal cause may exist for the supreme court to grant review if an opinion were written.

This 26th day of January 2005.



Eliot I. Bernstein, Pro Se



P. Stephen Lamont, Pro Se

*P. Stephen  
Lamont  
as attorney  
in fact*

**EXHIBIT “A”**



## THE FLORIDA BAR

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JOHN F. HARKNESS, JR.  
EXECUTIVE DIRECTOR

850/561-5600  
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July 9, 2004

Mr. Eliot Bernstein  
IViewIt Holdings, Inc.  
10158 Stonehenge Circle  
Suite 801  
Boynton Beach, FL 33437-3546

Re: Eric Turner et al.

Dear Mr. Bernstein:

I have been regularly communicating with Mr. Marvin concerning your assertions and I have read a series of letters and/or email between you and staff of our Fort Lauderdale office or Mr. Marvin.

Recently you wrote (in one email) Mr. Marvin:

“As mentioned in our last conversation on 7/02/04 we have learned and notified you of a severe conflict of interest in the Wheeler complaint 2003-51 109 15c, whereby Matthew Triggs, with no formal disclosure, acted as Wheeler's counselor within the one-year period after serving as a Grievance Committee Member, thereby a conflict exists which has the additional appearance of impropriety and thus taints the entire Wheeler case, and your Turner decision, if such decision was formal. Due to the conflict and influence peddling at the Bar this may represent, the entire case should now be reviewed by an independent third-party. Triggs served from 4/1/99 to 3/31/02 and as illustrated in the attached letter to the bar, Triggs had already started representing Wheeler on March 21, 2003, clearly within the year prohibition.”

Subsequently you wrote (in another email) Mr. Marvin:

“Please provide us with the rules and code that apply to internal review of complaints lodged against officers of the FL Bar and where we can find out how this process is handled. Also, since we have now notified you of the conflict of interest and appearance of impropriety in the Triggs response on behalf of the Wheeler complaint, we would like to add charges of conflict of interest and

appearance of impropriety to Mr. Turner's complaint. Would we need to establish another separate complaint or can you amend the existing "complaint"? We are certain that such charges would constitute a violation of Mr. Turner's professional ethics as regulated by the FL Bar and therefore constitute charges necessitating a formal complaint with formal process. In addition, do we need to file another case on Wheeler and Triggs for the conflict of interest, appearance of impropriety and the abuse of public office or is this something that the FL Bar needs to institute as you are now aware of the abuse of public office caused by Triggs and Wheeler? In light of the recent discoveries regarding such conflict, it seems that the FL Bar should re-open the Wheeler case, strike the tainted response of Triggs and charge Wheeler with all charges contained in his complaint, as if no response was given at all."

This is a form over substance issue. The fact that for a short period of time Mr. Triggs represented Mr. Wheeler without a waiver does not automatically create a conflict. Waiver would have been routinely granted under standing board policy and if the situation had come to our attention all that would have happened was notice to Mr. Triggs to submit a waiver request. Upon the expiration of 12 months from the end of his grievance committee service, the need for a waiver ceased. It is noteworthy that the grievance committee that heard your complaint against Mr. Wheeler is not the same committee on which Mr. Triggs served. Thus there was no actual conflict for the short time that a waiver was an issue.

**15.10 Waiver of Disqualification as Attorney for Respondents.**

- (a) **Authority for Waiver.** The Rules Regulating The Florida Bar disqualify partners, associates or other firm members of board members, grievance committee members and former staff attorneys from representing a respondent in a disciplinary matter. Further, the rule disqualifies the board members, grievance committee members and former staff attorneys from the same representation and extends all disqualification periods for 1 year after the termination of board, grievance committee or staff service. The rule allows for waiver of the disqualification by the board.

This policy is enacted to identify the instances in which the board will waive the rule.

- (c) **Grievance Committee Members.** No current member of a grievance committee may represent a respondent in a disciplinary matter.

A member of the grievance committee member's law firm may represent a respondent while the grievance committee member is serving on the committee if:

- (1) the representation involves a grievance committee other than the 1 on which the member of the law firm serves; and
- (2) the grievance committee member has no involvement with the representation and is screened from access to the file on the matter; and
- (3) the attorney wishing to represent the respondent provides written notice of the disqualification to the executive director.

Former grievance committee members may represent a respondent in a disciplinary matter if the matter was not pending, before the committee on which the former member served, before the former member's term expired.

- Members of the former grievance committee member's law firm may represent a respondent in a disciplinary matter during the 1-year disqualification period if the former member may also do so under the terms of this policy.
- (f) **Executive Director Authority.** The executive director is hereby granted the authority to issue waivers under the terms of this policy. The executive director shall not deviate from this policy and if the executive director is in doubt regarding issuance of a waiver, the request shall be referred to the board of governors for resolution. The executive director shall report to the board listing all waivers granted and all waivers denied.

We treated your complaint against Mr. Turner as an internal matter as you question his job performance. You employ other words and characterizations, but the thrust of what you say is that you do not accept his conclusions. There are no provisions in the Rules Regulating The Florida Bar for handling job performance based complaints and we have no written policies in this regard.

Also your labeling the matter concerning Mr. Turner as a complaint is a creative attempt to fashion a way to preserve the file in your prior complaint when routine record retention schedules require its purging. It is obvious that one of your goals is the preservation of the Wheeler file. It can be argued that this is the central issue of your goals at this time. We cannot use an artifice to avoid routine record keeping requirements.

Your assertions have received careful and repetitive review (bar counsel, chief branch discipline counsel, grievance committee chair, and designated reviewer have all reviewed your complaint against Mr. Wheeler and all agree with closure) and that file shall remain closed. Mr. Marvin and I lack authority to do otherwise.

Your criticism of Mr. Turner's job performance is noted and has been reviewed by Mr. Marvin and me. We respect your right to be critical, but we conclude that Mr. Turner has acted within the scope of his duties and authority. No personnel action will be initiated.

As to the website content issue, we have that matter under review and will act as all of the facts require. This review will be conducted out of our Fort Lauderdale office. By copy hereof I advise Mr. Turner to provide status information to you, Mr. Marvin and me.

Sincerely,



John Anthony Boggs  
Director, Legal Division

cc: Kenneth L. Marvin  
Eric M. Turner

g:\winword\letters\07-2004\07 09 2004 Eliot Bernstein

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was furnished by facsimile, email and US Mail this 26<sup>th</sup> day of January 2005 to The Florida Bar Ft. Lauderdale offices.

A handwritten signature in purple ink, appearing to read 'E. Bernstein', is written over a horizontal line.

Eliot I. Bernstein