

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ELIOT I. BERNSTEIN, et al.,

Plaintiffs,

-against-

07-cv-9599

APPELLATE DIVISION, FIRST
DEPARTMENT DEPARTMENTAL
DISCIPLINARY COMMITTEE, *et. al.*,

NOTICE OF MOTION

Defendants.

X

PLEASE TAKE NOTICE that upon the accompanying affirmation and the exhibits, pro se plaintiff Eliot Ivan Bernstein will move this Court before the Honorable Judge. Shira A. Scheindlin, United States District Judge, at the United States Courthouse, 500 Pearl Street, New York, New York 10007, at a date and time to be determined by the Court, for an order:

- (1) striking the pleadings of defendants pursuant to Rule 12 (f) of the federal Rules of Civil Procedure, *inter alia*, reopening the herein case;
- (2) granting a new trial pursuant to Rule 59, Fed.R.Civ.P.;
- (3) for such other relief as the Court may find just and proper.

I declare under penalty of perjury that the foregoing is

Dated: New York, New York

, 2013

Eliot I. Bernstein
2753 NW 34th St.
Boca Raton, FL 3343
(561) 245-8588

To: Defendants
Office of the NYS Attorney General
120 Broadway, 24th floor
New York, New York 10271-0332

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ELIOT I. BERNSTEIN, et al.,

Plaintiffs,

-against-

07-cv-9599

APPELLATE DIVISION, FIRST
DEPARTMENT DEPARTMENTAL
DISCIPLINARY COMMITTEE, *et. al.*,

AFFIRMATION

Defendants.

X

I, Eliot I. Bernstein, make the following affirmation under penalties of perjury:

I, Eliot I. Bernstein, am the pro se plaintiff in the above entitled action, and respectfully move this court to issue an order

- I. striking the filings of defendant and reopen case pursuant to Rule 12(f), Fed.R.Civ.P
- II. granting a new trial pursuant to Rule 59, Fed.R.Civ.P.

The reasons why I am entitled to the relief I seek are the following:

I. INTRODUCTION

1. On _____ date, members of the AG office and the Governor's office admitted to Plaintiff that they were conflicted with acting in this Lawsuit and needed to seek independent representative counsel to represent them and they could not represent any defendants in any way in these matters. The AG stated that they were seeking counsel and would get back to Plaintiff and have failed thus far to that.
2. On _____ date, Plaintiff filed complaints with the Attorney General's office against NY Public Officials and others.
3. On _____date, Christine C. Anderson, Esq., a New York Supreme Court Disciplinary Department Attorney filed a "Whistleblower" lawsuit in the US District Court SDNY
4. On _____ date, Plaintiff filed a RICO case in the US District Court with predicate acts that include, but are not limited to, theft of Intellectual Properties and Obstruction of

Justice. Obstruction charges were filed against public officials who were charged with investigating attorney misconduct complaints and failed to follow rules and regulations in the handling of public complaints and for aiding and abetting the Defendants who charged with the theft of Intellectual Properties.

5. Plaintiff filed such RICO complaint with a request to the Court to be legally related to Whistleblower Anderson's lawsuit, which became "legally related" by The Honorable Shira A. Scheindlin.
6. That on _____, the New York Attorney General became counsel for 39+ New York State Defendants, representing each in both a personal and professional capacity and while also having already opened investigations into many of the same individuals in complaints filed by Plaintiff.'
7. That on March 05, 2008 Plaintiff filed opposition to the Attorney General representing the New York State Defendants due to the conflicts with the criminal complaints filed with their offices and other conflicts discovered.
8. That on _____, this Court ruled and stated the following " _____ "
9. That on _____ and dates, Plaintiff filed the following documents regarding further conflicts with the AG's representation that precluded their representing the state defendants.
10. On May 09, 2008 Plaintiff filed an Amended Complaint naming the "Office of the Attorney General of the State of New York" and "Eliot Spitzer, in his official and individual capacities, as both former Attorney General for the State of New York, and, as former Governor of the State of New York" as Defendants in the Iviewit RICO & ANTITRUST Lawsuit, for their part in aiding abetting RICO activities through Obstruction of Justice caused by Conflicts of Interest that acted to deny due process and procedure from the minute the AG began representing the State Defendants in conflict and misusing public office to effectuate a fraud on the court.

11. That on _____, Plaintiff filed additional complaints with the both the AG's office and the Governor's office and further filed complaints with the AG and Governor against the acting AG at the time. These complaints became corruption stalled through a series of acts by conflicted parties to stymie and derail any investigations into the complaints.
12. On _____, Christine C. Anderson filed a motion to remove the AG due to similar conflicts of interest in their improper representations in her case, again causing a fraud on the court through conflicts of interest that obstruct justice and misuse public funds in so doing.
13. On _____, this court rejected Anderson's motion because it was filed Pro Se when apparently she still retained counsel.
14. On _____, Plaintiff filed a Emergency Motion with this Court that despite having admitted conflict and the need for independent counsel for their offices and their defendants, the AG ignored their admission and filed an answer to the motion. Plaintiff now moves to strike Defendants' answer and all prior pleadings, pursuant to Federal Rule of Civil Procedure 12(f) and to granting a new trial pursuant to Rule 59, Fed.R.Civ.P.

II. BACKGROUND

A. Rehear as Motion REGARDING AG Conflict initially filed was ruled on err and violation of law by the Honorable Shira Scheindlin

On March 05, 2008 Plaintiff filed by letter with the Court opposition to the Attorney General's illegal and conflicted representation of the many State Defendants of New York by the Attorney General's office¹. The letter to the Court came after the Attorney General's office refused to admit or deny conflicts to impart fair and impartial representation in the case and told Plaintiff to instead petition the Court to ascertain their conflicts, which seemed impossible for a

¹ March 05, 2008 Re: Plaintiffs Opposition to State Defendants Letter of February 29, 2008 in Eliot I. Bernstein, et al. v. Appellate Division, First Department Departmental Disciplinary Committee, et al.

judge to answer someone else's conflict of interest questions instead of demanding that opposing counsel run a thorough conflicts check before proceeding.

After a review of the matters and on information and belief, without asking the Attorney General to admit or deny conflict themselves, this Court in an Order dated March 10, 2008² presumed no conflict existed and allowed the tainted and now learned illegal representations of State Defendants by the Attorney General to continue in the Court. However the Court stated,

“I have considered plaintiffs' request and have determined that the Attorney General does not face an improper conflict of interest in representing the State Defendants. If, however, the Attorney General concludes that an investigation of defendants is warranted, then independent counsel would be required.”

In a series of phone calls with both Governor Andrew Coumo and Attorney General Eric Schneiderman regarding the failure of the Attorney General's office and Governor's office to investigate directly related criminal complaints to this RICO & ANTITRUST Lawsuit, investigations which would implicate their State Defendant clients in this case in a multitude of crimes, the complaints became purposely corruption stalled for years. However, recently, the AG's office made startling admissions that they could not investigate and had not investigated the complaints relating to these matters that have been with their offices for now years and further stated they could not continue representing anyone in this lawsuit, including the State Defendants in this Lawsuit, including their office and members of their offices, as they were wholly conflicted with the matters and would need to seek representative counsel to represent them in this Lawsuit. Further, they claimed they could not investigate the corruption stalled criminal complaints filed with their offices regarding a multitude of defendants in these matters

² March 10, 2008 Order Scheindlin

[http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/Scheindlin%20Order%2003%2007%202008%20\(2\).pdf](http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/Scheindlin%20Order%2003%2007%202008%20(2).pdf)

for the same reasons. Plaintiff has been waiting since the time of the last call whereby the Attorney General stated,

Jim Rogers [NY Attorney General Office]: If you are a plaintiff in a lawsuit to which the AG I work for is a defendant, I can't talk to you unless I'm represented by counsel.

Eliot Bernstein: You should be. So do you want to get counsel and start getting counsel for this?

Jim Rogers: I'll refer the case. We going to have to retain outside counsel if we are being sued directly.

Eliot Bernstein: Yes. Correct.

Jim Rogers: We'll retain outside counsel to represent us I think.

Eliot Bernstein: And also here's some other interesting points.

Jim Rogers: I can't do this. This conversation is over. I am a defendant in a case that you brought against this agency.

Eliot Bernstein: Well you're not but Cuomo and Spitzer are.

Jim Rogers: The AG as a whole.

Eliot Bernstein: But you're also representing against me you see because I'm pro se in the case

Jim Rogers: I have no idea. If I'm a defendant I can't talk to you.

Eliot Bernstein: Also wait wait wait. You're also counsel in the case.

Jim Rogers: I don't want to get too [sounds like] muffled with you. What you need to do is send me the Complaint against the Attorney General's office **and I will make sure that our counsel gets back to you promptly, alright?** I can't legally talk to you because I am an employee of the agency you are suing.

Eliot Bernstein: What is your email address?

Jim Rogers: My email address is james.rogers@ag.ny.gov

Eliot Bernstein: Okay and what was that james.rogers@ag.ny.gov

Jim Rogers: That's right.

Eliot Bernstein: Okay I will send you over a copy of the complaint.

Jim Rogers: **And our counsel will get in touch with you.**

Eliot Bernstein: And your counsel...by the way the Complaint will have a conflict of interest letter attached to the front of it.

Jim Rogers: As soon as we can open up a line of communication we will be happy to talk to you.

Eliot Bernstein: Then you're the first administration in eight years that will do that. It's amazing I'm blown away. From your mouth to God's ears.

Plaintiff has been waiting since April 14, 2011 for the New York AG's counsel to respond to us "promptly" and open a line of NON CONFLICTED communications but no one has called or written to this point. Plaintiff is certain AG would already have notified the Court and the US Court of Appeal's of their need to secure counsel and have their former illegally represented clients' secure non-conflicted "legal" legal counsel.

New York Attorney General's office has failed to date to secure promised NON CONFLICTED counsel to represent them and their 39+ state defendants in these matters and despite stating they cannot represent these matters and need independent counsel they instead file a response to Plaintiff's most recent Motion³ with no counsel representing them. Quite

³ "Emergency Motion Emergency Motion to:

I. IMMEDIATELY DISQUALIFY ALL JUSTICES AND OTHER MEMBERS OF THE UNITED STATES SECOND CIRCUIT COURT OF APPEALS (THIS COURT) WHOM HAVE CURRENTLY ACTED IN THIS LAWSUIT IN ANYWAY WHATSOEVER, FOR THEIR PART IN AIDING AND ABETTING FRAUD ON THE COURT, OBSTRUCTION OF JUSTICE, DENIAL OF DUE PROCESS AND MORE PRIOR TO ACTING ON FURTHER ON THIS MOTION

astonishing that while admitting Conflicts of Interest that have been Obstructing Justice to deny Plaintiff Due Process rights in this Court, the Attorney General then further acts in the matter without securing counsel to represent them and their illegally represented State Clients in these matters, as if none of this mattered. The illegal and obstructionary AG response⁴ to the “Emergency Motion” filed by Plaintiff, acting as both their own counsel and on behalf of the 39+ state defendants is again an illegal fraud on the court that denies Plaintiff fair and impartial due process under law.

Criminal Complaints filed with the New York Attorney General’s Office against members of the court, court officers, attorneys at law and public officials relating directly to this case which have not even been investigated at this time due to ADMITTED AND

II. REMAND AND REHEAR THIS RICO & ANTITRUST LAWSUIT DUE TO THE NEW YORK STATE ATTORNEY GENERAL’S NOW ADMITTED AND ACKNOWLEDGED CONFLICTS OF INTEREST, BOTH PAST AND PRESENT, IN ACTING ILLEGALLY AS COUNSEL FOR THEIR OFFICE AND ADDITIONALLY FOR 39 PLUS STATE DEFENDANT/ACTORS IN THIS LAWSUIT AND VIOLATING PUBLIC OFFICE RULES & REGULATIONS, ATTORNEY CONDUCT CODES AND STATE & FEDERAL LAW

III. REMAND AND REHEAR THIS LAWSUIT DUE TO THE NEW YORK STATE SUPREME COURT ATTORNEY WHISTLEBLOWER CHRISTINE C. ANDERSON’S FELONY CRIMINAL ALLEGATIONS AGAINST SENIOR COURT OFFICIALS, PUBLIC OFFICIALS AND MORE

IV. REMAND AND REHEAR THIS LAWSUIT DUE TO THE NEW YORK STATE SUPREME COURT ATTORNEY WHISTLEBLOWER NICOLE CORRADO’S FELONY CRIMINAL ALLEGATIONS AGAINST SENIOR COURT OFFICIALS, PUBLIC OFFICIALS AND MORE AS ALREADY EVIDENCED HEREIN AND IN EXHIBIT

V. REMOVE AND REPORT ALL OTHER CONFLICTS OF INTEREST, VIOLATIONS OF PUBLIC OFFICE RULES, VIOLATIONS OF JUDICIAL CANNONS, ATTORNEY CONDUCT CODES AND STATE AND FEDERAL LAW, CURRENTLY IN PLACE IN THIS RICO LAWSUIT AND RELATED CASES, IN ORDER TO IMPART FAIR AND IMPARTIAL DUE PROCESS UNDER LAW

VI. DEMAND THAT ALL PARTIES TO THIS LAWSUIT GOING FORWARD, INCLUDING BUT NOT LIMITED TO, COURT JUSTICES & OFFICIALS, ATTORNEYS AT LAW, PROSECUTORS, CLERKS, ETC. SIGN AFFIRMED CONFLICT OF INTEREST DISCLOSURES, IDENTICAL TO THE ONE ATTACHED HEREIN, ACKNOWLEDGING PERSONAL AND PROFESSIONAL LIABILITIES FOR ANY VIOLATION, PRIOR TO, ANY FURTHER ACTION BY ANYONE IN THIS RICO & ANTITRUST LAWSUIT

VII. DEMAND FOR JUSTICES OF THE SECOND CIRCUIT TO TURN THEMSELVES INTO STATE AND FEDERAL CRIMINAL AUTHORITIES TO ANSWER TO FILED CRIMINAL COMPLAINTS AGAINST THEM AND SERVED UPON THEM

VIII. ALLEGED CRIMES ONGOING BY P. STEPHEN LAMONT ET AL. BOTH KNOWN AND UNKNOWN AND FRAUD ON THIS COURT, THE US DISTRICT COURT AND NOW OTHER COURTS INCLUDING THE SUPREME COURT AND MORE

IX. PLAINTIFF SEEKS LEAVE TO AMEND THE AMENDED COMPLAINT TO ADD NEW DEFENDANTS AND NEW ALLEGED CRIMES NEWLY DISCOVERED filed July 27, 2012 <http://www.iviewit.tv/20120727%20COURT%20STAMPED%20FINAL%20SIGNED%20Motion%20to%20Remand%20and%20Rehear%20Lawsuit%20after%20Investigations%20of%20the%20New%20York%20Attorney%20General%20415935.pdf>, hereby incorporated herein by reference in entirety.

⁴ August 14, 2012 “STATE DEFENDANTS’ MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF ELIOT I. BERNSTEIN’S “EMERGENCY MOTION”.

ACKNOWLEDGED CONFLICTS OF INTEREST AND NEW CRIMINAL ACTS in these matters, constituting continued and ongoing RICO activities. No investigations into the complaints against the Members of this Court by DEFENDANT and OPPOSING COUNSEL in this Lawsuit, the New York Attorney General have begun, quite outside of Procedural Law, due to an ADMITTED DIZZYING ARRAY OF VIOLATIONS OF LAW by the Attorney General's Office. With the administration change from the New York Attorney General Andrew Cuomo to the current Eric T. Schneiderman's Administration, major Conflicts of Interest were acknowledged and ADMITTED TO by the new Schneiderman Administration and by members of the Cuomo Administration who were also members of the Cuomo AG administration prior. The New York Attorney General both Admitted and Acknowledged Conflict of Interests and violations of procedural laws in ALL Iviewit/Eliot Bernstein matters both Civil and Criminal and then requested time to obtain NON CONFLICTED OUTSIDE COUNSEL to represent themselves in this RICO Lawsuit and the Criminal Complaints filed against members of the AG office and others.

Yet, amazingly and without regard to law, this Court accepted a new Motion filed by the Attorney General in response to Plaintiff's the last Motion filed on DATE and was yet the Attorney General had already claimed and admitted they were CONFLICTED and NEEDED TO GET COUNSEL TO REPRESENT THEM. This Court has Erred greatly in accepting such CONFLICTED AND ILLEGAL RESPONSE by the New York Attorney General and must strike all representations by Defendant New York Attorney General and rehear the case free of these Frauds on the Court that have Obstructed Justice caused by Conflicts and Violations of State and Federal Law, Attorney Conduct Codes, Judicial Cannons and Public Office Rules and Regulations, all which have denied Plaintiff Due Process in toto, denying Plaintiff a single day in court for years and denied a Federal Venue to pursue Patent and Antitrust Violations against Plaintiffs.

THESE NEW AND SHOCKING ADMITTED AND ACKNOWLEDGED CONFLICTS OF INTEREST and DISQUALIFICATION/RECUSAL OF INVOLVEMENT AS COUNSEL in this RICO Lawsuit and in handling the Criminal Complaints filed at the Attorney General's offices, including but not limited to, those lodged against members of this Court, is a game changer in this RICO Lawsuit. The Admission of the Conflicts, Withdrawal from Representation in this Lawsuit and Withdrawal from handling CRIMINAL COMPLAINTS by the new Schneiderman Administration invalidates all prior filings by ALL Defendants in this Lawsuit whom the AG represented illegally and demand the court rehear the case and allow the relevant criminal complaints to be investigated prior or in conjunction with the rehearing. All prior illegal and vexatious filings in this Court by Defendant the New York Attorney General on behalf of their State Defendant clients and in their own defense serve as Prima Facie evidence for Criminal Investigators of further Fraud on the Court by Officials of the Court, Obstruction of Justice, Violations of Public Office Rules and Regulations and State and Federal Law. The Admission of Conflicts and other illegal activities demand IMMEDIATE rehearing of this RICO & ANTITRUST Lawsuit and ALL OF THE LEGALLY RELATED LAWSUITS, free of the plethora of Ongoing Conflicts of Interest, free of the continued Fraud on the Courts and free of Criminal Misconduct in the Court by those in charge of the courts.

The new Attorney General Schneiderman has now withdrawn as counsel to the New York State Defendants in these matters, including their office and members of their office who are Defendants in this Lawsuit, as indicated in the taped telephone conversations exhibited herein and included in entirety by reference herein. The New York Attorney General's representation has been illegal from the start due to the Conflicts of Interest that Obstructed Fair and Impartial Due Process and thus Plaintiff demands a rehearing FREE OF CONFLICT OF INTEREST.

The ADMITTED AND ACKNOWLEDGED conflicts forced the ATTORNEY GENERAL to declare that due to the PAST and ONGOING CONFLICTS OF INTEREST with both the CRIMINAL COMPLAINTS and this RICO & ANTITRUST LAWSUIT, their offices are currently SEEKING INDEPENDENT NON CONFLICTED OUTSIDE COUNSEL to represent their office and the members of their offices sued as Defendants in this Lawsuit.

The AG stated that they need to turn over all CRIMINAL COMPLAINTS, naming their offices and members of this Court, to NON-CONFLICTED parties for investigations as they are conflicted out. Therefore, the STATE DEFENDANTS REPRESENTED ILLEGALLY THROUGHOUT THIS LAWSUIT BY THE ATTORNEY GENERAL IN BOTH A PERSONAL AND PROFESSIONAL CAPACITY, ALL NOW NEED TO SEEK INDEPENDENT COUNSEL TO REPRESENT THEM FURTHER in this Lawsuit, one for personal representation and separate and distinct counsel to represent them in their official capacity.

The CONFLICTS of the Attorney General and other violations of Public Office, which have caused Obstruction and Denial of Due Process in the Lawsuit and the related Criminal Complaints since day one, now INVALIDATE ALL prior representations made by the New York Attorney General. All representations on behalf of their office, members of their office and in defense of their client STATE ACTOR Defendant Clients in this Lawsuit have been illegal and tendered in conflict since the outset. Anderson has also called for the ILLEGAL REPRESENTATIONS OF THE ATTORNEY GENERAL AND ILLEGAL USE OF PUBLIC FUNDS FOR PRIVATE LEGAL REPRESENTATIONS, estimated to amount to several hundred million dollars of legal costs to date, IMMEDIATELY CEASE.

At this time, over one year after the admission and acknowledgement of the need for independent counsel and investigators to intervene, the New York Attorney General's Office should have already noticed this Court and other Criminal Authorities of their Admitted and Acknowledged Conflicts of Interest and certainly obtained counsel. The New York Attorney General should already noticed this court of their voluntary DISQUALIFICATION AND RECUSAL from this RICO Lawsuit and the Criminal Complaints filed with their offices

To summarize the AG call, on April 14, 2011, James Rogers, Esq. Special Counsel and Senior Advisor to New York Attorney General Eric T. Schneiderman, ADMITTED and ACKNOWLEDGED Conflicts of Interest for both himself personally and the New York

Attorney General's Office, relating to CRIMINAL COMPLAINTS FILED WITH THEIR OFFICES AND THEIR ILLEGAL and UNETHICAL REPRESENTATIONS IN THIS LAWSUIT.⁵ and⁶ THESE ADMISSIONS preclude the NY AG from further direct action in any legal capacity in any matter relating to Plaintiff Iviewit/Eliot Bernstein in this Lawsuit and the Criminal Complaints filed with their offices. Conflicts of Interest that Rogers admitted preclude both Rogers and the AG's office from handling or even speaking further with Plaintiff about any matters related to Iviewit and Eliot Bernstein's Criminal Complaints and this RICO & ANTITRUST Lawsuit, without INDEPENDENT NON CONFLICTED COUNSEL REPRESENTING THEM. These ADMITTED & ACKNOWLEDGED Conflicts of Interest that preclude the AG from acting in any other capacity than as Defendant, have existed in this Lawsuit for the New York Attorney General since the initiation of the Lawsuit, even prior to becoming counsel for Defendants.

With the Admission of Conflict and the Anderson allegations, the time has come to investigate defendants for the now Admitted and Acknowledged prior conflicts, obstructions and more, looking backward fix the problems. First off, again, this Court must remove the Conflicted ILLEGAL LEGAL REPRESENTATIONS of the New York Attorney General that were designed from the start to OBSTRUCT JUSTICE and perpetrate FRAUD ON THE COURT, a rehearing free of conflicts and violations of law. The taped phone calls between Eliot Bernstein and Governor Cuomo's office with Emily Cole, Steven Michael Cohen⁷ and the New

⁵Taped Conversations with New York Governor Andrew Cuomo office, Steven M. Cohen (Chief of Staff), James Rogers, Esq., and Emily Cole.

<http://www.youtube.com/watch?v=X2pwFIEIp6E>

⁶ Exhibit 5 - Transcript of Taped Conversations with New York Governor Andrew Cuomo office, Steven M. Cohen (Chief of Staff), James Rogers, Esq., and Emily Cole.

⁷As of July 11, 2011, Cohen has been relieved of service to Andrew Cuomo.

“NEW YORK ATTORNEY GENERAL OFFICE OF ERIC T. SCHNEIDERMAN ADMISSION & ACKNOWLEDGEMENT OF CONFLICTS OF INTEREST BY JAMES ROGERS, ESQ. IN HANDLING IVIEWIT TECHNOLOGIES & ELIOT BERNSTEIN'S CRIMINAL COMPLAINTS AGAINST ANDREW CUOMO AND STEVEN M. COHEN. DEMAND FOR IMMEDIATE INVESTIGATION OF ANDREW CUOMO AND ELIOT SPITZER FOR VIOLATIONS OF PUBLIC OFFICE RULES & FELONY RICO CRIMES. CALL FOR NY ATTORNEY GENERAL TO CEASE ILLEGAL REPRESENTATIONS OF STATE SENIOR PUBLIC OFFICIALS, INCLUDING FORMER CHIEF JUDGE OF NEW YORK JUDITH KAYE IN THE IVIEWIT 12 TRILLION DOLLAR FEDERAL RICO AND ANTITRUST LAWSUIT, “LEGALLY RELATED” BY FEDERAL JUDGE SHIRA SCHEINDLIN TO A WHISTLEBLOWER LAWSUIT OF CHRISTINE C. ANDERSON A NEW YORK SUPREME COURT ATTORNEY. Proskauer Rose and Foley & Lardner Main Suspects in Patent Theft Worth Trillions.”

<http://iviewit.tv/wordpress/?p=588>

York Attorney General's office, culminating in Rogers ultimate ADMISSION & ACKNOWLEDGEMENT of Conflicts of Interest precluding further involvement are located at <http://www.youtube.com/watch?v=X2pwFIEIp6E> and hereby incorporated by reference in entirety herein.

In the TAPED CALLS TO GOVERNOR ANDREW CUOMO'S office, Cohen ironically responds to the statement by Plaintiff regarding Cohen's conflicts that preclude him from handling Criminal Complaints filed against himself and Cuomo. Plaintiff Bernstein notified Cohen, an old childhood friend that the complaints filed were attempting to "Put him in Prison," as he and Cuomo were named in the criminal complaints. Plaintiff notifies Cohen that he could no longer handle and bury the complaints naming him in RICO CRIMINAL activity, due to the obvious inherent conflicts. Whereby, Cohen retorts, "Some would say I already am in Prison!" At which point Plaintiff responded, "I agree!" Cohen then gives up control of the complaints and refers Plaintiff, acting still in conflict, to Schneiderman's Chief of Staff to handle. However, the complaints against Cuomo and Cohen were filed at both the NY Attorney General Office and the Governor's office and so Governor Cuomo must turn over the complaints filed with his offices to a Non Conflicted party to respond to them, as Cohen had blocked them in conflict for now several years from having any due process.

Yet, Cohen continued to act further in Conflict in his Official Capacity, now referring Plaintiff back to the AG Chief of Staff, despite the acknowledged conflict? Additionally, Emily Cole, Cohen's assistant, stated in the taped call that she had turned the complaints over to Cohen directly, whereby she was specifically requested by Plaintiff to not give the complaints to either Cuomo or Cohen upon filing them, further evidencing the INTENTIONAL Obstruction through Conflicts.

On May 20, 2011, a formal letter titled,

and

"Steven Michael Cohen, Andrew Cuomo Sr. Adviser Flees Sinking Cuomo Ship Over Iviewit Inventor Eliot Bernstein's Criminal Complaints against Cohen and Cuomo. Gotham Corruption at the Top Heating Up"
<http://iviewit.tv/wordpress/?p=591>

Re: / Phone Call on April 14, 2011 with James Rogers on behalf of Harlan Levy referred by Steven Michael Cohen, Chief of Staff to Governor Andrew Cuomo. re: FILED Criminal Complaints against the New York Attorney General's Office, Former Attorney General Andrew Cuomo, Steven Michael Cohen, Secretary to Governor Andrew Cuomo, and, Monica Connell of the New York State Office of the Attorney General et al.

was sent by Plaintiff memorializing the calls with the New York Attorney General Office and Governor Andrew Cuomo's Office. The Letter also contains additional Criminal Complaints against new participants in the RICO, including Cuomo's alleged niece, Emily Cuomo Cole who denied any relationship to Cuomo in the calls, yet on information and belief, Emily is the daughter of Maria Cuomo Cole. The Letter can be found at the following URL's, both hereby incorporated by reference in entirety herein,

<http://iviewit.tv/wordpress/?p=588>

and

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20110520%20FINAL%20NY%20AG%20ADMITTED%20CONFLICT%20OF%20INTEREST%20and%20CRIMINAL%20COMPLAINTS%20CUOMO%20and%20COHEN.pdf>.

From the Letter, quote,

Dear Mssrs. Levy and Rogers,

Please let this letter serve as formal commemoration of our April 14, 2011 phone conversation between James Rogers, Esq., Special Counsel and Senior Advisor to Attorney General Eric T. Schneiderman and myself. A witnessing party on the phone call was Patrick Hanley. The following summarizes the salient points of the call with James Rogers, Esq., acting on behalf of Harlan Levy referred by Steven Michael Cohen, Chief of Staff to Governor Andrew Cuomo and prior calls with the Governor's office.

Notably, Rogers acknowledged and admitted that he was precluded from handling the matters related to Iviewit's Criminal Complaints and RICO & ANTITRUST Lawsuit, as the Attorney General was Conflicted in the matters, as further defined herein. Admissions by Rogers of existing Conflicts of Interest now require IMMEDIATE corrective actions in ongoing State, Federal and International Criminal and Civil Proceedings going forward. The multiple Conflicts of Interest identified, caused Rogers to assert that the inherent Conflicts for himself, the Attorney General's Office and other members of the Attorney General's Office, now demanded that the Attorney General's office was required forthwith, to seek Outside Non Conflicted Independent Counsel in any related matters...

... The Conflict Swamp further thickens, when taking into account Conflicts created by the Attorney General's additional role as Legal Counsel for State Actors/Defendants in the RICO & ANTITRUST Lawsuit. The Attorney General's Office is not only representing their own offices and employees in conflict, but also, illegally representing **39 PLUS** State Actors/Defendants as counsel of record, in further Violations of Attorney Conduct Codes, Public Office Rules & Regulations and State & Federal Law, and yet, still directly handle Criminal Complaints naming them as central Criminal RICO Actors. Additional Conflicts of Interest are further created by the illegal twofold representation by the Attorney General of the State Actors/Defendants in both a Professional and Personal capacity. The Attorney General may represent State Actors/Defendants in Lawsuits in a PROFESSIONAL capacity only on the State of New York's funds and the Individual representations are illegal and further Violations of Attorney Conduct Codes, Public Office Rules & Regulations and State & Federal Law, further defined herein. This entire bizarre and convoluted myriad of ILLEGAL Conflicts of Interest and Obstructions create further massive Frauds on the Courts and Frauds on a Multiplicity of Government Agencies, all combining to further illegally deny Due Process and Obstruct Justice...

...Anderson further complains to the Federal Court in a Motion to Remove the Attorney General[13] from illegal legal representations that **CUOMO IS ILLEGALLY REPRESENTING STATE ACTORS/DEFENDANTS** in both the US District Court for the

Southern District of New York and the Second Circuit Court of Appeals, in her case and the “legally related” cases. Anderson filed to remove the Attorney General from her Whistleblower Lawsuit for ILLEGAL Conflicts of Interest and other Violations of Attorney Conduct Codes, Public Office Rules & Regulations and State& Federal Law, illustrating a further Pattern and Practice of Public Corruption designed to evade prosecution.

—

Footnote From the Letter ^[13]

[Anderson’s Motion to Remove the Attorney General](#) can be found at the following URL’s and Anderson’s arguments for removing the Attorney General in that Motion and her Lawsuit are hereby fully incorporated by reference as my own arguments in this Motion, where they are applicable to our “legally related” lawsuits.

<http://iviewit.tv/wordpress/?p=391>

[“Wednesday, September 15, 2010 “Anderson Moves to Disqualify NY Attorney General”](#)

http://www.frankbrady.org/TammanyHall/Documents_files/CCA%20091410%20Filing.pdf ...

B. ACTIONS TO REMOVE ADMITTED AND ACKNOWLEDGED CONFLICTS OF INTEREST FROM ALL PROCEEDINGS AND CEASE AND DESIST ILLEGAL REPRESENTATIONS OF STATE ACTORS/DEFENDANTS BY THE NEW YORK ATTORNEY GENERAL

As Anderson’s Motion to Disqualify the Attorney General’s Office shows, there are Conflicts of Interest inherent in the ILLEGAL legal representations of the Public Officers both personally and professionally by the New York Attorney General’s office, which preclude such representations. Therefore, since the conflicted representations are in Violations of Attorney

Conduct Codes, Public Office Rules & Regulations and State & Federal Law, all instances of these illegal representations must instantly Cease and Desist, and proper remedial actions taken.

First, all State Actors/Defendants illegally represented currently by the Attorney General, now must be replaced with Non-Conflicted Independent Counsel, separate counsel for both their Professional and Individual Legal Defenses where they are sued in both capacities. In particular, Anderson claims, quote,

“Ongoing Conflict of Interest”

Representation by the New York Attorney General’s office in the pending appeal continues the improper prejudice against plaintiff. Furthermore, not only did the Attorney General’s representation of the defendants unduly prejudice the plaintiff, but it also raised serious conflict of interest issues with respect to the defendants themselves. To protect their own rights, each of the defendants had to have their own attorneys in order to permit them to cross claim or make admissions, including their own right to protect their own individual rights in this appeal. Under New York State and federal conflict of interest rules, each of the defendants must be free to undertake these independent actions. To do so, they must have their own counsel. (See NYS Code of Professional Conduct Canon 5 Conflict of Interest Rules. [15]) The Attorney General as a state attorney is bound by these rules as well. [16]

This constitutes New York State law, and the attorney who violates these safeguards must be immediately removed from the case. Further, should the defendants seek to waive the conflicts they would have to submit an affidavit to that effect to the court.

Notwithstanding a defendant’s attempt to waive his right to independent counsel, the court can deny the waiver, based on a finding that ultimately this conflict cannot properly be waived.

The trial [sic trial] court improperly ignored the obligation to address the inherent conflict up to and including the trial. This court, however, must now disqualify the Attorney General from any representation of the defendants.

As a result of these conflict of interest issues, the Attorney General cannot properly represent the defendants, either as a group or individually, in these appellate proceedings. Each defendant must have the right to advance his or her own position on appeal, to cross claim against the others, and to bring a counterclaim against the State.

These actions most certainly could not be undertaken in a case where the Attorney General represents all the named defendants. All defendants clearly are in conflict with each other, especially in their individual capacities. Without question, the Attorney General violated its ethical rules and the public trust in undertaking to represent all of the defendants. The Attorney General continues to violate its ethical rules by appearing before this appellate body.

This would be the case, even were it established that the defendants had sought to consent to such representation...

The conflict here is particularly acute given the nature of the claims brought by plaintiff Anderson. Plaintiff's charges warranted an independent investigation by the New York State Attorney General's office to review the basic claims given that Anderson was formerly a Departmental Disciplinary Committee staff attorney with considerable experience and over the years received excellent evaluations. The fact is that these are not allegations from a lay person.

While at the DDC, Plaintiff Anderson was charged with investigating cases involving possible criminal and civil misconduct by attorneys. She carried out her duties as a duly authorized officer of the Court. The New York State Attorney General's Office was therefore obligated to protect her and to investigate her claims of serious misconduct against the named parties. To the Contrary, the New York State Attorney General's Office failed to do so.

The Attorney General is a publicly funded arm of the State. It was conflicted from the outset of this case because it could not possibly defend any of the defendants, while simultaneously investigating plaintiff's claims of serious ongoing misconduct by the defendants. Indeed, no explanation has ever been provided as to why the Attorney General did not represent plaintiff Anderson against any of the original defendants. This was itself a misappropriation of public funds by a state investigative agency with prosecution powers.

Federal law mandates that a special prosecutor be substituted into the case, and this was not done.”

Footnotes from Anderson filing

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Footnote ^[15]

[Conflict of Interest Disciplinary Rule 5](#)

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Footnote ^[16] [As head of the Department of Law, the Attorney General is both the “People’s Lawyer” and the State’s chief legal officer.](#) As the “People’s Lawyer,” the Attorney General serves as the guardian of the legal rights of the citizens of New York, its organizations and its natural resources. In his role as the State’s chief legal counsel, the Attorney General not only advises the Executive Branch of State government, but also defends actions and proceedings on behalf of the State. —...

...Similar to Anderson, in my RICO & ANTITRUST lawsuit, the Attorney General not only represents 39 plus State Actors/Defendants ILLEGALLY, both personally and professionally, but also acts as in further conflict as Counsel for their own offices and former employees, in both the US District Court and Second Circuit Court of Appeals. Evidence of such representations can be found in the Attorney General’s response to the Amended Complaint in US District Court, which was GRANTED & DOCKETED by Judge Scheindlin in the following Order, included by reference in entirety herein, [SCHEINDLIN ORDER GRANTING THE AMENDED COMPLAINT](#)

<http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080414%20Order%20Granting%20Filing%20of%20Amended%20Complaint.pdf>

The Amended Complaint was responded to ILLEGALLY by the Attorney General's Office, whom was wearing a number of conflicting hats, acting as both a State Actor/Defendant and Defense Counsel to other State Actor/Defendants, all represented ILLEGALLY both Professionally and in their Individual capacities. Once again, a further bizarre and illegal myriad of Conflicts of Interest exposed, again in Violation of Attorney Conduct Codes, Public Offices Rules & Regulations and State & Federal Law, combining to further Block Due Process & Procedure of the victims through Obstruction Justice to both the Criminal Complaints and the RICO & ANTITRUST Lawsuit.

The admission of Conflicts of Interest in these matters has now forced the NY Attorney General's office to refuse to further handle or even speak to Plaintiff regarding the Criminal Complaints filed with their offices or this RICO & ANTITRUST Lawsuit, disqualify their offices from further illegal legal representations and seek independent NON CONFLICTED COUNSEL AND INVESTIGATORS. The Attorney General stating they are seeking INDEPENDENT NON CONFLICTED COUNSEL to represent their offices forward in this RICO and INDEPENDENT NON CONFLICTED PROSECUTORS to investigate the CRIMINAL COMPLAINTS they have Obstructed for several years, including CRIMINAL COMPLAINTS naming Members of this Court as central conspirators in the Cover-Up crimes.

To the integrity of Scheinderman's Attorney General Office and Mr. Rogers, for admitting that the New York Attorney General's Office is ABSOLUTELY CONFLICTED in this Lawsuit and the Criminal Complaints and taking the right steps to absolve such continued violations of law and ethics. Further, for seeking INDEPENDENT NON CONFLICTED PARTIES to now represent and investigate these matters forward for their office and officials of their office named in this Lawsuit, Anderson's Lawsuit and the "Legally Related" Lawsuits. The admission and disqualification of the AG breaks down one of main conflicts in the WALL OF FELONY OBSTRUCTIONS perverting this Lawsuit from day one and wholly denying lawful due process and procedure. Prior to the Admission by Rogers of conflicts precluding the AG from representing Defendants in these matters, both New York Attorney Generals Spitzer and Cuomo, flagrantly and with SCIENTER violated Conflict of Interest Rules, Public Office Rules

and Law to deny Plaintiff due process. These OBSTRUCTIONS occurred with the blessing and APPROVAL FROM MEMBERS OF THE COURTS who allowed the AG to operate in the Courts in conflict, knowing of the illegality, all in Violation after Violation of Law. These Violations denied PLAINTIFF DUE PROCESS AND PROCEDURE THROUGH MULTIPLE ACTS OF FELONY FRAUD ON THE COURTS achieved through the VIOLATION OF ATTORNEY CONDUCT CODES, VIOLATION OF PUBLIC OFFICE RULES AND REGULATIONS AND VIOLATION OF STATE AND FEDERAL LAW.

II. ARGUMENT

A. Strike the filings of defendant and reopen case

1. Relevant Law

Fed. R. Civ. P. 12(f) provides that, upon motion, the court may order stricken from a pleading an insufficient defense or an immaterial matter. However, a court will not exercise its discretion under the rule to strike a pleading unless the matter sought to be omitted has no possible relationship to the controversy, may confuse the issues, or otherwise **prejudice** a party. *Charles R. Reyher vs. Transworld Airlines, Inc.*, 881 F. Supp. 574 (U.S. Dist. 1995). A three-part test determines whether a Rule 12(f) motion will be granted in district:

First, there may be no question of fact which might allow the defense to succeed...Second, there may be no substantial question of law, a resolution of which could allow the defense to succeed....Third, [the] plaintiff must show that it is prejudiced by inclusion of the defense.

County vanlines Inc. v. Experian Infor Solutions, Inc., 205 F.R.D. 148, 153 (S.D.N.Y. 2002) (quoting *SEC v. Toomey*, 866 F. Supp. 719, 722 (S.D.N.Y. 1992)) (alteration in original)

It has been held “prejudice is presumed when counsel is burdened by an actual conflict of interest. This presumption is fairly rigid. Moreover, once the defendant establishes that there was an actual conflict, he need not prove prejudice, but simply that a lapse in representation resulted from the conflict. To prove a lapse in representation, a defendant must demonstrate that some plausible alternative defense strategy or tactic might have been pursued, and that the alternative defense was inherently in conflict with or not undertaken due to the attorney's other loyalties or

interests.” *Unites States of America v. Michael Malpiedi and others*, 62 F.3d 465 (U.S. App. 1995)

I. Discussion

The defendants have admitted the conflict of interest. When there is conflict of interest prejudice is presumed. All the pleadings filed under conflict of interest prejudice the Plaintiff. Hence the court should strike the pleadings of defendants and reopen the case.

B. Granting a new trial

1. Relevant Law

Because of the unique perspective of the trial judge, the decision as to whether to grant a new trial is committed to the court's sound discretion and will be reversed only for a clear abuse of that discretion. *Kempner Mobile Electronics, Inc. v. Southwestern Bell Mobile Systems*, 428 F.3d 706, 716 (7th Cir. 2005); *Latino v. Kaizer*, 58 F.3d 310, 314 (7th Cir.1995).

Fed.R.Civ.P. 59 does not list the grounds for which a new trial may be granted. (Wright § 95). In federal courts, common law must be looked to in determining the available grounds. Of the numerous grounds justifying a grant of new trial, one is that the "interests of justice" require a new trial. See e.g., *Fort Howard Paper Co. v. Standard Havens, Inc.*, 901 F.2d 1373, 1379 (7th Cir. 1990) (affirming grant of new trial after a three-week jury trial). Among the grounds cited for seeking new trials are the following:

- (1) Irregularity of the proceedings;
- (2) Misconduct of jury;
- (3) Accident or surprise;
- (4) Newly discovered evidence;
- (6) Insufficient evidence;
- (6) Verdict against law;
- (7) Error in law;
- (8) Excessive or Inadequate damages.

In ruling on a motion for a new trial, "the judge may consider the credibility of the witnesses, the weight of the evidence, and any other matter which justice requires." *Spanish Action Committee of Chicago V. City of Chicago*, 766 F.2d 315, 321 (7 Cir. 1985). Moreover, the judge can order a new trial sua sponte. Rule 59(d), Fed.R.Civ.P.

A key question is whether a new trial should be granted to avoid a miscarriage of justice. See *Beckman v. Mayo Foundation*, 804 F.2d 435, 439 (8th Cir.1986) ("The district court can only disturb a jury verdict to prevent a miscarriage of justice.").

A court has broad discretion in considering a Rule 59(e) motion. *Hagerman v. Yukon Energy Corp.*, 839 F.2d 407, 413 (8th Cir.), cert. denied, 488 U.S. 820 (1988). Rule 59(e) was adopted to clarify that "the district court possesses the power to rectify its own mistakes in the period immediately following the entry of judgment." *White v. New Hampshire Dep't of Employment Sec.*, 455 U.S. 445, 450 (1982) (internal quotations omitted). A Rule 59(e) motion may be granted to correct a manifest error of law or fact, or to consider newly discovered evidence. See *Hagerman*, 890 F.2d at 414.

The granting of a new trial is within the discretion of the district court. *Larson v. Farmers Cooperative Elevator of Buffalo Center*, 211 F.3d 1089, 1095 (8th Cir. 2000). A new trial should be granted "if the verdict is against the weight of the evidence and if allowing it to stand would result in a miscarriage of justice." *Manus v. AmfIrican Airlines, Inc.*, 314 F.3d 968, 973 (8th Cir. 2003).

Although the issue is rarely raised, the district courts' grants of motions for new trials have been repeatedly affirmed. E.g., *General Foam Fabricators, Inc. v. Tenneco Chemicals, Inc.*, 695 F.2d 281, 288 (7th Cir. 1982); *Juneau Square Corp. v. First Wisconsin Nat. Bank of Milwaukee*, 624 F.2d 798, 809 (7th Cir. 1980).

2. Discussion

In this action, plaintiff was confronted with an unquestionably unfair set of circumstances. Plaintiff filed his complaint against defendants, who, although employed by the State of New York, were ultimately sued in their individual capacities. These defendants in turn

were defended by the New York State Attorney General. Thus, while the plaintiff charged the defendants with serious violations of law, the Attorney General stood before the court defending these very same actions. This arrangement seriously prejudiced the plaintiff, as court could and likely did conclude that the State Of New York supported fully the conduct of the defendants.

Furthermore, not only did the Attorney General's representation of the defendants unduly prejudice the plaintiff, but it also raised serious conflict of interest issues with respect to the defendants themselves. To protect their own rights, each of the defendants had to have their own attorneys in order to permit them to cross claim or make admissions. The Attorney General has accepted the conflict of interest.

Attorney General not only advises the executive branch of State government, but also defends actions and proceedings on behalf of the State government and represents all the named defendants. All defendants clearly are in conflict with each other, especially in their individual capacities. Without question, the Attorney General violated its ethical rules and the public trust in undertaking to represent all of the defendants.

The involvement of the New York Attorney General in refuting plaintiff's allegations, which involved serious violations of federal and state law and ethical standards, and in presenting the case of each defendants, denied plaintiff's due process and equal protection guarantees, and right to a fair and impartial trial. See *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) ("If a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental") and *Eldridge v. Williams*, 424 U.S. 319 335 (1974)

The Attorney General is a publicly funded arm of the State. It was conflicted from the outset of this case because it could not possibly defend any of the defendants. The actions of the Attorney General here confused, misled and confounded the court.

The representation made by Attorney General under conflict of interest has prejudiced the Plaintiff and resulted in miscarriage of justice, hence warrants a new trial.

III. Conclusion

For the reasons set forth in detail herein, Plaintiff respectfully requests that this Court in the interest of justice strike all the pleadings and filings of defendants and grant a new trial. Plaintiff is ready willing, and able to go to trial immediately and no delay, harm, or prejudice will occur to the other parties as a result of plaintiff's motion. In as much as the Attorney General should even be denied the opportunity to answer, and as justice demands, the court should sua sponte, grant the herein sought relief.

I declare under penalty of perjury that the foregoing is true and correct.

Wherefore, plaintiff respectfully requests that after notice and hearing, strike all the pleadings and filings of defendant, the judgment rendered in this case be set aside and the plaintiff be granted a new trial.

Respectfully submitted,

Dated: New York, New York

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