

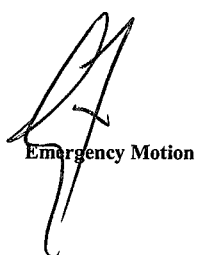
8AU5ANDC conference

1 whole -- and we would expect in a motion, your Honor, to of
2 course delve into the record and show your Honor the specific
3 deposition testimony and documentation which pertains here and
4 there is a fair amount of deposition testimony and also a
5 substantial amount of documentation which relates to the case
6 because there was intraoffice communications of various kinds
7 that went on -- we think that the discrimination claim just
8 will not hold up to scrutiny on a summary judgment basis.

9 We think that Mr. Beranbaum, in his own letter I
10 think, in effect, acknowledges that he has some heavy lifting
11 because he relies on precedent to the effect that the person
12 who allegedly was the source of the racial animus, Sherry Cohen
13 or such is the allegation, through communications that she
14 made, infected other people who were decision makers in having
15 Ms. Anderson discharged from her position. And on the basis of
16 that infection, as it were, the decision as a whole to dismiss
17 Ms. Anderson should be regarded as resulting from racial
18 discrimination.

19 So, you have kind of a double thing that is a result
20 from the racial discrimination. There is kind of a proximate
21 cause relationship there. And I think we're going to be able
22 to show that the decision on the part of the Office of Court
23 Administration Personnel as well as the Court personnel who
24 made the decision to discharge Ms. Anderson, was not affected
25 by any kind of racial discrimination.

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1 THE COURT: But what I am worried about is whether
2 that's a fact issue. I can't comb the record and then decide
3 facts.

4 MR. ADLERSTEIN: Well, your Honor, I think again that
5 gets me to my next point, that there is simply no evidence by
6 which a fact finder could infer that there was racial
7 discrimination.


8 THE COURT: What if Ms. Cohen's behavior shows it?
9 MR. ADLERSTEIN: Ms. Cohen's behavior or alleged
10 behavior --

11 THE COURT: Yes.
12 MR. ADLERSTEIN: -- we think is based solely on
13 unsubstantiated conjecture --

14 THE COURT: Wait. Wait.
15 MR. ADLERSTEIN: -- and speculation.

16 THE COURT: What does that mean? A plaintiff can
17 create an issue of fact.

18 If a plaintiff says -- not taking this case now and
19 making up a hypothetical case, a typical case of sex
20 discrimination, let's say -- he touched me, he said, he did.
21 Whatever that plaintiff says is evidence. It is not conjecture
22 or speculation. If the plaintiff says that the defendant --
23 and I said I'm making up a difference case so you won't think
24 it is this one -- but you know, he did something inappropriate.
25 That's her version. And in that case that would be enough to
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1 get to a jury.

2 MR. ADLERSTEIN: Except the plaintiff's own language
3 doesn't link it to race and the only evidence that the
4 plaintiff even attempted to link that allegation to race is
5 based on conjectural testimony from other employees which will
6 not hold up both on a matter of fact that it would not be
7 admissible evidence and also that it is unsubstantiated and
8 speculative.

9 THE COURT: Well, wait. Ms. Anderson testified that
10 she heard Ms. Cohen making racially derogatory remarks about
11 Black people and Hispanics?

12 MR. ADLERSTEIN: I don't believe that that is actually
13 an accurate portrayal of what's in the record.

14 THE COURT: Oh. Well, I don't -- I didn't study the
15 deposition but that's what was represented to me in the letter.

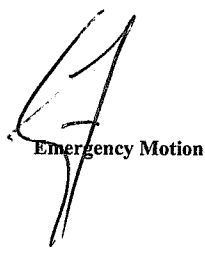
16 MR. ADLERSTEIN: Right.

17 THE COURT: Did Mr. Beranbaum lie in the letter? Did
18 you lie in the letter or did she say in her deposition that she
19 personally heard Ms. Cohen making racially derogatory remarks
20 about Black people and Hispanics?

21 MR. BERANBAUM: That's correct. She has told me that.

22 THE COURT: I didn't ask you what she told you, I said
23 what did she say in her deposition under oath? Is it there or
24 not there in the transcript?

25 MR. BERANBAUM: There is -- some of it is there and
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1 some of it was not asked and so it was not -- and so, she
 2 didn't need to answer it but she will provide an affidavit
 3 that's not inconsistent with a deposition.
 4 THE COURT: Right. An affidavit can't be
 5 inconsistent. It will be completely discounted.
 6 MR. BERANBAUM: It won't be.
 7 THE COURT: That means it will open up another
 8 deposition. I mean, if she's going to say things that are new
 9 that are in an affidavit here, we haven't gotten very far.
 10 MR. BERANBAUM: Well, these are remarks that Ms. Cohen
 11 said about Black people and about Hispanics.
 12 THE COURT: I know, but Mr. Adlerstein doesn't know
 13 about this. This is not in the record. I thought the record
 14 was closed. Now she wants to submit an affidavit in support of
 15 defending defendant's summary judgment motion.
 16 MR. BERANBAUM: Some of it isn't in the deposition
 17 and, as I said, it is not going to be inconsistent.
 18 THE COURT: I heard him saying that but it is new and
 19 if Mr. Adlerstein did know about it he wouldn't have made the
 20 motion. So, I'm wondering if you shouldn't just do the
 21 affidavit right now and find out what it is that she's going to
 22 say that's not in the deposition and Mr. Adlerstein can look at
 23 the deposition and he can analyze for himself whether he thinks
 24 it is inconsistent and write a letter to the Court saying you
 25 can't accept the affidavit, it is only inconsistent, or you can

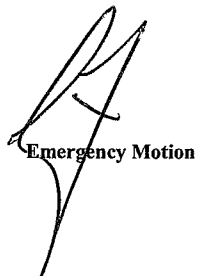
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1 say, well, I agree that wasn't asked, it is not inconsistent.
2 If that's what she's going to say in opposition to the motion I
3 can't move on that one claim.
4 Anyway, you were starting to say?
5 MR. BERANBAUM: I would be happy to do that.
6 THE COURT: Then do it. When can you get the
7 affidavit out?
8 MR. BERANBAUM: Next week.
9 THE COURT: What day? Close of business Wednesday?
10 MR. BERANBAUM: Sure.
11 THE COURT: Okay. So, in any event, let's say she did
12 say what he put in his letter that she heard Ms. Cohen making
13 racially derogatory remarks about Black people and Hispanics,
14 and then another witness would say -- and maybe this isn't good
15 enough -- but Black investigators of the DDC, you would say
16 Ms. Cohen discriminates against employees of color by routinely
17 harassing, demeaning and micro-managing them until they
18 eventually are forced out of their jobs.
19 Do you know about that testimony, this DDC
20 investigator or, again, this is new and not in the record right
21 now?
22 MR. ADLERSTEIN: Well, there is testimony from
23 co-workers where they make blanket statements to that effect.
24 However --
25 THE COURT: Do you know who this actual person is, a
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1 former Black investigator at the DDC that he quotes in the
2 letter? Do you know who that is?

3 MR. ADLERSTEIN: Yeah. The person was -- there were
4 two people.

5 THE COURT: As long as you know who it is.

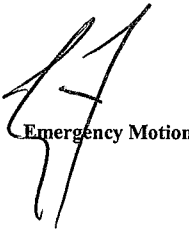
6 MR. ADLERSTEIN: There were two people who were
7 deposed.

8 THE COURT: Okay.

9 MR. ADLERSTEIN: And what we have done is we have
10 taken a look at that deposition testimony which the plaintiff
11 took and that deposition testimony is wholly conclusory. There
12 is no specifics where the individual says that they were able
13 to see how the conduct toward individuals they claimed who were
14 treated differently was related to race. It was a totally
15 conclusory fact.

16 I would ask the Court to consider the fact that we
17 will be able to cite case law. We just received a decision
18 from Judge Sifton in a case that we didn't cite in our letter,
19 a case called Moore v. New York State Division of Parole, 2008
20 U.S. District Lexis 72260, where a similar testimony was
21 offered in opposition to a motion for summary judgment. And
22 Judge Sifton cited case law rejecting the import of that
23 testimony to the effect that this was wholly conclusory
24 statements, that the impression of the person who was being
25 asked was that there was discrimination going on saying that I
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1 don't like how this particular person was treated and because I
2 didn't like how this person was treated it must have been
3 because of race.

4 That kind of testimony has been rejected under case
5 law and I think that irrespective of what Mr. Beranbaum is
6 going to be coming up with, I doubt very much that it is going
7 to be able to be linked to specific conduct on Ms. Cohen's part
8 or anyone else's part which demonstrates in any way, shape, or
9 form that race was in any way linked to the decision that was
10 made with respect to Ms. Anderson.

11 THE COURT: As for this recent decision, there are
12 hundreds and hundreds of District Court opinions on employment
13 discrimination cases. It is really best to cite controlling
14 law which is Circuit or Supreme Court. One can get lost in the
15 thicket of District Courts so I think the most persuasive
16 authorities for me usually are of course starting with the
17 United States Court; second, the Second Circuit Court of
18 Appeals; and third, if I have said it in a prior opinion I
19 guess I should be reminded. But, other than that, you know,
20 the plethora of District Court cases are not too fascinating.

21 MR. ADLERSTEIN: Judge Sifton does cite a District
22 Court case.

23 THE COURT: Then you should too.

24 MR. ADLERSTEIN: A case called Schwab v. Toufayon.


25 THE COURT: Yes. I remember that case.

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1 MR. ADLERSTEIN: He cites that case.
2 THE COURT: That's fine.
3 MR. ADLERSTEIN: And I think the prevailing law is
4 along those lines.
5 So, I would submit to the Court that there is at least
6 a very serious issue here about a link to racial discrimination
7 which your Honor ought to take a look at on summary judgment as
8 to whether you have more than speculative and conclusory
9 testimony as well as whether or not there is a real link
10 between anything Ms. Cohen would have thought or said or done
11 and the actual decision to have dismissed --
12 THE COURT: Okay. Let's go to retaliation.
13 MR. ADLERSTEIN: So that's on that.
14 THE COURT: Can we go to retaliation?
15 MR. ADLERSTEIN: Absolutely. Opinion on the
16 whistle-blowing or retaliation claim, there I know your Honor
17 has recently written on it in the Fiero case. We took a look
18 at Fiero as well as other cases. We cited the Routolo case.
19 THE COURT: Oh yeah, Fiero. They're appealing that.
20 Somebody is appealing Fiero. They don't like what I did.
21 MR. ADLERSTEIN: Okay.
22 THE COURT: You didn't like it.
23 MR. ADLERSTEIN: Routolo.
24 THE COURT: No, no. Fiero.
25 MR. BERANBAUM: In Fiero your Honor decided that the
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1 speech involved was, in effect, citizen speech, it wasn't
2 because the person was actually saying that the employee was
3 saying that they had been asked to do specifically dishonest
4 acts.

5 THE COURT: It was a teacher dispute.

6 MR. ADLERSTEIN: Right. Right. And what the Routolo
7 case instructs, as well as other cases, is that essentially
8 which side of the fence the speech is on that was allegedly
9 linked to the firing --

10 THE COURT: Right.

11 MR. ADLERSTEIN: -- is to be determined by a Court as
12 a matter of law.

13 THE COURT: Okay.

14 MR. ADLERSTEIN: And so, we think that the motion for
15 summary judgment will provide an opportunity. It will be our
16 position, your Honor, that the record shows that the alleged
17 speech was essentially linked to the plaintiff's job and her
18 job duties. What she claims to have done was to have said to
19 some superiors, I think that you are going too easy on some
20 people in some cases and as a result of that we are not
21 fulfilling our mission. However, at the same time she doesn't
22 go beyond the small circle of people that she's talking to.
23 There is allegations in the complaint that somehow this was an
24 allegation relating to corruption that was going on. When the
25 plaintiff was asked about corruption inside the agency in her

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1 deposition, the plaintiff was unable to point to any specific
2 instance of corruption or any real patterns of corruption. It
3 just didn't hold up.

4 And so, we think that we are going to be able to show
5 in this motion, through a combination of all the circumstances
6 which the Courts have said contribute to a decision on what
7 kind of speech it is, whether it is in effect citizen speech or
8 whether it is job-related speech, we think we are going to be
9 able to show, your Honor, that clearly here what happened was
10 that it was job-related speech and that it was not speech as a
11 citizen.

12 We understand that the plaintiff is --

13 THE COURT: Therefore it doesn't have the same First
14 Amendment protection.

15 MR. ADLERSTEIN: That's right. That's right.

16 THE COURT: How does that help us with the retaliation
17 claim itself?

18 MR. ADLERSTEIN: Well, because the retaliation claim
19 is essentially that the plaintiff was dismissed as a result of
20 having told Katherine Wolf, who was the chief clerk, as well as
21 some other vague claims that the plaintiff has made about
22 perhaps telling others as Mr. Beranbaum said in his letter,
23 about such things. However, we have not seen substantiation of
24 that in the record. And even though Ms. Wolf denies that the
25 plaintiff made any of those kinds of comments to her, we think

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1 that even if she had said what she claims to have said to
2 Ms. Wolf, it wouldn't have comprised the kind of speech which
3 is protected. And also --

4 THE COURT: Once the speech isn't protected, let's say
5 it is in the course of her job, it is not a citizen job, then
6 they can fire her for the speech.

7 MR. ADLERSTEIN: That even if they had fired her for
8 the speech that it would have been permissible. However, we,
9 at the same time we are going to be able to show that the
10 firing itself was not linked to that speech and so that the
11 causation hasn't been shown. That's essentially the first step
12 is to show that.

13 THE COURT: You have a two-prong attack.

14 MR. ADLERSTEIN: Yes. And basically it is a two-prong
15 attack and that under Routolo, because it is an issue of law,
16 it provides the Court the opportunity to weigh into that
17 particular issue.

18 THE COURT: Well, except you are saying even if it was
19 protected speech it doesn't matter.

20 MR. ADLERSTEIN: Right.

21 THE COURT: She wasn't fired based on the speech now
22 as a matter of law, not issue of fact.

23 MR. ADLERSTEIN: Right. And we also think we are
24 going to be able to show that there was a lack of temporal
25 proximity because the conversation with Ms. Wolf took place in
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1 August of '06, the firing took place in June of '07; that this
2 would not have been linked to the -- so, there is various
3 instances that we would like to be able to present to the Court
4 on that particular issue.

5 THE COURT: Okay.

6 MR. ADLERSTEIN: And I would submit, on that basis,
7 the motion for summary judgment will be of at least substantial
8 assistance to the Court.

9 THE COURT: There is no such thing as substantial
10 assistance. Either you win it or you lose it. You think you
11 can win it.

12 MR. ADLERSTEIN: We think we can.

13 THE COURT: Because I don't need any assistance.

14 MR. ADLERSTEIN: No, but I mean in terms of the
15 parties involved in shaping the case and we think we will win.

16 THE COURT: Mr. Beranbaum, do you want to respond?

17 MR. BERANBAUM: Yes.

18 In terms of the race discrimination case, as the Court
19 well knows race discrimination, the determination is one of
20 intent and that's a province usually reserved for the jury to
21 make that decision in summary judgment.

22 THE COURT: There has to be some evidence on which
23 they can make it. What the summary judgment motion is saying
24 on the discrimination case is the record has no evidence; not
25 only little evidence but no evidence.

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1 MR. BERANBAUM: Yes. And I think that that's just an
 2 incredible position to take.
 3 THE COURT: Why?
 4 MR. BERANBAUM: I will explain.
 5 THE COURT: Okay, but yes, but here is my question.
 6 Because a supervisor can harass an employee for all kinds of
 7 other reasons, they just don't like the way they dress or they
 8 don't like I don't know what else, they don't like the way they
 9 speak or something or other. And while it is not a nice thing,
 10 it is not actionable. This has to be linked to race.
 11 MR. BERANBAUM: That's right.
 12 THE COURT: Okay.
 13 MR. BERANBAUM: And here a jury could make a
 14 reasonable inference linking the adverse action, the hostility,
 15 the hostile environment and the recommendation for firing --
 16 THE COURT: Based on what.
 17 MR. BERANBAUM: -- with race.
 18 THE COURT: Because the plaintiff is a minority?
 19 That's not enough.
 20 MR. BERANBAUM: It is certainly not my position.
 21 THE COURT: Okay. So what is the evidence?
 22 MR. BERANBAUM: The evidence is that she has been
 23 heard by co-workers, including my client, of making racially
 24 insensitive maybe racist remarks, that she has an animus
 25 towards minorities and Black people in particular as reflected

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1 by those remarks.

2 The remarks, it is contrary to counsel's

3 characterization that these remarks are simply conclusory. The

4 individual I quoted, and his name is Mr. Van Loo, and the

5 defendant took his deposition, not the plaintiff, he, in his

6 affidavit spoke specifically about disparate treatment that he

7 received --

8 THE COURT: That he himself received?

9 MR. BERANBAUM: Correct.

10 THE COURT: Not reporting about what he thinks she

11 said to others.

12 MR. BERANBAUM: That's correct, your Honor. And,

13 candidly, that's an issue. If we can show, which I think we

14 can, a generalized racial animus reflected in both her

15 treatment and disparate treatment to my client and others and

16 racially insensitive remarks, if we can show that she had that

17 animus and we can show that she was the prime mover in the

18 termination of my client, I think that's enough to get to a

19 jury and that's our case.

20 THE COURT: Funny, you don't really disagree much with

21 Mr. Adlerstein, you just think the law is broader in accepting


22 that kind of generalized proof than he does.

23 MR. BERANBAUM: No, I --

24 THE COURT: I mean, she can't say that this supervisor

25 said to me or wrote to me or did anything to me that was

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1 explicitly race discrimination so it is more of a generalized
2 allegation: She didn't treat me very well and, by the way, she
3 is a racist.

4 MR. BERANBAUM: She didn't treat me very well and, in
5 fact, she treated me differently than White people.

6 THE COURT: Right.

7 MR. BERANBAUM: She made ably insensitive remarks in
8 my presence.

9 THE COURT: We don't have that here. That's going to
10 be this affidavit.

11 MR. BERANBAUM: We do have that. I'm being perfectly
12 on the safe side. I didn't review the deposition. They might
13 all be in there but I want to be on the safe side and if there
14 is anything that is not in there I will have an affidavit but,
15 trust me, there is remarks in the deposition. And thirdly,
16 what she said to other people and how she -- minorities and how
17 she acted towards other people. That's our evidence.

18 THE COURT: Okay. It sounds like a difficult case.

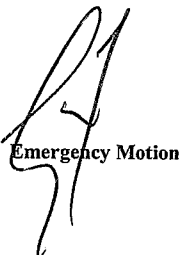
19 MR. BERANBAUM: Can I just make one other point?

20 THE COURT: Yes.

21 MR. BERANBAUM: On top of that, there was
22 extraordinary efforts made against this woman and some of which
23 I referred to, these biased evaluations, not letting her
24 respond to them, keeping her in the supervision of a woman who
25 she feared because she had been assaulted. And there is case

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1 law, as I'm sure your Honor recognizes, that this kind of
2 irregular treatment one can infer in combination with other
3 evidence was caused by discriminatory animus.

4 THE COURT: All right. This may be one of the rare
5 cases where the discrimination claim may survive and the
6 retaliation won't. We often have the opposite outcome at the
7 end of the day. Do you want to address the retaliation claim
8 briefly?

9 MR. BERANBAUM: Sure.
10 The retaliation claim, and you know I think
11 Mr. Adlerstein and I agree that the issue here is under
12 Garcetti. She was speaking as a disgruntled employee.

13 THE COURT: He goes one step farther and says even if
14 the speech was protected, there is no proof she was fired.

15 MR. BERANBAUM: Yes, and that's a fact question.

16 THE COURT: Not necessarily. There, again, has to be
17 some facts in the record from which a reasonable juror could
18 find that she was fired because of her speech. There has to be
19 something to support it. A jury can't just pluck it out of the
20 air.

21 MR. BERANBAUM: Well, I can show temporally --
22 THE COURT: He said the opposite. He said temporally,
23 no, no, no, but he gave me some dates, for his part of the
24 record and I will have the transcript to look at. What do you
25 have to say? Surely the date of termination is the same. What

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1 did you tell me it was?

2 MR. ADLERSTEIN: June of '07, your Honor.

3 THE COURT: That must be agreed upon.

4 MR. BERANBAUM: Right. And the assault that I

5 mentioned that grew out of her complaint was in June of '06.

6 And thereafter there was a series of adverse -- of negative and

7 hostile actions on the part of this woman.

8 THE COURT: I know, but her speech, the complaining

9 speech. What was the complaining speech? By the way, because

10 you don't pause so there is no use talking to you.

11 MR. BERANBAUM: I'm sorry.

12 THE COURT: Mr. Adlerstein, when is the complaining

13 speech.

14 MR. ADLERSTEIN: When I was alleging to this alleged

15 whistle-blower speech, in August of '06.

16 MR. BERANBAUM: Right.

17 THE COURT: So a year.

18 MR. BERANBAUM: In September of '06.

19 THE COURT: Still close to a year earlier.

20 MR. BERANBAUM: But I think the record will make it

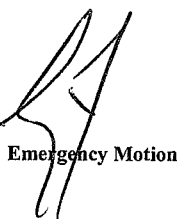
21 clear that she continued to make complaints. Then she spoke to

22 Mr. Cahill and there are --

23 THE COURT: What is the most recent speech to the

24 termination that you have in the record?

25 MR. BERANBAUM: In the record, she submitted a
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1 grievance in which she referred to the retaliation for her
 2 complaints about the soft treatment that the DDC was according
 3 attorneys and that was in the spring.

4 THE COURT: She was fired when again? June? June.
 5 MR. BERANBAUM: Yes. Truly, the Garcetti issue I
 6 think is really what's key.

7 THE COURT: I don't know about that. It may mean
 8 there is not enough of a link no matter what.
 9 Okay. I think I get the argument. If there is
 10 nothing you wish to add I thank you both for coming in early.
 11 We need to go over the schedule, or do we?


12 MR. ADLERSTEIN: Well, I think it would be helpful to
 13 have a schedule.

14 THE COURT: But I'm saying we don't have one yet.
 15 MR. ADLERSTEIN: No, we do not.

16 THE COURT: That's the next step, to set the schedule.
 17 I have one other question. Have you tried to mediate
 18 this employment dispute in the building? I send the case to a
 19 magistrate judge or the Court Annexed Mediation Program. Did I
 20 do either here?

21 MR. BERANBAUM: I suggested it. We had suggested it.
 22 THE COURT: I don't wait for your consent other than
 23 which one do you want, magistrate judge or Court Annexed
 24 Mediation Program which of course is free, but you have to go
 25 to one or the other.

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1 MR. BERANBAUM: I see.

2 THE COURT: Maybe you didn't do that because at one

3 time Ms. Anderson had a different lawyer, I think it was a

4 different setting. In any event, I didn't send you. Is that

5 it?

6 MR. BERANBAUM: Correct.

7 THE COURT: Do you want to go to magistrate judge or

8 the Court Annexed Mediator?

9 MR. ADLERSTEIN: I think the magistrate judge.

10 THE COURT: Fine. What month would you like to?

11 MR. BERANBAUM: Your Honor, may I say something?

12 THE COURT: No. Not really. It is going to go to the

13 magistrate judge.

14 MR. ADLERSTEIN: Would that be the same magistrate

15 judge because my --

16 THE COURT: As what?

17 MR. ADLERSTEIN: As has been handling the discovery.

18 THE COURT: In the Anderson case?

19 MR. ADLERSTEIN: Yes.

20 THE COURT: Who is that?

21 MR. ADLERSTEIN: Judge Peck. And the only reason I

22 say so, Judge Peck is in my eyes is great but we've had some

23 sort of discovery run ins. My client feels a little weary and

24 I don't think it would be productive in that case.

25 THE COURT: I don't know. I have to speak to the, I
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1 guess, the chief magistrate judge whether they can assign it to
2 a different one for settlement purposes only. So, I will fill
3 out the form and then I will look into that but I do want to
4 make sure it gets done. So, I will put down November. If you
5 are going to talk settlement you might as well talk. Discovery
6 is pretty well known so I will put down November and we will
7 see who it will be.

8 MR. ADLERSTEIN: Your Honor, perhaps if -- no, that's
9 okay.

10 THE COURT: I want to get you a schedule for the
11 summary judgment so I can move on to the remaining cases and
12 get out on time.

13 MR. ADLERSTEIN: Your Honor, may I make a suggestion
14 about the schedule?

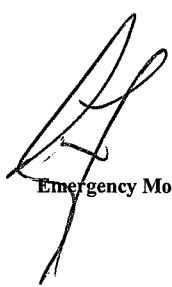
15 THE COURT: All right.

16 MR. ADLERSTEIN: We were going to ask your Honor for a
17 January date for submission of the motion. There is a couple
18 of things going on. First, my hours have been curtailed
19 because of the fact that I haven't been feeling well, I'm under
20 some medication with what I have been dealing with; and
21 secondly, both Mr. Bauman and I have a trial in front of Judge
22 Sifton scheduled for December the 8th, and so we think that we
23 would be able to get a motion in by the early part of January.

24 THE COURT: Today is October 30th. I thought you
25 meant that that would be fully submitted by then. Moving

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(212) 804-0300




8AU5ANDC conference

1 papers would be before and the response papers and reply
 2 papers.

3 MR. ADLERSTEIN: I respectfully request that for those
 4 factors, my hours have been curtailed and also we do have that
 5 trial that we need to concentrate on. In that case there is a
 6 fair amount of pretrial activity that judge Sifton has ordered,
 7 and it just happens that Mr. Bauman and I are both involved in
 8 that trial. And so, I would respectfully request that the
 9 Court allow us to see clear to --

10 THE COURT: But you have a big, big, big office. In
 11 other words, are you not the only two people there. To ask
 12 basically that the case go on hold for two and a half months is
 13 what you are saying. You know, once the papers are filed in
 14 summary judgment from the moment the first person files and
 15 then the next response and then reply and then waiting for the
 16 Court, it almost always takes half a year. That's my
 17 experience from beginning to end and that's a long time so I
 18 just wanted to start the process. I'm not saying it has to be
 19 filed in a week or 10 days, but to ask for two and a half
 20 months to file papers, I understand the reasons that you two
 21 are but you have a big, big office.

22 MR. ADLERSTEIN: Well, the fact is, your Honor that --
 23 THE COURT: And your case before Judge Sifton may
 24 settle. That happens all the time.
 25 MR. ADLERSTEIN: I don't expect that case is going to
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Emergency Motion

8AUSANDC conference

1 settle. That hasn't been successful before and also there is a
2 fair amount of ground to cover here and I'm just looking to try
3 to be realistic and not have the kind of pressure which I think
4 would be very difficult to deal with under the circumstances.

5 THE COURT: What is your view?

6 MR. ADLERSTEIN: I had mentioned that to
7 Mr. Beranbaum.

8 THE COURT: Mr. Beranbaum, what is your view?

9 MR. BERANBAUM: I'm certainly going to accommodate
10 Mr. Adlerstein's not feeling well and he's always extended me
11 courtesies and so I don't feel like I'm going to object to his
12 needs and trust what he has to say.

13 THE COURT: But, Mr. Adlerstein, since I'm not a great
14 fan of this proposal in the first place I'm not going to give
15 any adjournment. I don't see how you are better off putting it
16 the day after your trial.

17 MR. ADLERSTEIN: No, the trial is December 8.

18 THE COURT: I know.

19 MR. ADLERSTEIN: So if your Honor gave us --

20 THE COURT: How long is it supposed to last?

21 MR. ADLERSTEIN: Probably a week or a little bit more.

22 If your Honor gave us an early January date it would be my
23 expectation -- I'm not going away in the holiday period.

24 THE COURT: Okay. But, I'm telling you now I'm not
25 going to adjourn it, it is a no adjournment schedule. January

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8AU5ANDC conference

1 7th for the moving papers.

2 MR. ADLERSTEIN: Thank you.

3 THE COURT: No adjournments.

4 Mr. Beranbaum, how long do you need to respond to it?

5 MR. BERANBAUM: I would like four weeks, please.

6 THE COURT: February 4th.

7 How long do you need to reply, Mr. Adlerstein?

8 MR. ADLERSTEIN: Three weeks, your Honor.

9 THE COURT: See my point? February 25th.

10 MR. BERANBAUM: I think two weeks is the ordinary.

11 THE COURT: There is no ordinary. February 25th is

12 it. This is a no adjournment schedule: January 7th, February

13 4th, February 25th, all page limits apply. Exhibit limits,

14 don't tinker with them they're out there in the rules. They're

15 out there in the internet. That's it. Or you can get them off

16 the court website. Thank you.

17 MR. BERANBAUM: Your Honor, would you want to address

18 my second letter?

19 THE COURT: Oh, right. Your second letter.

20 You know, I don't think there is much to address. I

21 read the letter. I'm not sure that you are asking me anything.

22 You just seem to want to tell me something or report it to me.

23 Okay. You reported it to me. You are not really asking me to

24 do anything, are you? If so, your letter didn't make that

25 clear. Do you want me to do anything? We don't need names, I

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27

8AU5ANDC conference
1 know you are concerned about privacy. What do you want me to
2 do?
3 MR. BERANBAUM: As an officer of the court I wanted to
4 apprise the Court of it and, if the Court felt necessary, to
5 refer it to anybody.
6 THE COURT: I don't.
7 MR. BERANBAUM: Thank you.
8 THE COURT: Thank you.
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 CATHEDRAL STA.
 NEW YORK, New York
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Sales Receipt		
Product Description	Sale Unit Qty	Final Price
NEW YORK NY 10271		\$5.15
Zone-1 Priority Mail		
Flat Rate Env		
9.40 oz.		
Expected Delivery: Tue 06/26/12		
Delivery Confirmation		\$0.75
Label #: 03006000000215189674		
Customer Postage		-\$5.65
Subtotal:		\$0.25
Issue PVI:		\$0.25

 Total: \$0.25
 Paid by:
 Cash \$0.25

Order stamps at usps.com/shop or call 1-800-Stamp24. Go to usps.com/clicknship to print shipping labels with postage. For other information...

U.S. Postal Service Delivery Confirmation Receipt

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)
Attorney General's Office
120 Broadway, 26th Floor
New York, NY 10270

DELIVERY CONFIRMATION NUMBER: 03006000000215189674

POSTMARK: CATHEDRAL STATION, NEW YORK NY 10025, JUN 25 2012

POSTAL CUSTOMER: Keep this receipt. For inquiries: Access Internet web site at www.usps.com or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY):
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PS Form 162, March 1999 (See Reverse)

Exhibits and Attachments Contained in this Exhibited Filing Can be found online @ <https://docs.google.com/file/d/0B2uaBj3kU8urYWNtaHc0QmVTMG8/edit?pli=1>

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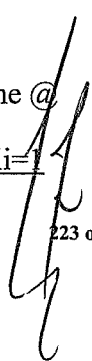


EXHIBIT 3 - FRANKLIN PEREZ ORDER

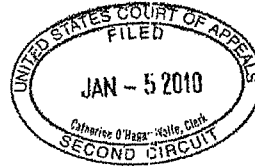
S.D.N.Y. - N.Y.C.
07-cv-11196
Scheidlin, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 5th day of January, two thousand ten,

Present:

Richard C. Wesley,
Peter W. Hall,
Debra Ann Livingston,
Circuit Judges.



Elliot I. Bernstein, *et al.*,
Plaintiffs-Appellants,

v.

08-4873-cv

Appellate Division First Department
Departmental Disciplinary Committee, *et al.*,

Defendants-Appellees.

Appellant Bernstein, *pro se*, moves to compel the appointment of counsel and for extensive relief. Upon due consideration, it is hereby ORDERED that the motion is DENIED to the extent it seeks to compel the appointment of counsel and the appeal is DISMISSED because it lacks an arguable basis in law or fact. *See* 28 U.S.C. § 1915(e); *see also Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995) (this Court has "inherent authority, wholly aside from any statutory warrant, to dismiss an appeal or petition for review as frivolous when the appeal or petition presents no arguably meritorious issue for our consideration."). It is further ORDERED that the remainder of Appellant Bernstein's motion to compel, and all motions that remain pending before this Court, are DENIED as moot.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: *Franklin Perez*

SAO-MGM

EXHIBIT 4 - FRANKLIN PEREZ INFORMATION

January 05, 2010 Order Signed by, Franklin Perez, may be part of a much larger FRAUD on the COURTS being committed in the US Second Circuit with the aid of Members of this Court, as revealed in a Lawsuit filed and represented by Attorney Ruth M. Pollack, Esquire, titled,

“IN THE SUPREME COURT OF THE UNITED STATES - KEVIN G. CHESNEY AND LORRAINE CHESNEY, PETITIONERS V. VALLEY STREAM UNION FREE SCHOOL DISTRICT NO. 24, ET AL., RESPONDENTS”

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

filed with the US Supreme Court and found online at http://www.scribd.com/doc/58592324/Ruth-Pollack-SCOTUS-Petition-for-Certiorari-on-2nd-Circuit-Court-Fraud?secret_password=&autodown=pdf and the filed case at the US Supreme Court and the attached URL are hereby incorporated by reference in ENTIRETY herein.

All arguments contained within the Chesney’s Lawsuit regarding Fraudulent Court Orders pertaining to Franklin Perez and Defendant Catherine O’Hagan Wolfe, are hereby further included in this Motion as further PRIMA FACIE evidence of THIS COURT’S CONTINUED & ONGOING OBSTRUCTIONS caused by Court Officials in a plethora of cases, including this one where both Perez and Wolfe are directly involved. Please print the document at this URL and include the SUPREME COURT CASE DOCKET for this case and attach them as physical Exhibits to this Motion, due to the ongoing claims of docket fraud and document fraud as alleged in the Chesney/Pollack case, the Anderson Lawsuit and the Legally Related Lawsuits to Anderson. These document and docket frauds may be affecting not only the lawsuits related herein but tens of thousands of other US Civil and Criminal Cases, therefore all exhibits should be printed and added directly to this Motion. From the Online Court Filing in the above matter, quote,

“e) immediate stay of appeal pending criminal investigation into docket fraud, file destruction and conference with judges, and f) stay of appeal pending “resolution of [Petitioners’] anticipated writs of certiorari, mandamus to the United States Supreme Court, based on impossibility of briefing within appeal due to destroyed record and fraudulent Order signed by Operation’s Analyst Franklin Perez for RCW [Justice Richard C. Wesley, Esq.],” and g) a default judgment due to proven tampering, destruction and fake Orders. App. 69-92 This case is unique and shocks the conscience for its total lack of due process under FED. R. CIV. P. at the trial court level and under FED. R. APP. P. at the appellate level. The Second Circuit failed to afford Petitioners with due process in multiple ways in that there were:

- 1) no docketed, annotated, certified Record on Appeal; App. 106-120
- 2) no certified transcripts of district court proceedings; App. 106-120 17
- 3) no original lower court documents as stated on the Second Circuit General Docket as published on PACER;
- 4) no CAMP conference; App. 106-120
- 5) no briefing schedule or pre-briefing conference; App. 106-120
- 6) no oral arguments, even though oral argument was formally requested seven (7) times; App. 106-120
- 7) no panel of judges or single judge, at least twelve (12) different judges’ names appeared without their knowledge on fake Orders and on the fake

General Docket, but no judge or panel of judges ever heard the case or met with the parties; App. 106-120

8) no appearance of this case or any of its seven (7) T-1080 motions by Petitioners appeared on any approved calendars maintained by the Clerk of the Court; App. 93-105

9) no judge's signature on any documents or purported orders of the Court;

10) no valid orders were issued; in fact, all motions by Petitioners were falsely claimed to have been "sua sponte" denied by the Court, even though none were ever calendared or seen by a judge or a panel of judges as required by FED. R. APP. P; App. 10 a fake "Order" dated, filed by stamp of January 07, 2010 is falsely docketed on the General Docket as 18 "entered" on January 8, 2010, signed by "Operations Analyst Franklin Perez for Judge Richard C. Wesley (RCW by FP)."

App. 7-9 The fake order, miss-mailed to an incorrect address late and post marked four (4) days later to Petitioners' legal counsel Pollack, contains three sitting judges' names all in contravention of FED. R. APP. P. § 25(a)(2)(B)(ii). Hence, there never was a briefing "Order" or a "certified" and "mandated" "Order" dismissing (disposing of) this phantom appeal. App. 1-4

11) No judges present on any calendars. According to the Court's Approved Calendar for the Week of January 4 through January 8, 2010 in the Ceremonial Courtroom (9th Floor), none of the named judges on the fake "order" were "Present" on the date or week indicated. The instant case did not appear on this week's "approved" calendar. None of the fake orders in the instant case appeared on any of the Court's corresponding calendars. App. 93-105 Mr. Perez also appears in other cases as "Deputy Clerk Frank Perez." cf. App. 7-9

12) Staff attorneys with no authority to do so, signed fake Orders and issued them late under unknowing judges' names and failed to docket the fake Orders.

13) No opposition or lawful participation by pro se Respondent – Respondent school 19 district from April 29, 2009 to date – the duration of the case in the Circuit – resulting in a total default by the school district, a fact never acknowledged by the District Court, Circuit Court or Clerk;

14) Circuit Clerk abducted Petitioners' case in that she acted as attorney and counsel on behalf of the defaulting school district in violation of FED. R. APP. P. §§ 45 and 45.1. [Clerk's Duties]


15) Purported Order dated May 5, 2010 that "disposed" of this phantom "appeal" was not seen by any judge or panel of judges, not calendared or entered onto the Court docket, but is purportedly "mandated" on June 10, 2010 and not "docketed" until June 24, 2010. This fake Order was not mandated or sent to and docketed by the district court. App. 1-4, 121

16) No true case manager on the case. The docket reflects at least twelve (12) different "case managers" from several different departments of the Court. App. 106-120

**EXHIBIT 5 – TRANSCRIPT OF TAPED CALLS TO NY GOVERNOR
ANDREW CUOMA AND ATTORNEY GENERAL ERIC SCHNEIDERMAN
OFFICES**

A handwritten signature in black ink, appearing to be the initials 'AS', positioned below the title.

Thursday, July 26, 2012

A handwritten signature in black ink, appearing to be the initials 'AS', positioned above the text 'Emergency Motion'.

Emergency Motion

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TRANSCRIPTS

Iviewit calls Andrew Cuomo, Emily Cole, Stephen M. Cohen, James Rogers, et al. re
Criminal Complaints Against Andrew Cuomo, Steven Cohen and Members of This Court.

Audio File Length: 42.48 minutes

Posted/Shared/Uploaded May 22, 2011



YouTube Channel [eliotbernstein](#)

SIX CALLS

CALL DATES

February 8, 2011

March 24, 2011

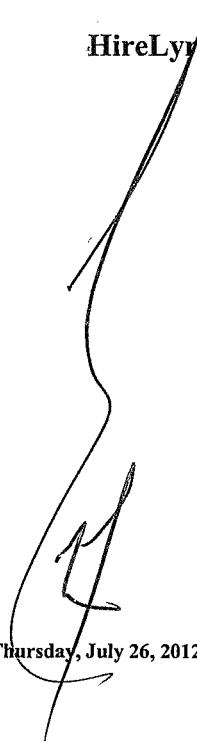
April 13, 2011

April 14, 2011

Transcribed July 20, 2012

By: Roxanne Grinage, Legal Assistant

HireLyrics Administrative Services


Thursday, July 26, 2012

Emergency Motion

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FIRST CALL BETWEEN

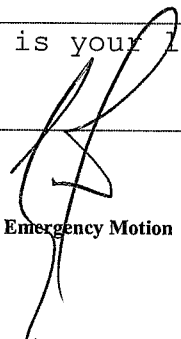
ELIOT BERNSTEIN, WILLIAM WAGNER (A REPORTER) AND
EMILY COLE IN STEPHEN COHEN'S OFFICE

February 8, 2011

Eliot Bernstein	Quiet on the set [dialed call rings].
1st Female Voice, Executive Chambers	Executive Chambers.
Eliot Bernstein	Hi, Andrew Cuomo please.
1st Female Voice, Executive Chambers	Okay, who's calling?
Eliot Bernstein	My name is Eliot Bernstein and I have on the line with me William Wagener who is a reporter.
1st Female Voice, Executive Chambers	Okay one moment. [call transfers]
2nd Female Voice, Press Office	Press Office.
Eliot Bernstein	Hi, I'm trying to reach Andrew Cuomo.
2nd Female, Voice Press Office	Okay one moment. [brief ring while call transfers]

3rd Female Voice, Executive Chambers	Executive Chambers. May I help you?
Eliot Bernstein	Yes. It's Eliot Bernstein and...
William Wagener	and William Wagener.
3rd Female Voice, Executive Chambers	and William... I'm sorry [pause].
Eliot Bernstein	Yes. It's regarding a criminal complaint I filed against Andrew Cuomo while he was Attorney General. I also filed a copy with Governor Patterson and I haven't had any response back yet.
3rd Female Voice, Executive Chambers	You filed this when he was Attorney General?
Eliot Bernstein	Correct. I filed it with the Attorney General's offices and I filed it with Governor Patterson's office as well as the New York Chief Justice of the criminal courts as well as about fifty other people.
3rd Female Voice, Executive Chambers	And you never heard back from anyone?
Eliot Bernstein	No. In fact this goes way back to Stephen Cohen's promise to get right back to me regarding the criminal complaints and I have several submissions to Mr. Cohen as well as notified federal and state authorities of Mr.

	Cohen's possible criminal activities as well.
3rd Female Voice Executive Chambers	When was the last time you spoke to Stephen Cohen?
Eliot Bernstein	Hmmmm hold on...looks about June 13, '09. And I sent him a letter on June 13, 2009 memorializing our conversation. That was an eight page letter. And, he knows me since childhood so he should know this call well.
3rd Female Voice Executive Chambers	All right. Bear with me one sec.
Eliot Bernstein	Okay. Can I get your name? [keyboard/typing sounds].
3rd Female Voice Executive Chambers	Mr. Bernstein?
Eliot Bernstein	Yes.
3rd Female Voice Executive Chambers	Bear with me one moment sir.
Eliot Bernstein	What is your name? [ringing call transfers]
Emily Cole	Hello Mr. Bernstein? Hi, this is Emily Cole, I work for Steve Cohen.
Eliot Bernstein	Emily, what is your last name?



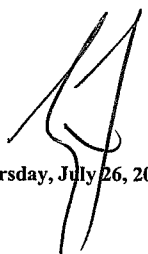
Emily Cole	Cole, [spells name] C O L E.
Eliot Bernstein	You work for Stephen Cole so you probably have conflict with this matter but I'll let you decide.
Emily Code	Okay.
Eliot Bernstein	I had filed criminal complaints against Andrew Stephen and Monica Connell. I filed a criminal complaint in November with Andrew Cuomo's office directly. I filed it with Governor Patterson so I'm calling also to find out how that complaint is going; and I filed it with the Chief Justice of the criminal courts of New York as well as with Eric Holder and several other people that were investigating the matters that we are discussing.
Emily Cole	Concerning what? - was the complaint?
Eliot Bernstein	Criminal allegations against Andrew Cuomo, Stephen Cohen and Monica Connell....for criminal obstruction of justice and a variety of other things including RICO which I am in the middle of a federal RICO and antitrust civil lawsuit before Shira Anne Scheindlin at the Second Circuit as well tied to a whistleblower Christine Anderson in the New York Supreme Court. Federal Judge Scheindlin has legally related my case to her's. I'm not sure if you're familiar but Stephen Cohen who knows me since [sounds like] Glanko [Glencoe, IL] as a child where we played hockey and other things together, has spoken to me at length about these things and he failed to get back to me dating way back to '09 when I've written letters to him because he requested I write letters to him regarding the criminal activity of Mr. Cuomo.
Emily Cole	Okay.

Eliot Bernstein	So, acknowledging that there could be possible conflicts here, who is going to handle this criminal complaint that's been lodged with the Governor's office against Mr. Cuomo?
Emily Cole	You know what I'm not certain who that would go to. I can check into that and get back to you. I assume perhaps Counsel's office but I think that's more formally the role of the Attorney General's office.
Eliot Bernstein	Well I filed it with the Attorney General while Mr. Cuomo was there and he blatantly disregarded it by failing to do anything, which is again... [Emily Cole asks question]
Emily Cole	By failing to investigate?
Eliot Bernstein	Yes. By failing to turn it over to a non-conflicted prosecutor.
Emily Cole	Okay.
Eliot Bernstein	And that is criminal activity too because that again is obstruction of justice.
Emily Cole	Okay.
Eliot Bernstein	Okay. So now with all that information, do you want to go find out now who to have take this call?
Emily Cole	Sure. Let me ask around and see if I can come up with an answer for you. I know that if you filed the complaint with the Attorney General's office, I'm sure it's still there. I know that it may have not necessarily been handed down, but I'm sure that it is with the administration there and they might be the people to talk to about it as well.
Eliot Bernstein	But I also did file the formal complaint with the Governor asking that the Governor Patterson

	move the complaint through to a special prosecutor.
Emily Cole	Okay. Well if he didn't do that, then there is nothing we can do about that now.
Eliot Bernstein	Well what do you mean?
Emily Cole	If Governor Patterson didn't do that I don't - I'm almost certain I can check for you but there is nothing we can do with that complaint that was filed with Governor Patterson's office if he hadn't passed it on to a prosecutor. So, perhaps re-filing it with the new Attorney General would be my suggestion but again I will check and I will ask Steve and I will find out the best way to go about this and I will let you know.
Eliot Bernstein	Okay, do you need my number or anything?
Emily Cole	Yes please.
Eliot Bernstein	Okay. 561-245-8588. My name is Eliot [spells Eliot] Bernstein [spells Bernstein]
Emily Cole	Okay.
Eliot Bernstein	And as Stephen Cohen knows this involves a car bombing and attempted murder of my family.
Emily Cole	Okay.
Eliot Bernstein	So it has a high priority urgency to it so if you could back to me sometime today or tomorrow that would be great.
Emily Cole	Okay. I will let you know.
Eliot Bernstein	I think he already knows all that.
Emily Cole	Okay. I will have someone get back to you.

Eliot
Bernstein

Thank you have great day. [hang up call ends].



SECOND CALL

Eliot Bernstein Calls Andrew Cuomo, Governor
03/24/2011 Pat Hanley, Eliot Bernstein [?Sp?
Readingberg ?Sp?] Waiting For Emily Cole.

Eliot Bernstein	[door closes footsteps heard approaching] Hello.
Pat Hanley	I'm here.
Eliot Bernstein	[sounds like memo to file] Andrew Cuomo, Governor 03/24/2011 Call: Pat Hanley, Eliot Bernstein [?sp? Readingberg ?sp?]. Waiting for Emily Cole.
Pat Hanley	Indiscernible.
Eliot Bernstein	I object and do not consent to any other listeners on this call.
Pat Hanley	Repeats I object and do not consent to any other listeners on this call.
Female voice	Mr. Bernstein?
Eliot Bernstein	Yes.
Kate Wittemore	I'm sorry she's away from her desk and I'm not getting an answer. May I take a number?
Eliot Bernstein	Certainly. My number is 516-245-8588 and it's in regard to our February 8th call regarding the Iviewit companies and the criminal complaint against Andrew Cuomo.
Kate Wittemore	And Mr. Bernstein that's spelled Bernstein?
Eliot Bernstein	Correct. And what is your name please?
Kate Wittemore	My name is Kate.

Eliot Bernstein	And your last name please?
Kate	Excuse me I have to put you on hold.
Pat Hanley	You there?
Eliot Bernstein	Yes.
Eliot Bernstein	"Hey dude" in response to child saying "Hey dad."
Pat Hanley	How long will this take?
Eliot Bernstein	She's gotta find a last name.
Pat Hanley	I notice the way she did that.
Eliot Bernstein	Coughs. Excuse me.
Kate Whittemore	Thank you I'm sorry to keep you holding. What was it that you needed?
Eliot Bernstein	Your last name.
Kate Whittemore	My last name is Whittemore and spells Whittemore.
Kate Whittemore	That's right.
Eliot Bernstein	Types and repeats spelling Whittemore. And Kate what is your
Kate Whittemore	"Thank you for calling" [Kate Whittemore interrupts Eliot Bernstein and ends the call before Elliot Bernstein could complete question].
Pat Hanley	Well Eliot [sounds like] I think I should've

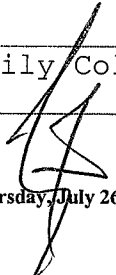
	gotten this from her email.
--	-----------------------------

THIRD CALL

**[Eliot Bernstein Initiates Call to Emily Cole]
[Memo to File: Andrew Cuomo call 04/13 2:05 PM.]**

Eliot Bernstein	Good morning, is Emily Cole in?
Female voice	She's at our New York office. I'll connect you.
Eliot Bernstein	Okay. Hello! Emily Cole please.
Emily Cole	This is she.
Eliot Bernstein	This is Eliot Bernstein calling.
Emily Cole	Hi, How are you?
Eliot Bernstein	I'm not well but how are you?
Emily Cole	I'm pretty good.
Eliot Bernstein	I was calling to see if you got any information on my complaints.
Emily Cole	I passed it along...
Eliot Bernstein	Let me ask you a quick question. Are you related to a Cuomo by the way?
Emily Cole	No.
Eliot Bernstein	Is your mom?
Emily Cole	No sir.
Eliot Bernstein	So you're not part of Maria Cuomo Cole?

Emily Cole	No and I don't understand why you are asking all of these questions.
Eliot Bernstein	Well, I'm asking about the handling of a complaint about Andrew Cuomo. If you family that is related and there is an Emily Cole whose mother is
Emily Cole	It is not an appropriate question as this is not the case.
Eliot Bernstein	So you're not the Emily Cole whose father is Kenneth Cole and mother, Maria Cuomo Cole?
Emily Cole	Would you like me to patch your call into someone else who could maybe handle it better?
Eliot Bernstein	Well I'm asking you a question. If you are saying no that you are a different Emily Cole, then that's fine with me. Then I don't have an issue with a conflict. Otherwise I would have a massive conflict as you can understand - YOU would have a massive conflict and I would...
Emily Cole	Regardless...
Eliot Bernstein	No not regardless, let me just explain.
Emily Cole	Okay.
Eliot Bernstein	Let me explain.
Emily Cole	No sir. I just explained there's nothing I can do to help you. All I can do is pass your message along.
Eliot Bernstein	Pass what message along? First of all I would like to get that I called you and we spoke on 03/24, Correct?
Emily Cole	Yes.



Eliot Bernstein	And you were checking into to where the criminal complaint against Andrew Cuomo and Stephen Cohen which were filed both with the AG's office and Andrew Cuomo while he was AG.
Emily Cole	All I can do sir is explain to people that you are check into these complaints.
Eliot Bernstein	What's your title?
Emily Cole	I work for Steve Cohen.
Eliot Bernstein	Okay. Steve Cohen. Now I definitely have a conflict with you because I filed a criminal complaint against Steve Cohen.
Emily Cole	Okay then I should pass your phone call on to someone else.
Eliot Bernstein	Yes. Who are we passing it to?
Emily Cole	I'm not sure who would have a conflict or who would be best to [indiscernible] your phone calls.
Eliot Bernstein	That's your job not mine. You have to address who doesn't have conflict because the Complaint states formally in the beginning, "Please if you have conflict you will avoid me including you as a defendant in a RICO [Emily Cole interrupts]
Emily Cole	Usually it's the Attorney General's role to investigate but they usually don't prosecute...
Eliot Bernstein	Yes Mr. Cuomo was the Attorney General.
Emily Cole	Well have you tried the current Attorney General's office?
Eliot	I have but I also sent the same Complaint to Andrew Cuomo as Governor to deal with. And now,

Bernstein	he has to deal it with as the Governor of the State of New York. So my separate complaint with be Attorney General which collusion might be there as well, will be dealt with separately. Andrew Cuomo has an obligation to deal with the Complaint as Governor. So I petitioned him under his power as Governor. Now obviously he can't or any of his family members or Steve Cohen or any of his employees can't be handling this like you. And now I'm going to have to include you [Emily Cole interrupts]
Emily Cole	Sir I can't [sounds like] have any obligation...
Eliot Bernstein	No, actually by handling this knowing that it was against Steve Cohen I am already going to include you in a criminal RICO federal lawsuit that [Emily Cole interrupts]
Emily Cole	I just took your full message.
Eliot Bernstein	You have delayed this process and like I told you there's been a car bombing attempted murder. These are the fundamentals of the RICO Complaint. And now you are going to be added as a part of that actually.
Emily Cole	I don't appreciate you threatening me.
Eliot Bernstein	I'm not threatening you. I'm telling you a fact. [Emily Cole and Eliot Bernstein are now speaking at the same time, Emily Cole indiscernible because Eliot Bernstein is closest to the microphone] . I'm telling you a fact. I'm telling you a fact and you should tell Steve Cohen the fact that how dare he put you into that position? He's already become a defendant, he already has a criminal complaint against him and the fact that he has one of his staff working on this without a conflict check really puts you in the hot seat there. I'd be mad at

	the right person.
Emily Cole	Sir, I'm not working on anything I took a phone message for Steve and I passed it along to him. That is all I've done.
Eliot Bernstein	I told you on that phone call that Stephen Cohen was one of those complained [Emily Cole interrupts]
Emily Cole	Sir, I don't know what "handling the investigation" means. All I can do is pass it along to someone in a position of power to do something about it.
Eliot Bernstein	So Steven didn't call me. You passed the message to Stephen Cohen. Pass me to me to Steve Cohen.
Emily Cole	Okay. He's aware that you called and he is not in the office today.
Eliot Bernstein	Okay then you know what? Can I have Benjamin Lawsky
Emily Cole	He is in the New York office so you will have to call there to catch him.
Eliot Bernstein	Is he the Chief of Staff currently?
Emily Cole	Yes.
Eliot Bernstein	Okay. Great and I appreciate that and again you're not the Emily Cole whose father is Kenneth Cole?
Emily Cole	No sir and it is really none of your business.
Eliot Bernstein	It is an appropriate question considering the criminal activity going on in the Governor's office in New York. C'mon, it's a totally clear question. It's funny, I don't need that conflict with you anymore Emily. The very

	<p>conflict that you work for Steven Cohen and have jimmy rigged this Complaint to not be dealt with according to procedural law and rule has just landed you in the center of a criminal complaint. [Emily Cole hangs up while Eliot Bernstein is speaking.]</p>
--	---

FOURTH CALL

ELIOT BERNSTEIN AND PAT HANLEY


BENJAMIN LAWSKY CHIEF OF STAFF GOVENOR CUOMO

Pat Hanley	I think she hung up on you Eliot.
Eliot Bernstein	Gotta love 'em. I gotta love 'em. What? Hello, Hello.
Pat Hanley	Are you getting anomalies too Eliot?
Eliot Bernstein	Hold on...Let's call what's his name? Benjamin Lawsky
Pat Hanley	She wants it Eliot I'd say.
Eliot Bernstein	Oh she's gettin it. She's dead. And she lied. She totally lied and I'm going to memorialize that in one second with her. So we're going to send her a nice little letter in a moment.
Eliot Bernstein	[Memo To File] Benjamin Lawsky Call Chief of Staff Governor Cuomo.
Female voice	[Indiscernible]
Eliot Bernstein	Hi. Benjamin Lawsky please.
Female voice	I'll transfer you he's at another office.
Eliot	Yes. Do you have his number there?

Bernstein	
Female voice	Yes of course. It's [?]42-681-4321.
Eliot Bernstein	Okay thank you.
Female voice	Okay.
Pat Hanley	She forgot to connect us to the number.
Eliot Bernstein	Yeah. She didn't connect us. Hold on. [touchtone dialing].
Female Voice	[answers] [how she identifies office is indiscernible].
Eliot Bernstein	Hi. Benjamin Lawsky please.
Female Voice	Who is calling please.
Eliot Bernstein	Eliot Bernstein. Thank you.
Female Voice	May I say what this is regarding?
Eliot Bernstein	Yes. Criminal complaints against Andrew Cuomo, Stephen Cohen and now Emily Cole.
Female Voice	Okay hold on.
Eliot Bernstein	[sounds like cookware or dishes clanging - EIB asks people in background to hold off for a minute] [Hold Time before call resumes is 7 minutes and 26 seconds]
Vanessa Salpana	Executive Chamber.
Eliot Bernstein	Hi. Who am I speaking with?

Vanessa Salpana	Vanessa.
Eliot Bernstein	Vanessa....last name?
Vanessa Salpana	Salpana
Eliot Bernstein	Can I ask who is calling?
Eliot Bernstein Salpana	Yes. It's Eliot Bernstein
Vanessa Salpana	Oh Okay. Salpana
Eliot Bernstein	And your title?
Vanessa Salpana	What are you calling for.
Eliot Bernstein	I'm trying to get somebody to handle a criminal complaint that I filed with Andrew Cuomo against Andrew Cuomo, Stephen Cohen and now Emily Cole is added to that list. How do I spell your last name again?
Vanessa Salpana	I don't have one. [hang up].
Eliot Bernstein	Excuse me. Vanessa?
Eliot Bernstein	No deal getting a surname. That's a good sign. Mr. Herpes is calling. [female voice in room with Eliot laughter]. These are our public officials.
Female in room	[sounds like] They know your name by now?

with Eliot	
Eliot Bernstein	Oh yeah. I've filed criminal complaints on the Governor. They know my name. They don't know their names. [laughter]
Eliot Bernstein	[Eliot initiates a call] Hello.
Female voice on phone	What's your name again?
Eliot Bernstein	My name is Eliot Bernstein [Eliot spells first and last name.]
Female voice on phone	Hold on one moment.
Eliot Bernstein	[Memo to File] Eliot Bernstein call to Benjamin Lawskey Chief of Staff nine minutes and thirty two second (9 minutes and 32 seconds) and holding.
Eliot Bernstein	Hello. I object and do not consent. I definitely heard somebody on that line. [transcriptionist confirms a male voice was heard a second indiscernible.] [Eliot Bernstein continues to hold]
Stephen Cohen	Hello.
Eliot Bernstein	Steve Cohen!
Stephen Cohen	Yes.
Eliot Bernstein	What the hell is going on with my criminal complaint Steve Cohen against you and Andrew Cuomo?
Stephen Cohen	Well I'm conflicted so I can't really discuss it in any great detail but it's at the AG's office, will you call them?


 Emergency Motion

Eliot Bernstein	Well I filed the Complaint with the Governor as well and I filed it with the AG that you kind of blew off and so I'm kind of tired of all that game so I put the Complaint on the Governor's desk and I want the Governor to take the actions he is required by law to take.
Stephen Cohen	I'll make a deal with you Eliot, call the Governor's office not the AG's office.
Eliot Bernstein	But you're conflicted. I'm trying to put you in prison. I'm trying to put you in prison in a RICO.
Stephen Cohen	Some would argue that I am already in prison.
Eliot Bernstein	I would agree.
Stephen Cohen	But in the meantime, the guy you want to speak to at the AG's office is [sounds like] Dave Hart, he has my old job. Call [sounds like] Paul Hart and tell him to take your phone call. Okay? If you have a problem just call me. [sounds like] Insulting my staff is just getting crazy. Just call me we know each other, I assume you're not going to Demetrius'[New Trier's} reunion or [indiscernible].
Eliot Bernstein	[Eliot chuckles] I'm not going because I don't want to but otherwise I would go.
Stephen Cohen	Okay I gotta run. [indiscernible] in the Governor's office. Erwin Levy is the man you want. Call that 212-416-8051. Erwin Levy.
Eliot Bernstein	[reports telephone number and spelling of Erwin Levy.]
Stephen Cohen.	Exactly, and I will tell Hart that he's gotta deal with you.
Eliot	Okay thanks. Talk to you later.

Bernstein	
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FIFTH CALL

[TRANSCRIPTIONIST UNSURE]

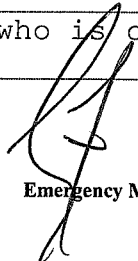
Eliot Bernstein and Pat Hanley	[Initiate a call].
Rachel	[sounds like] Executive Chambers.
Eliot Bernstein	Eliot Bernstein and Pat Hanley.
Eliot Bernstein	Pat?
Pat Hanley	I'm here.
Eliot Bernstein	I need quiet on the set.
Rachel	Hey there. He's actually in a meeting right now. Can I take a message?
Eliot Bernstein	Yes. I left a message earlier. Is this Rachel?
Rachel	Yes. And I talked to him.
Eliot Bernstein	So basically can I expect a call back tonight?
Rachel	I don't know.
Eliot Bernstein	You want to ask him? It's kind of urgent. It involves car bombings and death threats on people, it's kind of urgent. I don't know what he is meeting about. I'm sure it's pretty important that this serious stuff.

Rachel	I can't interrupt the meeting sir. Sorry.
Eliot Bernstein	Yeah. Then just leave him the same message that I'd like to speak to him today if possible.
Rachel	Okay.
Eliot Bernstein	Okay. Thanks Rachel. Have a good night.
Eliot Bernstein	Pat?
Pat Hanley	I'm here.
Eliot Bernstein	Can you believe that?

SIXTH CALL April 14, 2011

**ELIOT BERNSTEIN AND PAT HANLEY CALL
HARLAND LEVY ON REFERRAL OF STEPHEN COHEN IN THE
GOVERNOR'S [CUOMO] OFFICE**

Eliot Bernstein	[Memo To File] 04/15/11, Eliot Bernstein, Pat Hanley call Erwin Levy on referral from Stephen Cohen in the Governor's [Cuomo] office. Here we go.
Eliot Bernstein	Pat? Pat?
Pat Hanley	Yo.
Female voice	[?_____?] office.
Eliot Bernstein	Harland Levy Please?
Female voice	May I ask who is calling?

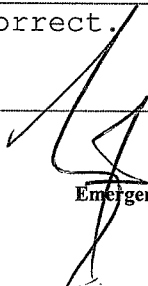


Eliot Bernstein	Eliot Bernstein and Patrick Hanley.
Female voice	Hold on one moment.
Eliot Bernstein	[while holding]. I'm telling you they arrested that judge for treason in the courtroom using the Magna Carta in whatever country that was in.
Pat Hanley	I don't know....what you are talking about.
Eliot Bernstein	I posted a video of them arresting a judge for treason.
Pat Hanley	Okay.
Eliot Bernstein	They turned him over to the police. They were in his courtroom. They jumped over the bench. They arrested him, they made the police come and arrest him.
Pat Hanley	What county was this?
Eliot Bernstein	I think it England since they were using the Magna Carta law of common something. Maybe Australia, I don't know. I'm not a hundred percent sure. But I posted it....let me send it to you. I'm telling you, we could do it right here.
A second female voice	Hello. Oh [abruptly returns call to hold].
Eliot Bernstein	Pat?
Pat Hanley	I'm here.
Eliot Bernstein	I object and do not consent.
Pat Hanley	I object and don't consent right back at you.
Eliot	Was that on your phone?

Bernstein	
Pat Hanley	Negative. I think that was somebody at the AG's office. That's my impression but I still object and don't consent.
Eliot Bernstein	On an ongoing basis I object and don't consent In Perpetuity on all tapes edited and non-edited.
Jim Rogers	Hello.
Eliot Bernstein	Harland?
Jim Rogers	No, I'm Jim Rogers, Senior Counsel to the Attorney General. How may I help you?
Eliot Bernstein	I contacted the Governor's office, Steve Cohen referred me to Harland Directly and to speak to him directly.
Jim Rogers	Okay. Well you're in the ball park here. So what can I help you with?
Eliot Bernstein	You can tell me what is your exact name again.
Jim Rogers	My name is Jim Rogers [and he spells his name],
Eliot Bernstein	What was your first name?
Jim Rogers	Jim.
Eliot Bernstein	James?
Jim Rogers	Yeah. Short for James.
Eliot Bernstein	Okay. James Rogers. And what is your title?
Jim Rogers	I am Special Counsel and Senior Advisor to the

	Attorney Attorney.
Eliot Bernstein	Okay my name is Eliot Bernstein, and I
Jim Rogers	Hi.
Eliot Bernstein	And I have on the line with me Patrick Hanley and Pat and I are also related to a case that your office is handling. You are representing 39 state defendants in a lawsuit that I filed in a federal court that is related to a federal whistleblower lawsuit that also implicates your office of high crimes.
Jim Rogers	Implicates my office of high crimes?
Eliot Bernstein	Yes. The AG's office.
Jim Rogers	[sounds like] You said the lawsuit has already been filed?
Eliot Bernstein	I have a Twelve Trillion Dollar Federal RICO and Antitrust lawsuit that is legally related by Sira Scheindlin in the Southern District to a whistleblower case for the attorney for the Supreme Court whistleblower who also has problems with your office.
Jim Rogers	Is my office a named defendant in that suit?
Eliot Bernstein	Yes.
Jim Rogers	Okay. I can't talk to you.
Eliot Bernstein	You know Steve Cohen I filed criminal complaints against him and Cuomo. I filed them with the AG's office. It's gotta conflict letter on it that's pretty clear that if you handle it and you have any conflict with any of the thousands of people that I'm going to file against you for obstruction and those things. So that is

	probably your best move. Wait Wait Wait.
Jim Rogers	I don't even want to hear what you're talking about.
Eliot Bernstein	I've sent letters to the AG's office because...
Jim Rogers	Yeah but it will help me in my ability to understanding you if you don't talk about things without explaining them first. I have no idea what you are talking about.
Eliot Bernstein	Okay. I have a ten year legacy here. I have also filed with Mr. Schneiderman, Eric Schneiderman, I believe, complaints, criminal complaints against Stephen Cuomo and Andrew Cuomo.
Jim Rogers	[Indiscernible]
Eliot Bernstein	Yes. And I filed those complaints prior with Andrew Cuomo and Steven Cohen. And he blew it off. Now Stephen Cohen knows me going back quite some time...he
Jim Rogers	My question to you is this.
Eliot Bernstein	Yes.
Jim Rogers	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 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.



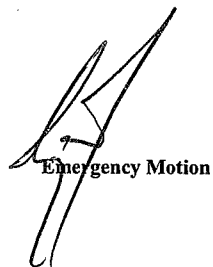
Jim Rogers	We'll retain outside counsel to represent us I think.
Eliot Bernstein	And also here's some other interesting points.
Jim Rogers	I can't do this. This conversation is over. I am a defendant in a case that you brought against this agency.
Eliot Bernstein	Well you're not but Cuomo and Spitzer 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.

END AUDIO END DRAFT TRANSCRIPT 26 PAGES VERBATIM WITH
TRANSCRIPTION COMMENTS IN BRACKETS



EXHIBIT 6 - SUZANNE MCCORMICK MOTION FOR REHEARING

A handwritten signature in black ink, appearing to be 'Suzanne McCormick', written over the text 'SUZANNE MCCORMICK' in the title.A handwritten signature in black ink, appearing to be 'Suzanne McCormick', written over the text 'Emergency Motion'.

UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Case No. 08Civ4438 (SAS)

-----X
SUZANNE MCCORMICK,

Plaintiff,

-against-

THE STATE OF NEW YORK, ET AL.

Defendants.
-----X

HONORABLE JUDGE SHIRA A. SCHEINDLIN, U. S. D. J.

**AFFIRMATION FOR RECONSIDERATION
OF THE COURT'S AUGUST 8, 2008 OPINION AND ORDER**

PLAINTIFF Suzanne McCormick, *Pro Se*, moves pursuant to Local civil Rule 6.3, for reconsideration of the Court's August 8, 2008 Opinion and Order (the "Order") whereby the Court dismissed all cases related to *Anderson v. State of New York* (07 Civ. 9599, S.D.N.Y.) based on overlooked, misunderstood, or misperceived underlying grounds for the Complaint.

BASIS FOR RECONSIDERATION

1. Pursuant to Fed. R. Civ. P. 6(a) and rules 6.3 and 6.4 of the Local Civil Rules of the Southern District of New York, this request for reconsideration is timely, as it is submitted within ten business days of the date of the docketing of the Opinion and Order.
2. Reconsideration is warranted where the Court overlooked controlling decisions, factual matters or misstated in error factual information that might have influenced its prior determination on a matter at issue (See *Eisemann v. Green*, 204 F.3d 393, 395 n.2 (2d Cir. 2004); *Shrader v. CSX Transportation, Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)).



3. Plaintiff has been denied her right to file an Amended complaint. There were not yet any answers to Plaintiff's Complaint. (See Exhibit A - 11 pp.) There was not yet a Motion to Dismiss. In fact, no Defendants have been served yet with the Complaint.

4. Plaintiff, individually and collectively with the group, the group deemed as "Related," I believe accumulated irrefutable evidence of collusion between Judges, law enforcement, State agencies, and certain "influential" attorneys at law who seek to improperly profit at Plaintiffs' expense.

5. It is my understanding that the attorneys against whom damages are sought had numerous ethical complaints filed, all of which asserted similar violations of the mandatory disciplinary regulations.

6. *Anderson*, and the dismissed cases accepted by this Court as "Related," had the potential of unmasking State employees who (along with other attorneys at law) personally benefitted from violation their oaths of office. And these individuals acted improperly under the color of law-they are, at a minimum, personally responsible.

7. Without a fair and objective trial in U.S. District Court of the substantive Constitutional and civil rights issues, including demonstration of offenses with the documentary evidence, systemic State corruption becomes the Law of the Land, superior to all Constitutionally guaranteed rights and contrary to all U.S. Codes.

8. This Court's August 8, 2008 dated order violates my equal rights and other guaranteed rights that are explicitly protected by U.S. Constitution and U.S. laws cited in the various complaints and herein. Such violations make these complaints federal questions correctly before U.S. District Court.



PREMATURE ACTION TO DISMISS

9. I had not yet served any Defendants, nor have answers been filed, nor have any motions to dismiss been filed. Dismissal at this stage of litigation is inappropriate and is patently premature without discovery and my opportunity to **amend my *Pro Se* complaint**.

10. The United States Constitution does permit this Court to review the decisions of the EMPLOYEES of New York State (and other attorneys at law). The Supreme Court found in *Jett v. Dallas Independent School District* (491 U.S. 701 (1989)), that 42 U.S.C. § 1981 by its terms prohibits private discrimination as well as discrimination under color of state law. The Court considered whether § 1981 created a private right of action to enforce that prohibition against state actors. The Court concluded that, “the express cause of action for damages created by §1983 constitutes the exclusive federal remedy for violation of the rights guaranteed in § 1981 by state governmental units.” (Id. At 720-721, 733).

11. “A plaintiff may sue a state official acting in his official capacity - notwithstanding the Eleventh Amendment - for prospective, injunctive relief from violations of federal law.” (Opinion and Order, p36).

12. The U.S. Supreme Court in *Scheuer v. Rhodes* [416 U.S. 232 (1974)] held” “The Eleventh Amendment does not in some circumstances bar an action for damages against a state official charged with depriving a person of a federal right under color of state law, and the District Court acted prematurely and hence erroneously in dismissing the complaints as it did without affording petitioners any opportunity by subsequent proof to establish their claims.”

13. Further in *Scheuer v. Rhodes*, the Court noted “If the immunity is qualified, [416 U.S. 232, 243] not absolute, the scope of that immunity will necessarily be related to facts as yet not established either by affidavits, admissions, or a trial record. Final resolution of this question

must take into account the functions and responsibilities of these particular defendants in their capacities as officers of the state government, as well as the purposes of 42 U.S.C. 1983.”

14. “[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” (*Harlow v. Fitzgerald* (1982) 457 U.S. 800, 818 [73 L.Ed.2d 396, 410]).

15. In my complaint, I assert violations of civil rights and other rights of which so-called “legal professionals” “would have known.” I also asserted evidence to demonstrate that such violations of guaranteed rights are planned, intentional, and organized for profit to the chosen few who are attorneys at law and officials benefitting at Plaintiffs’ expense. I also assert that discovery in the related cases to *Anderson* would further verify the civil and criminal allegations made or to be made by me and the other Plaintiffs, that are already confirmed as plausible.

16. Title 42 U.S.C. § 1988 in relevant part confers on the District Courts “protection of all person in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause” (emphasis added).

17. This Court has not been requested or asked to review State of New York court

decisions. The acts of State employees would be described to demonstrate such actions resulted in the conspiracy against my rights. Title 42 U.S.C. §1985 (2) applies to obstructing justice; intimidating a party, or witness if “two or more persons in any State ... conspire for the purpose of impeding, hindering obstructing, of defeating, in any manner, the due course of justice in any State.”

18. This Court has not been requested or asked to review the decisions of the departmental disciplinary committees.

19. In *Zahrey v. City of New York*, (No. 98 Civ. 4546(LAP), 1999), on a motion to dismiss, the District Court dismissed the claims against defendant Coffey on the ground of qualified immunity. Without determining whether a prosecutor’s fabrication of evidence violated a constitutional right, this Court ruled that Coffey was entitled to qualified immunity because “the law was not ‘clearly established’ in 1996 that a prosecutor’s fabrication of evidence violated a persons’s constitutional rights.”

20. On appeal to the U.S. 2nd Circuit Court of Appeals for the Second Circuit, (*Zahrey v. Coffey*, No. 99-9119), this Court’s dismissal was reversed and remanded: “We hold that there is a constitutional right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigatory capacity, at least where the officer foresees that he himself will use the evidence with a resulting deprivation of liberty. ... [W]e conclude that the allegations of the complaint suffice to indicate that a qualified immunity defense may not be sustained without further development of the facts.”

21. My filed complaint was not served to the named defendants, I was prohibited from perfecting and filing any Amended Complaint and no Motion to Dismiss was filed before this Court’s Opinion and Order to dismiss. This Court’s presumption of motions to dismiss

(without the actuality) applies to many of the other Plaintiffs as well. Certainly, there was no opportunity to verify through discovery the falsification of evidence by State employees or attorneys at law who are defendants.

ROOKER-FLEDMAN DOCTRINE IS INAPPLICABLE

22. There are not State proceedings dealing with the issues raised in Plaintiffs' complaints, or with these Defendants; the relief sought (injunctive relief against the state and money damages against individuals) has not been sought in State courts. This District Court has not been asked to change any State decisions. Plaintiffs' complaints do not concern actions properly "judicial in nature" since Plaintiffs assert that revelations in *Anderson* confirm accusations of improper acts by individuals beyond the legal limits of their official positions, thereby harming Plaintiffs by deprivation of substantive and material guaranteed rights under U.S. laws.

23. The Supreme Court case of *Exxon Mobil Corp. v. Saudi Basic Industries Corp.* (544 U.S. 280 (2005)) clearly shows that claim preclusion is a separate doctrine entirely. In *Exxon* the requisite elements that must be met for the *Rooker-Feldman* doctrine to apply are defined as:

a. First: The case must be brought in District Court by a party that has already lost in state court.

b. Second: The injury claimed must be as a result of the judgment itself. There is no "judgment" in my case. The complaint in District Court concerns on-going abuse of civil rights under color of state law, or state authority, by state employees and other attorneys at law causing damages to Plaintiffs.

c. Third: A final judgment on the state court proceeding must have already been



rendered before the federal action is brought. This does not apply here.

d. Fourth: The federal case must invite review and rejection of the state law claim; if the claims are not identical, the Federal claim must be inextricably intertwined with the state law claim, so as to implicate common facts pertaining to the same transaction or occurrence. (*District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 n. 16 (1983)). This does not apply to my case. Since official corruption causing deprivation of civil rights was not part of any State proceeding, since there was no previous injury from judgment since there was no final State court judgment, therefore *Rooker-Feldman* does not apply.

24. It is an abuse of discretion to dismiss a declaratory judgment action in favor of a state court proceeding that does not exist (*Michigan Tech Fund v. Century Nat'l Bank of Broward*, 680 F.2d 736, 742 (11th Cir. 1982)) (reversing discretionary dismissal of declaratory judgment complaint where there was "no pending state proceeding in which the issues in this case will necessarily be resolved"); (*Federal Reserve Bank of Atlanta v. Thomas*, 220 F.3d 1235 (11th Cir. 2000)).

25. In *ARW Exploration Corp. V. Aguirre* (947 F.2d 450 (10th Cir. 1991)), it was held that a district court abused its discretion when it dismissed a declaratory judgment action after a related state court proceeding had been dismissed. In that case the state court had not addressed the issues raised in the federal declaratory judgment action and those claims could no longer be adjudicated in state court because the state court proceeding had been dismissed.

STANDING

26. In my filed complaint, I assert that *Anderson* revealed and verified suspicions of systemic corruption by State employees acting in violation of their oaths of office. I believe that such abuses of official positions should be immediately stopped by injunctive relief appointing a

Federal Monitor. I respectfully believe this court overlooked this issue, and the urgent need and opportunity for the court's intervention.

27. Three tests determine if a would-be plaintiff has standing: the litigant must show: (a) that he has suffered personally some actual or threatened injury; (b) that the injury must be fairly traceable to the alleged illegal conduct of the defendant, and (c) that the injury must likely be redressed by a favorable decision. (*Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472 (1982)). Causation and redress ability are required (*Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 41-43 (1976)). The Supreme Court has referred to the "injuring fact" standard as the "irreducible minimum" required by the Constitution.

FEDERAL RULES OF CIVIL PROCEDURE 8,9 & 12

28. My complaint presented substantive facts without "bald assertions." Such facts, must be taken as true (Opinion and Order, p.30). The revelations of egregious organized systemic corruption revealed in *Anderson* further substantiates the statements that might have been otherwise labeled implausible. Continued discovery would further substantiate the preliminary facts asserted. Plaintiffs made statements of fact and attempted to provide enough details (pursuant to Rules 8, 9 and 12) to demonstrate that in the light of *Anderson* the claims were not speculative and should not be summarily dismissed *Sua Sponte* without further discovery.

INFORMATION NOT ALLOWED

29. I believe I have a constitutional right to file an amended complaint, and to be, most importantly, substantively heard on the facts of my amended complaint. At the time this Court *Sua Sponte* dismissed my complaint, I was in the process of perfecting my amended



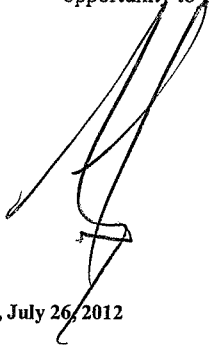
complaint. That amended complaint clarified the very troubling issues of corruption involving attorneys at law along with other members of the bar et al., having direct knowledge of the altering of official Court records in furtherance of a continuing fraud all of which was contained in my 2005 complaint to the First Department Departmental Disciplinary Committee.

30. During my tenure as a legal Executrix of my late husband's Estate, based on personal experience, I have come to realize that, in my opinion, the malignant cancer of corruption has metastasized with the New York State Judicial System.

31. If it were not for the uncurbed corruption I would not have been repeatedly defrauded and my husband's and my life's hard work would not have been squandered and maliciously destroyed. These actions have been bold, brazen and malicious. The very people who are sworn to serving and protecting society should be abiding by the law and enforcing these very laws. Instead, these same people routinely abuse the law and peoples rights cavalierly and with impunity. These actions are harmful to a lawful society.

32. It is my understanding that all attorneys, including members of the Judiciary, are officers of the court and further it is my understanding that they all have a sworn duty to report inappropriate or unlawful acts to the responsible oversight authority. I have seen and an a victim of the altering and falsification of official court records.

33. Due to the total absence of any meaningful oversight and self policing governance my rights have been repeatedly violated. The continuing egregious oppressive actions and obstruction of justice has served to deprive me financially through obstruction and engaging in a policy of attrition. This has damaged me not only financially, but also physically and emotionally as well as the loss of spiritual creativity as a concert pianist and the denial of the opportunity to perform in a Government sponsored tour representing the U.S. for the heads of the



European countries. My ethics complaints of improprieties have effectively and summarily been ignored. The total absence of any ethics oversight and accountability has permitted my situation to fester of over nineteen (19) years. To correct a factual error in the Opinion and Order, my filed complaint does not say and at not time did I hire Winthrop Rutherford, Jr. Or David G. Keyko to represent me in connection with my husbands Estate.

a. - The Testator, Edmund J. McCormick, died in November 1988. His Will nominated five (5) Executors, one of which was *Bankers Trust Company*, a chartered New York State Banking entity and Professional Corporate Fiduciary.

b. - The attorney and the law firm, purportedly representing the decedent's Estate, applied for the permanent "Letters Testamentary" and in late January 1989 they were issued by the Westchester County Surrogate, Judge Evans Brewster, naming five (5) Executors/Fiduciaries. (See Exhibit B - 1 pp.) An "Exemplified" copy of the permanent "Letter Testamentary" was issued by the same Surrogate Judge on April 10, 1989. (See Exhibit C- 2 pp.)

c. - In early 1996, I went to a friend of my husband (Ralph Martinelli, publisher of local Westchester newspapers), who spoke to the then Westchester Surrogate Judge Albert J. Emanuelli. Judge Emanuelli agreed to examine the Estate file and at the time found two (2) thing seriously wrong. The first thing, he related - a conflict involving the purported Estate attorney and *Bankers Trust Company* that left the Estate devoid of legal counsel after a Motion was filed in February 1989 on behalf of *Bankers Trust Company* by it's legal counsel. He refused to reveal the second thing that was wrong. The publisher told Judge Emanuelli in several contentious telephone conversations either he would disclose to him the second thing that Judge Emanuelli had discovered wrong or he would openly oppose him for reelection in his newspapers. The Judge told the publisher that he would give him legal ads, an overture that the publisher then refused. In 2000, Judge Emanuelli ran for reelection and the publisher, for the above reasons, supported Surrogate Judge Anthony A. Scarpino, Jr. Judge Emanuelli lost the election.

d - In early 2004, when looking at my copy of the original of the permanent "Letters Testamentary" that had been issued to me as a Legal Executrix, for the first time I discovered that the name of the Professional Corporate Fiduciary was not the same as nominated in the Will (*Bankers Trust Company*) - but instead *Bankers Trust Company of New York*. Upon further investigation, it turned out that the named entity, *Bankers Trust Company of New York* (that appears on the permanent "Letter Testamentary") did not exist in 1989 when the permanent "Letters Testamentary" were issued! NYS Banking Department records revealed that the entity, *Bankers Trust Company of New York*, named on the permanent "Letters Testamentary" (in

January 1989), did not become a legal Banking entity until more than ten (10) years later in September 1992. (See Exhibit D - 1 pp. - page 38 from the NYS Banking website) *Bankers Trust Company* has never been known as *Bankers Trust Company of New York* at anytime. (See Exhibit E - 1 pp. - page 37 from the NYS Banking website)

e. - Unaware of the material fact involving the permanent "Letters Testamentary," I obtained a Certificate of Fiduciary for the Estate in November 2001 from the Westchester County Surrogate's Court. This Certificate of Fiduciary for the Estate certified that *Bankers Trust Company* appears on the permanent "Letters Testamentary," when in fact, as previously stated, the nonexistent entity, *Bankers Trust Company of New York*, is actually listed on the permanent "Letters Testamentary" dated January 1989. It is now obvious that the Court Records were changed. (See Exhibit F - 1 pp.)

f. - In February, 2003, after more than two (2) years I succeeded in forcing Surrogate Judge Anthony A. Scarpino, Jr. To recuse himself since Judge Scarpino had been employed at *Bankers Trust Company*, who I was under the impression was the legal Corporate Executor/Fiduciary. The Estate was ultimately transferred to Dutchess County Surrogate Judge James Pagonos.

g. - In early 2004, after discovering what name (*Bankers Trust Company of New York*) was actually on the permanent "Letters Testamentary," dated January 1989, I had a representative go to the Westchester Surrogate's Court to obtain a new Certificate of Fiduciary for the Estate. After paying for a new Certificate of Fiduciary, John Kelly Court Clerk and Jody Keltz Court Attorney/Referee (both attorneys at law) refused to provide the Certificate of Fiduciary for the Estate. It was provided only after they were told that it was needed for the IRS. The copy (signed by Judge Anthony A. Scarpino, Jr.) and bearing a hand written notation on the bottom signed by John Kelly refers to the original "Letters Testamentary" and states that the name of *Bankers Trust Company* appears on them. (See Exhibit G - 1 pp.)

h - *Bankers Trust Company* on March 11, 1999 plead to three (3) felony counts in the S.D.N.Y. On June 4, 1999 *Bankers Trust Company* was purchased by Deutsche Bank and became a sentenced federal felon on July 26, 1999 (99cr250 - USA v. *Bankers Trust Company*). Furthermore, NYS statute bars a felon from acting as a fiduciary. It is my understanding from the NY Times that Deutsche Bank is currently under criminal investigation in the S.D.N.Y. This alteration of official Court Records in commission the this continuing constructive fraud, cover-up, obstruction of justice and violation of the public trust.

CONCLUSION

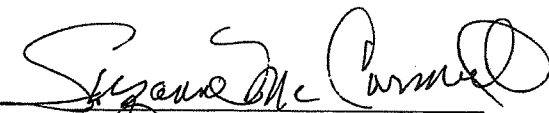
34. In Jefferson Fourteenth Assocs. F. Wometco de Puerto Rico, Inc., 695 F.2d 524 (11th Cir.1983), the court specifically prohibited such a *Sua Sponte* dismissal in the following

circumstances: (1) the defendant had not filed an answer and, thus, the plaintiff still had a right under Fed. R. Civ. P. 15(a) to amend the complaint; (2) the plaintiff's claim was brought in good faith and was not vexatious or patently frivolous; and (3) the district court had provided the plaintiff with neither notice of its intent to dismiss the complaint nor an opportunity to respond. (*Neitzke v. Williams*, 490 U.S. 319, 330 n. 8) (1989) (declining to decide whether a district court possesses the ability to *Sua Sponte* dismiss a complaint under Rule 12(b)(6)). All of the foregoing factors are present here.

35. In *Gloria Perex, et. al v. Jesus Ortiz, et. al*, 849 F. 2d 793 (2nd Cir. 1988), the court, "held that the district court erred in dismissing the claims sua sponte without giving plaintiffs notice and an opportunity to be heard, and abused its discretion in dismissing the official capacity suits against appellees with giving appellants an opportunity to amend their complaints to conform to the requirements for such a suit."

36. Accordingly, based on the facts and decisions cited above, plaintiff respectfully requests that this Court return my complaint to active status.

DATED: August 25, 2008



Suzanne McCormick, Pro se
P.O. Box 102
Hastings On Hudson, New York 10706-0102
(914) 693-6687

EXHIBIT A

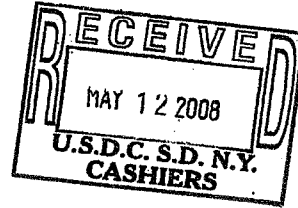


Thursday, July 26, 2012


Emergency Motion

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SUZANNE MCCORMICK,

Plaintiff,

-against-

COMPLAINT

THE STATE OF NEW YORK;
THE OFFICE OF COURT ADMINISTRATION
OF THE UNIFIED COURT SYSTEM;
THE APPELLATE DIVISION, FIRST DEPARTMENT
DEPARTMENTAL DISCIPLINARY COMMITTEE;
WINTHROP RUTHERFURD, JR;
DAVID G. KEYKO and
JOHN and JANE DOES, 1-30,

'08 CIV 44387

JURY TRIAL
DEMANDED

Defendants.

PLAINTIFF Suzanne McCormick, *Pro Se*, as and for her Complaint against the above-captioned defendants, alleges upon personal knowledge as to her own facts and upon information and belief as to all other matters:

PRELIMINARY STATEMENT

1. This is a civil action seeking injunctive relief, monetary relief, compensatory and punitive damages, disbursements, costs and fees for violations of rights, brought pursuant to 42 U.S.C. § 1983; the First and Fourteenth Amendments to the United States Constitution; and State law claims.

2. Specifically, plaintiff alleges that the defendants purposefully, wantonly, recklessly, knowingly, cavalierly and arbitrarily acting individually and in conspiracy and collusion with each other and others, committed numerous acts of self dealing, including the "whitewash," "cover-up" and "obstruction" of complaints against certain attorneys, seeking to deprive plaintiff of her Constitutional and statutory rights, by means of misrepresentation, deceit, egregious bad faith,

unclean hands, fraud, obstruction of justice, obfuscation, oppression, self-dealing, harassment, and manipulation of laws, rules, and regulations and by various other means.

3. Plaintiff is aware of at least six (6) pending cases against some of these defendants concerning, *inter alia*, "whitewashing" and "covering up" of attorney grievances-- complaints against certain attorneys at law and other state employees that are largely ignored for "political reasons" and or other unknown reasons. Only recently was the full extent and long-standing practice of misconduct revealed to plaintiff, and initially by an article in *The New York Times* on November 1, 2007, *Suit Accuses Court Panel Of Cover-Up* (Exhibit A - 1 pp.).

4. At all times relevant herein, the defendants, individually and in concert and in collusion with each other and others in egregious bad faith and unclean hands, acted to "whitewash," "cover-up," engage in "obstruction of justice" and otherwise fraudulently conceal various improper and illegal actions by defendants involving serious attorney misconduct.

5. Plaintiff also specifically brings claims against the defendants for fraud, harassment, oppression, egregious-bad faith, unclean hands, breach of contract, breach of fiduciary duties, obstruction of justice, and malfeasance.

JURISDICTION AND VENUE


6. Jurisdiction of this Court is invoked under 28 U.S.C. §1331, 28 U.S.C. §§1343(3) and (4), and the First and Fourteenth Amendments to the United States Constitution. Pendent jurisdiction over Plaintiff's state law claims is proper pursuant to 28 U.S.C. §1367. This Court has jurisdiction pursuant to 42 U.S.C. §1983, because defendants Office of Court Administration of the Unified Court System (hereinafter "OCA") and Appellate Division, First Department Departmental Disciplinary Committee (hereinafter "DDC") are "state actors" within the meaning of

2


**EXHIBIT 7 - ORDER SHIRA A. SCHEINDLIN RE: SUZANNE MCCORMICK
MOTION FOR REHEARING**

A handwritten signature in black ink, appearing to be 'SAS', positioned centrally below the title.

Thursday, July 26, 2012



Emergency Motion

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Case 1:08-cv-04438-SAS Document 6 Filed 08/27/2008 Page 1 of 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

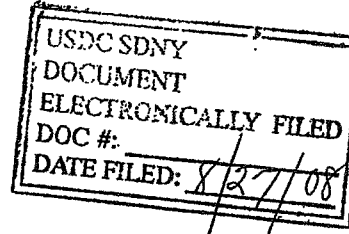
SUZANNE MCCORMICK,

Plaintiff,

- against -

STATE OF NEW YORK, *et al.*,

Defendants.



ORDER

08 Civ. 4438 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

By Opinion and Order dated August 8, 2008, this Court dismissed plaintiff's claims sua sponte. Plaintiff now moves for reconsideration of that Opinion and Order.

"The standard for granting such a motion is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked – matters, in other words, that might reasonably be expected to alter the conclusion reached by the court."¹ Plaintiff raises a

¹ *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). *Accord In re BDC 56 LLC*, 330 F.3d 111, 123 (2d Cir. 2003); *Eisemann v. Greene*, 204 F.3d 393, 395 n.2 (2d Cir. 2000) ("To be entitled to reargument, a party must demonstrate that the Court overlooked controlling decisions or factual matters that were put before it on the underlying motion" (quotation omitted)).

number of grounds for reconsideration.

Plaintiff first argues that the dismissal of her Complaint denied her an opportunity to conduct discovery.² However, this Court already assumed the truth of plaintiff's assertions, and found that notwithstanding those accusations, relief was unavailable.

Plaintiff next argues that the Court misapplied the *Rooker-Feldman* doctrine. She reasons that the doctrine applies only if her federal claim is intertwined with her state claim, and she did not bring her federal claims in state court.³ Plaintiff has confused the requirements of the doctrine. *Rooker-Feldman* prevents federal courts from exercising appellate jurisdiction over state courts regardless of the form the action takes. Plaintiff's federal claims are barred because she asks this Court to overturn state court decisions, not because the federal claims themselves were already determined by a state court. The latter is an example of claim preclusion, not the *Rooker-Feldman* doctrine.

Plaintiff contends that a related case "revealed and verified suspicions of systemic corruption by State employees acting in violation of their oaths of

² See Affirmation for Reconsideration of the Court's August 8, 2008 Opinion and Order ¶ 21.

³ See *id.* ¶ 23(d).

A handwritten signature in black ink, appearing to be a stylized name, possibly "M. J. ...".

office.”⁴ She “believe[s] that such abuses of official positions should be immediately stopped by injunctive relief appointing a Federal Monitor.”⁵ Even if true, plaintiff lacks standing to make this request.

Plaintiff also argues that she has “a constitutional right to file an amended complaint, and to be, most importantly, substantively heard on the facts of [her] amended complaint.”⁶ But her proposed amendments would not cure the fatal problems in her Complaint. She contends that her “rights have been repeatedly violated” because of “the total absence of any meaningful oversight and self policing governance” of the New York court system.⁷ But as discussed in the Opinion, the lower federal courts cannot police the decisions of state courts. If she believes that a state court decision is unjust or unconstitutional, her sole remedy is to appeal the decision to a higher court of the state, and then, if necessary, to the United States Supreme Court.

The Opinion and Order stated that plaintiff alleged that she hired defendants Rutherford and Keyko. This statement is inaccurate. The Opinion will

⁴ *Id.* ¶ 26.

⁵ *Id.*

⁶ *Id.* ¶ 29.

⁷ *Id.* ¶ 33.



A handwritten signature in black ink, appearing to be 'L. Rutherford', is written over the text 'Emergency Motion'.

Emergency Motion

EXHIBIT 8 - ARTICLES

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Thursday, July 26, 2012

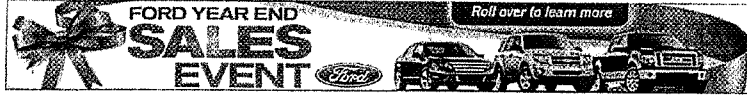
Emergency Motion

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Bloomberg News reports that Andrew Cuomo's campaign accepted money from law firms Page 1 of 2

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Comments: 13 POST STAFF REPORT Last Updated: 12:47 PM, November 23, 2009 Posted: 10:52 AM, November 23, 2009

State Attorney General Andrew Cuomo's campaign took money from law firms that represent clients his office investigated or accused of wrongdoing, according to a new report.

Citing state records, Bloomberg News reported that Boies Schiller & Flexner LLP contributed \$35,000 this year to Cuomo's campaign. The firm, led by David Boies, represents Maurice "Hank" Greenberg, the former AIG CEO, who is fighting a civil fraud case the attorney general filed.

Attorneys for Dell Inc., Deutsche Bank and former Liberal Party chief Raymond Harding also contributed to Cuomo. The AG's office has been involved with disputes with each of them.

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Richard Bamberger, a Cuomo spokesman, told Bloomberg in an e-mail, "Lawyers appear constantly before all sorts of government agencies, whether it is the Mayor's Office, the Governor's Office, or countless agencies and boards. No one would argue that lawyers can't donate to candidates for any of these offices. Indeed, the ABA and New York State rules specifically encourage lawyers to participate in the political process."

Cuomo is expected to run for governor. His campaign has raised \$16 million, Bloomberg reported.

Topics

Andrew Cuomo Bloomberg News David Boies Dell, Inc. Deutsche Bank

Comments (12)

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adainv 11/23/2009 6:00 PM What is needed is an independent prosecutor to investigate, and prosecute to the fullest extent of the law if crimes have been found. The problem is finding an honest, independent prosecutor. They all have political hooks and they would have to be an attorney. How would you find one of them who is honest. They all cover for each other.

vpin 11/23/2009 4:15 PM Here we go, the nasty politics are starting against Cuomo. I smell a Republican rat in the mixture behind that news being in the Post.

Cuomo's the front runner for Governor and the overwhelming majority of New Yorkers want him to be elected so the rightwing trots out their usual dirty politics and their manufactured dirt machine goes into high gear.

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http://www.nypost.com/p/news/local/cuomo_campaign_took_money_from_attorneys_U... 11/23/2009

Handwritten signature

These law firms represent many people and all business is being investigated Delivery by Cuomo so GIVE IT A REST!

Lou (bx67) Report Abuse 11/23/2009 2:31 PM

And this guy is the leader of the pack according to poll numbers. Don't people remember that they threw his old man out of office? The nut doesn't fall far from the tree.

The NYS voters are some of the dumbest people on the planet.

breadguy Report Abuse 11/23/2009 2:25 PM

This guy is another crook, just like the ex father-in-law Kennedy. Get the Mafia to get the unions to elect him, then try to put the mob in jail. They showed him who to f-k with

Bazwald927 Report Abuse 11/23/2009 12:36 PM

Eliot Spitzer the 2nd.... (In terms of a hypocrisy and egomania) AC has a lot of people in this state and country fooled - hopefully the truth will start to come out now...

LIBERTY4ALL Report Abuse 11/23/2009 12:31 PM

His old man was as crooked as a dogs hind leg. The apple don't fall far from the tree. Ole bug eyes Cuomo is following in his Fathers footsteps.

LIBERTY4ALL Report Abuse 11/23/2009 12:31 PM

His old man was as crooked as a dogs hind leg. The apple don't fall far from the tree. Ole bug eyes Cuomo is following in his Fathers footsteps.

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His old man was as crooked as a dogs hind leg. The apple don't fall far from the tree. Ole bug eyes Cuomo is following in his Fathers footsteps.

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http://www.nypost.com/p/news/local/cuomo_campaign_took_money_from_attorneys_U... 11/23/2009

**EXHIBIT 9 - KEVIN MCKEOWN AKA FRANK BRADY MEMO TO
SCHEINDLIN REGARDING DIRTY JUDGES AND SEALED COURT PAPERS**

A handwritten signature in black ink, appearing to be 'KM', written over the title text.

Thursday, July 26, 2012



Emergency Motion

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JUDGE S. A. SCHEINDLIN Fax:212-805-7920

Jun 11 2008 11:20am P001/002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CHAMBERS OF JUDGE SHIRA A. SCHEINDLIN
NEW YORK, NEW YORK 10007
Telephone (212) 805-0246
Telefax (212) 805-7920

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ADDRESSEE: Kevin McKeown

ADDRESSEE FACSIMILE TELEPHONE NUMBER: (212) 591-6022

NAME OF COMPANY: _____

COMPANY TELEPHONE NUMBER: (212) 591-1022

CITY AND STATE: New York, NY

DATE TRANSMITTED: June 11, 2008 TIME TRANSMITTED: 11:14 a.m.

SENDER/NAME: JUDGE SHIRA A. SCHEINDLIN

OPERATOR: _____

CASE NAME: McKeown v. State of New York, et al.

DOCKET NUMBER: 08 Civ. 2391(SAS)

NUMBER OF PAGES Including Cover Sheet: 2

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MESSAGE: IMPORTANT!

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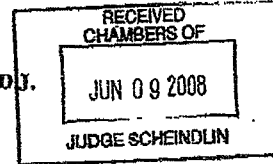


JUDGE S. A. SCHEINDLIN Fax:212-805-7920

Jun 11 2008 11:21am P002/002

FAX MEMO & COVER

TO: Deputy Law Clerk Jim Reilly
Chambers of The Honorable Shira A. Scheindlin, U.S.D.J.
FAX #: 212-805-7920
FROM: Kevin McKeown, pro se
Tel: 212-591-1022; Fax: 212-591-6022
DATE: Monday, June 9, 2008 - 4:00pm
RE: McKeown v State of NY, et al. (08cv2391)(SAS)
Leave to File Under Seal



TOTAL PAGES (including cover): 1

Dear Mr. Reilly,

1. I respectfully request permission to submit a Motion for Leave to File Under Seal two documents currently in my possession:

- (a) An affirmation, dated June 8, 2008, from a retired elected judge of this state, and who sat on the bench for more than 20 years (3 pages); and
(b) An affirmation, dated June 3, 2008, from a sitting, elected justice of the NYS Supreme Court (11 pages).

Both affirmants want to personally testify before this Honorable Court, in the above referenced matter, and at a hearing that I will be soon seeking. Upon information and belief, and after reading their affirmations, I believe both individuals will testify as to their first-hand knowledge of the systemic corruption, and that continues to severely harm me, within the New York State attorney grievance committees and, further, within the New York State Commission on Judicial Conduct. I believe their affirmations and testimony will fully support my allegations and the urgent need for this Honorable Court's immediate action.

2. As an alternative to my submission for leave, I respectfully request that the herein application to File Under Seal be SO ORDERED. (In the interest of judicial economy, I respectfully advise the Court that I have been informed by other NYS judges of their desire to also appear, and to file affirmations in support of my application, though I do not yet have those promised affirmations in my possession. Accordingly, I would respectfully request that any affirmation from any retired or sitting justice of any NYS court dated before June 27, 2008 be covered by any order)


3. As a final alternative, and as supported by all filings hereto had herein and in all related cases, I respectfully request this Honorable Court's reconsideration of the previously filed order to show cause, and that a hearing on the hereto sought relief be immediately scheduled.

cc: Anthony J. Tomari, Esq. 212-416-6009 fax 358pm VOK
Joseph F. McQuade, Esq. 212-599-3116 fax 359pm VOK
Respectfully submitted, Kevin McKeown
Plaintiff's request is granted. Plaintiff may file the two affirmations listed above under seal. SO ORDERED: Shira A. Scheindlin, U.S.D.J.
Rabbi: New York, New York June 10, 2008

**EXHIBIT 10 - KEVIN MCKEOWN AKA FRANK BRADY AFFIRMATION OF
SUZANNE MCCORMICK**

A handwritten signature in black ink, appearing to be 'K. McKeown', written over the text 'SUZANNE MCCORMICK'.

Thursday, July 26, 2012



Emergency Motion

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United States District Court
For The Southern District of New York

COPY

-----X
KEVIN MCKEOWN, Plaintiff,
-against-
THE STATE OF NEW YORK; et al.
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Case No. 08-cv-02391-SAS

Affirmation of Suzanne McCormick

I, SUZANNE MCCORMICK, affirm as follows:

1. I am over twenty one years of age and fully competent and knowledgeable to affirm to the facts and matters set forth in this Affirmation. My related case is #08civ4438.
2. I am a legal Executrix of the Estate of my late husband Edmund J. McCormick pursuant to the permanent "Letters Testamentary" dated January 25, 1989. Attached (1 pp.) is a true and accurate copy of the permanent "Letters Testamentary" issued by the Westchester County Surrogate's Court which are still in effect and unrevoked.
3. I hereby make this Affirmation freely in enthusiastic support of the application to appoint a Federal Monitor over the statewide Disciplinary Grievance (Ethics) Committees and also over the Commission for Judicial Conduct. I am convinced and believe that each and every citizen is entitled to receive "Equal Protection" under the law. I further believe in the un-abridged rights to Petition Our Government and receive a full and impartial redress of any grievances.
4. During my tenure as an Executrix of my late husband's Estate, based on personal experience, I have come to realize that, in my opinion, the malignant cancer of corruption has metastasized within the New York State Judicial System.
5. If it were not for the uncurbed corruption I would not have been repeatedly defrauded and my husband's and my life's work would not have been squandered and maliciously destroyed. These actions have been bold, brazen and malicious. The very people

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who are sworn to serving and protecting society should be abiding by the law and enforcing this very law. Instead, these same people routinely abuse the law and peoples rights cavalierly and with impunity. These actions are harmful to a lawful society.

6. During April 2001, I learned by accident that the newly elected Westchester County Surrogate Court Judge Anthony A. Scarpino, Jr., where my late husband's Estate was sited, had been employed as a Bank Officer by the alleged Executor/Corporate Fiduciary Bankers Trust Company. For approximately two (2) years I attempted to have Judge Scarpino disqualify or recuse himself to no avail. Finally, when a photo appeared in a newspaper in late 2002, revealing the fact that he had worked at Bankers Trust Company only them under pressure did Judge Scarpino, begin the process of recusal that was concluded in early February 2003.

7. The situation where former members of the Judiciary that allegedly engaged in the practice of law utilizing their former status and position, is Un-American and against the fabric of this fairness. I believe that this unethical practice add fuel to the fires of corruption.

8. All of the attorneys, including Judges, are officers of the court and it is my understanding that they have a sworn duty to report inappropriate or unlawful acts to the responsible oversight authority. I have seen and am a victim of the altering and falsification of official court records.

9. Due to the total absence of any meaningful oversight and self policing governance my rights have been repeatedly violated. The continuing egregious oppressive actions and obstruction of justice has served to deprive me financially through obstruction and engaging in a policy of attrition. This has damaged me not only financially, but also physically and emotionally as well as the loss of spiritual creativity as a concert pianist and the denial of the opportunity to perform in a Government sponsored tour representing the U.S. for the heads of the



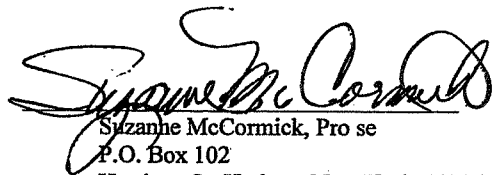
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European countries. My ethics complaints of Judicial and attorney improprieties have effectively and summarily been ignored. My extensive damages are detail in my filed complaint (#08civ4438). The total absence of any ethics oversight and accountability has permitted my situation to fester for over nineteen (19) years.

10. Based on the foregoing salient statements I again fervently believe that this court should appoint a federal monitor so that the rogue oversight authorities will not be permitted to continue to violate my and all other citizen's rights.

I hereby declare under penalty of perjury that to the best of my actual knowledge the facts and all other matters set forth in my three (3) page Affirmation with it's attachment (True and complete copy of the "Letters Testamentary" - 1 pp.) are true and correct to the best of my ability.

June 2, 2008



Suzanne McCormick, Pro se
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Form 124-8-84

The People of the State of New York, No. 214216

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN:

This is to certify that on the 25th day of JANUARY, 1989
LETTERS TESTAMENTARY OF THE Last Will and Testament OF

EDMUND J. MC CORMICK

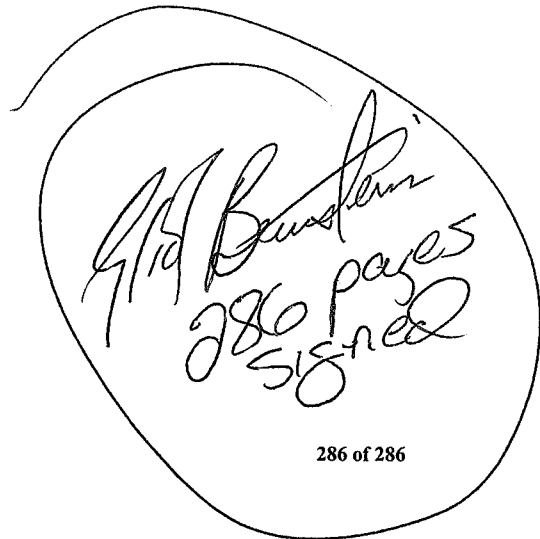
late of the VILLAGE of DOBBS FERRY
were duly granted and issued by the Surrogate of the County of Westchester to
ALFRED S. HOWES, HERMAN MARKOWITZ, SUZANNE V. MC CORMICK, EDMUND J. MC CORMICK, JR., BANKERS
and that the same are still valid and in full force. TRUST COMPANY OF NEW YORK
Dated, Attested and Sealed JANUARY 31, 1989

HON. EVANS V. BREWSTER, Surrogate of Westchester County.

Philip E. Pungel
Chief Clerk of the Surrogate's Court

I hereby certify that this is a True and Complete
Copy of the Original.
June 2, 2008
Suzanne V. McCormick

ATTACHMENT



Emergency Motion

Thursday, July 26, 2012

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