SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

JOSEPH RAKOFSKY and RAKOFSKY LAW FIRM, P.C.,

Plaintiffs,

-against-

THE WASHINGTON POST COMPANY, et al.,

Defendants.

----------x

Affidavit in Support of Motion

Index # 105573/11

Eric Turkewitz, being duly sworn, deposes and says:

I am an attorney admitted to practice law in New York and in good standing. I am also a defendant in this action along with 80 other lawyers, law firms, media companies, and John Doe / pseudonymous defendants. I make this affidavit based on personal knowledge, as well as extensive media reports that are the subject of this suit.

The Affidavit is submitted on behalf of 14 individual defendants encompassing 30 of the 81 named defense entities. A complete list is set forth near the end of this Affidavit.

This Affidavit supports a motion:

a. To admit Marc John Randazza *pro hac vice* to defend this case on behalf of the defendants I represent;

b. To extend the time for all identifiable defendants to answer or move with respect to the complaint, so that the defendants have a unified date to move or answer. This is to (hopefully) organize the oncoming blizzard of paper, by starting the action with unified time schedules; and

c. Directing that the plaintiffs serve a copy of the order on all defendants.

In an attempt to avoid this motion, counsel for the parties spoke by phone on May 26, 2011. Plaintiffs' counsel, Richard Borzouye, told Marc Randazza that Mr. Rakofsky opposes Mr. Randazza's admission to practice *pro hac vice*, though he did not provide any legal grounds for his opposition during that call.

During the same conversation with Mr. Borzouye, we asked for a unified date for answering or moving, but we were refused. We were told that our defendants could have until June 16th before plaintiffs would seek a default (now updated to June 28th). It is not clear, however, that all defendants will likely be served by that date – thus resulting in the exact sort of piecemeal litigation and waste of judicial resources that would result from no extension at all. As of June 1st, process was still being served.

Background of this Defamation Suit

This defamation action results from numerous news stories that plaintiff Joseph Rakofsky was incompetent as an attorney during a criminal trial.

On April 1st of this year the *Washington Post* published an unflattering article regarding Mr. Rakofsky and his attempt defend a murder case in the District of Columbia.[1] Mr. Rakofsky, admitted *pro hac vice*, told the jury during a "rambling" opening that it was his first trial. D.C. Superior Court Judge William Jackson expressed dismay at the defense being provided, to the detriment of the defendant, and declared a mistrial after three days.

Judge Jackson said, according to the *Post*, that he was "astonished" at Mr. Rakofsky's

[1] Exhibit A, Keith Alexander, D.C. Superior Court judge declares mistrial over attorney's

performance and at his "not having a good grasp of legal procedures." He also said that Mr. Rakofsky's performance in the trial was "below what any reasonable person would expect in a murder trial." And further, Judge Jackson added that Mr. Rakofsky did not have "a good grasp of legal procedures of what was, and was not, allowed to be admitted in trial, to the detriment of (the defendant)."

Judge Jackson also showed displeasure at Mr. Rakofsky's email to an investigator asking that the investigator "trick" a witness. According to the *Post*:

> **The filing included an e-mail that the investigator said was from Rakofsky, saying: "Thank you for your help. Please trick the old lady to say that she did not see the shooting or provide information to the lawyers about the shooting." The e-mail came from Rakofsky's e-mail account, which is registered to Rakofsky Law Firm in Freehold, N.J.**[2]

Mr. Rakofsky was admitted to practice law in New Jersey on April 29, 2010. Soon after, it was learned, he opened numerous law offices and advertised his services in New Jersey, New York, Connecticut and Washington D.C. under the name of his professional corporation, Rakofsky Law Firm, P.C. He did this despite not being licensed in New York, Connecticut or Washington D.C.

The newly admitted Mr. Rakofsky gave this description of his experience on one of his many websites:

> **Mr. Rakofsky has worked on cases involving Murder, Embezzlement, Tax Evasion, Civil RICO, Securities Fraud, Bank Fraud, Insurance Fraud, Wire Fraud, Conspiracy, Money Laundering, Drug Trafficking, Grand Larceny, Identity Theft, Counterfeit Credit Card Enterprise**

---

competence in murder case, *Washington Post*, April 1, 2011

[2] Exhibit B, available online at: http://www.washingtonpost.com/wp-srv/metro/crime/letter100610.pdf (last viewed May 27, 2011)

and Aggravated Harassment. Following graduation from law school, he worked for one of the biggest civil litigation firms on the east coast and has worked for boutique white-collar criminal defense firms in Manhattan.[3]

He also directly advertised for cases in New York City, despite being unlicensed to practice law here, as he held himself out to the public as "an experienced attorney" with an "extensive and intricate understanding of legal procedures":

My name is Joseph Rakofsky, and I founded this firm on a commitment to set the standard for criminal defense in New York City. When you need an experienced attorney to make sure your rights are protected, no one will fight more aggressively on your behalf than we will. We have an extensive and intricate understanding of legal procedures and loopholes, as well as federal and state trial experience, especially in all areas of white collar crime including: * Embezzlement * Tax Evasion * Identity Theft * Securities & Bank Fraud * Grand Larceny * Drug Trafficking[4]

And he asserted that he could provide a better defense than any one else could provide, despite his lack of experience:[5]

Charged with Murder?

If you or a loved one has been charged with Homicide, you need a lawyer who will spend every second of his time concentrating on you and on how to protect you. You need a lawyer who will protect you when the Government is attacking you and trying to make you appear guilty. You need a lawyer who will take your hand and help you walk through this extremely difficult process.

We, the lawyers at the Rakofsky Law Firm, *are the only people* who can protect you in this way. (emphasis added)

---

[3] Scott Greenfield, The Truth Free Zone Eats One Of It's Own, *Simple Justice*, April 4, 2011, http://blog.simplejustice.us/2011/04/04/the-truth-free-zone-eats-one-its-own.aspx (last viewed, May 24, 2011)

[4] http://local.yodle.com/profile/rakofsky-law-firm-pc-greenwich-ct/17411057 (last viewed May 26, 2011)

[5] http://ivi3.com/whitecollarlawdc.com/vc.html, (archived site, last viewed May 26, 2011)

A number of journalists wrote about Mr. Rakofsky, beginning with the *Washington Post* (another defendant, along with its writers). The *Post* had relied, in part, on the documented in-court statements of Judge Jackson. Other media outlets then reviewed the *Post* article and other publicly available information (some of it found on Mr. Rakofsky's own websites, which has steadily disappeared) and offered candid and First Amendment protected opinions on his competence, ethics, and attorney marketing. The fact that he opened several offices outside of New Jersey did not escape the attention of writers.

The *Post* also published a follow-up article on April 9, 2011, describing how Mr. Rakofsky managed to land a murder case just one week after being admitted to practice law, by trolling for clients in New York City.[6] The story's lede:

> **Henrietta Watson stood inside the downtown Manhattan courthouse waiting for one of her grandsons to be released from jail. A young lawyer approached and asked if he could help.**
>
> **Watson and her husband declined. But the couple told the lawyer about another grandson in Washington, who was charged in the fatal shooting of a Virginia man. That case interested the lawyer, who gave Watson his card and introduced himself as Joseph Rakofsky, Watson said.**

Mr. Rakofsky brought this suit against the *Post*, the *American Bar Association*, *Thomson Reuters* and many dozens of individuals from around the United States and Canada that had commented on these subjects, as well as anyone Mr. Rakofsky thought might employ these journalists and pundits.[7] Many of these defendants are law bloggers (such as myself) and their law

[6] Exhibit C, Keith Alexander, Woman pays $7,700 to grandson's attorney who was later removed for inexperience, *Washington Post*, April 9, 2011; Amended Complaint ¶87

[7] Exhibit D, Summons and Complaint; Exhibit E, Amended Complaint

firms.

The essence of Mr. Rakofsky's claim is his belief that Judge Jackson and the prosecutor conspired to form a "blatant alliance" "that resulted in virtually all of Judge Jackson's rulings being in favor of the Government".[8] Mr. Rakofsky also alleges that Judge Jackson "uttered several statements in open court that slandered Rakofsky's knowledge of courtroom procedures,"[9] and that Judge Jackson's "anger may have been prompted by the diligence and zeal with which Rakofsky conducted his defense."

In addition to stating that Judge Jackson defamed him from the bench, Mr. Rakofsky also claims that Judge Jackson never declared him to be incompetent, and merely declared a mistrial due to a conflict with the defendant over what questions to ask at trial.[10] The transcript, however, says otherwise.

A review of the transcript[11] lays bare Judge Jackson's opinion on Mr. Rakofsky's competence, and reinforces the prior commentary. He said:

> **If there had been a conviction in this case, based on what I had seen so far, I would have granted a motion for a new trial under 23.110.**[12]

Judge Jackson was explicit regarding the lack of competence of Rakofsky's defense:

> **I[t] became readily apparent that the performance was not up to par under any reasonable standard of competence under the Sixth Amendment.**[13]

---

[8] Exhibit E, ¶109, see also ¶118
[9] Exhibit E, ¶119
[10] Exhibit E, ¶172
[11] Exhibit F, transcript, p. 4, *US v. Deaner*, criminal action 2008-CFI-30325, April 1, 2011
[12] D.C.Code § 23-110, post-trial motion to vacate, set aside, or correct the sentence.
[13] Exhibit F, transcript, p. 5

With respect to his missive to an investigator to "trick" a witness, Mr. Rakofsky claims in the Amended Complaint that the tricky missive was "hastily typed" on a mobile device, and that the investigator "knew only too well" that "trick" was actually shorthand for something else.[14]

After explaining what he meant to say in the email, Mr. Rakofsky then disavowed it, claiming that "no such email was ever written" by him.[15] The email, published online by the *Post*, is Exhibit B.

Mr. Rakofsky goes on to accuse the same investigator in the murder case of lying to the Court about him, and trying to blackmail him.[16]

From these claims Mr. Rakofsky then proceeds to assert that the *Post* and others are liable for repeating the news from the trial and offering opinions on the many subjects raised by the story.

The suit was instantly branded by one wag as *Rakofsky v. Internet* due to its significant reach and attempts to purge the Internet of unflattering stories about Mr. Rakofsky that stemmed from the trial and his marketing efforts. But, rather than silencing the critics and bullying defendants to remove their posts in fear of the lawsuit as Rakofsky had hoped (and as often happens in other circumstances),[17] it had the opposite effect of throwing gasoline on a fire: criticism soared.

The commentary became increasingly scathing, not only shining a brighter light on the problems Mr. Rakofsky had at the initial murder trial and the comments from the bench, but also for bringing a suit regarding opinions he knows are well protected by the First Amendment, as well as

---

[14] Exhibit E, ¶120
[15] Exhibit E, ¶139
[16] Exhibit E, ¶120, 122, 127
[17] Timothy B. Lee, Criticism and takedown: how review sites can defend free speech, *Ars Technica*, June 1, 2011 (http://arstechnica.com/tech-policy/news/2011/06/criticism-and-

bringing suit against a multitude of out of state entities over which this Court lacks long-arm jurisdiction.

Many pundits asserted that bringing such a suit was further proof of Mr. Rakofsky's incompetence, and they further highlighted his misleading marketing and ethical failings. And that was before they even saw the recently available transcript with Judge Jackson's comment that "I[t] became readily apparent that the performance was not up to par under any reasonable standard of competence under the Sixth Amendment."

After this second wave of criticism came out, Mr. Rakofsky amended his complaint to sue *additional* people, this time adding those who were critical of bringing this suit.[18] He also added a claim for intentional infliction of emotional distress in a bid to avoid the fact that this Court does not have long-arm jurisdiction for defamation claims over the vast majority of the defendants. The amendment of the claim, predictably, brought a third wave of commentary and ridicule.

Legal Issues Presented

Mr. Rakofsky's suit, therefore, presents a number of legal issues that are expected to result in a flood of CPLR § 3211 motions to dismiss, among other things. Among the problems of bringing this action are:

- The defamation claims are primarily based on judicial comments from the bench that were reported in a major newspaper, were thereafter reported by other media, and are now confirmed by the transcript;

---

takedown-how-review-sites-can-defend-free-speech.ars) (last viewed June 2, 2011)

- The failure to state a claim and the significant protections of opinion afforded by the First Amendment; New York's lack of long-arm jurisdiction for defamation that affects the majority of the defendants; defective service of process; and
- Mr. Rakofsky's substantial issues regarding practicing law in multiple states without a license, including New York.

Many defendants will likely move to sever their claims from each other. And it seems likely that many, if not most, will move for sanctions and attorney's fees under 22 NYCRR §130.1 (frivolous conduct) and for sanctions of up to $10,000 per defendant against Mr. Rakofsky and his counsel under CPLR § 8303-a (frivolous action). Sanctions, in fact, are mandatory in a defamation action upon a finding of frivolousness.[19] It thus appears clear that the Court may see a tsunami of motions on a number of different grounds and all with different return dates.

If this motion is granted it will streamline the litigation and preserve judicial resources so that conflicting motions and cross motions do not cross in the mail, redundant motions may be kept to a minimum, set a unified date for all known defendants to answer or move, provide time for defendants to obtain their counsel and be part of the schedule, and permit any other out-of-state attorneys to make their *pro hac vice* motions.

Motion For An Extension Of Time To Answer Or Move

The complaint was filed in New York County on May 16, 2011. Attempts at service of process started immediately thereafter. As of June 1st the attempts to serve process remain ongoing.

I immediately contacted Marc Randazza, whose primary area of legal work is First

---

[18] Exhibit E

[19] *Mitchell v. Herald Co.*, 137 AD2d 213, 529 NYS2d 602 (4th Dept. 1988); *Nyitray v. New York*

Amendment and intellectual property law, with respect to defending me. Other defendants have likewise contacted Mr. Randazza, who is well known as an experienced and competent First Amendment advocate.

In order to avoid a deluge of duplicative motions and cross-motions, many of which will be redundant, Mr. Randazza contacted plaintiffs' counsel at my request in order to set up a unified date for answering the suit or making motions. While plaintiffs were willing to extend the time for our group, and grant us June 16th (and now June 28th, as per our last communication with defense counsel) they have not yet signed a stipulation. More significantly, they have rejected a unified date for all defendants.

Nor is it clear whether all parties would even be served by June 28th, or if served even be required to answer by then, leaving the Court and the parties open to the piecemeal litigation that we seek to avoid. Since the time for some defendants to Answer may be fast approaching, we make this motion to avoid defaults and in the interests of justice.

While we understand that some of the defendants are pseudonyms, and thus may be difficult to serve, the vast majority of the defendants are not. It is with respect to the named defendants that we ask for the unified date.

We move pursuant to the broad judicial powers of CPLR § 2004, that all answers or motions, whether for these defendants or other known defendants, be returnable on a unified date, preferably 30 days after the plaintiffs assert that the final defendant they are capable of locating without discovery has been served. Since only the plaintiffs have the addresses of all the defendants, and only they know who can easily be located and served, we also ask that they serve a copy of the

---

Athletic Club in City of New York, 274 AD2d 326, 712 NYS2d 89 (1st Dept. 2000)

Court's order on all parties, and that the order also require that Rakofsky notify all defendants upon the final locatable defendant being served.

Motion to Admit *Pro Hac Vice*

Mr. Randazza is admitted to practice law in California, Arizona, Florida and Massachusetts. He also recently passed the Nevada bar and is awaiting admission. He is a 2000 graduate of Georgetown Law School, and is in good standing in all states where he is licensed. He has requested certificates of good standing (not yet received) and these will be provided in a supplemental filing.

Mr. Randazza focuses his law practice on First Amendment defense and intellectual property. His Petition is submitted along with this Affidavit. For the purposes of this suit, he will be associated with my office. If the motion is granted, his California office will be used for communications, pending his admission in Nevada: 187 Calle Magdalena, Suite 114, Encinitas, CA 92924.

Since the time of his signing the Petition, additional defendants have asked us to represent them, so the defendants listed in Mr. Randazza's Petition should not be considered static, but subject to change.

I am familiar with New York practice. Over the last 25 years I have taken medical malpractice and other civil cases to verdict in all boroughs of New York City as well as the adjoining counties, and argued appeals in the Appellate Divisions of the First and Second Departments. I am also admitted to, and have practiced in, the Eastern and Southern Districts of

New York and the Second Circuit Court of Appeals. No action has ever been taken against my license to practice law.

Admission for Mr. Randazza is requested pursuant to NYCRR §§ 520.11(a)(1) and 602.2(a). It is the policy of this State to recognize "a party's entitlement to be represented in ongoing litigation by counsel of its choosing."[20] The defendants that we seek to represent are indicated on the following chart, with citation to those paragraphs in the Amended Complaint where individual allegations are made:

Writer/Defendant	**Associated Entities**	**Amended Complaint ¶¶**	**Jurisdiction, per Amended Complaint**	**Total Defendants**
Eric Turkewitz	The Turkewitz Law Firm	47-48; 172	Washington, DC	2
Scott Greenfield	Simple Justice NY, LLC blog.simplejustice.us Kravet & Vogel, LLP	19-21; 148-152; 212	New York	4
Carolyn Elefant	MyShingle.com	16-17; 146-147; 201	Washington, DC	2
Mark Bennett	Bennett And Bennett	32-33; 160; 206	Texas	2
Eric L. Mayer	Eric L. Mayer, Attorney-at-Law	22-23; 153; 203	Kansas	2
Nathaniel Burney	The Burney Law Firm, LLC	82-83;193-194; 198	New York	2
Josh King	Avvo, Inc.	78-79; 202	Washington State	2
Jeff Gamso		24-25; 154	Ohio	1
George M. Wallace	Wallace, Brown & Schwartz	57-58; 180-181	Florida	2
"Tarrant84"	Banned Ventures Banni	65-67; 185	Colorado	3
Brian L. Tannebaum	Tannebaum Weiss	55-56; 179	Florida	2

[20] *Giannotti v. Mercedes Benz U.S.A., LLC*, 20 AD3d 389, 798 NYS2d 141 (2nd Dept. 2005)

Colin Samuels	Accela, Inc.	80-81; 192; 199	California	2
Crime and Federalism	John Doe #1	26-27; 155-157	Unknown	2
Antonin I. Pribetic	Steinberg Morton	51-52; 175; 205	Canada	2
Elie Mystel	AboveTheLaw.com; Breaking Media, LLC	9-11; 143; 200	New York	3
15 individuals				33 entities

There have been no similar requests for this relief.

WHEREFORE, the defendants listed above ask that:

1. Marc John Randazza be admitted *pro hac vice* to defend this case;

2. For an extension of time for all defendants to answer or move with respect to the complaint, so that defendants have a unified date to move or answer. This will organize the oncoming blizzard of paper, by starting the action with unified time schedules.

3. Directing that the plaintiffs serve a copy of the order on all defendants; and

4. For such other relief as this Court deems just and proper.

Dated: New York, New York
June 3, 2011

Eric Turkewitz, *pro se* and as counsel
to the defendants listed above

Sworn to before me on the 3rd day of June, 2011:

NOTARY PUBLIC

JENNIFER FREEMAN
Notary Public, State Of New York
No. 02fr5017529
Qualified In New York County
Commission Expires ~~Sept. 7, 2001~~
2-27-14