IVIEWIT HOLDINGS, INC.

Eliot I. Bernstein
Founder
Direct Dial: 561.364.4240

By Certified Mail

December 5, 2003

Brooke Kennerly
Executive Director
Judicial Qualifications Commission
1110 Thomasville Road
Tallahassee, Fla. 32303-6224

Re: Docket No. 03352

Dear Ms. Kennerly:

Per our conversation, the Company would like to again address the ethical violations that we feel Judge Jorge Labarga has violated in the handling of the Proskauer Rose v. Iviewit case referenced in our initial complaint with your offices, specifically addressing the ethical Canons that your office oversees. Please understand that we are not asking that the case be reviewed by your offices other than for the ethical considerations and that we are not asking your office to evaluate the outcome, in anyway change, or appeal the final decision in the case.

Specifically we reference the Canon's that we feel have been violated by Judge Jorge Labarga in the proceedings.

Under **Canon 3**

Canon 3D. Disciplinary Responsibilities.

(2) A judge who **receives information** or has actual knowledge that **substantial likelihood** exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's

> judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

We cite first 3D and it is our understanding of 3D2 that the Judge "**received information"** in the form of the previously attached Defendants Motion for Leave to Amend to Assert Counterclaim for Damages, that without doubt contained information that showed a "**substantial likelihood"** that lawyers (also the Plaintiff in the case) had committed many violations of the Rules Regulating The Florida Bar, including criminal actions and fraud on US Government Agencies such as the United States Patent and Trademark Office. Judge Labarga may have elected to not allow the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages to be heard in the case but it still would not have allowed him to neglect to report the activity (especially criminal) cited in the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages to the proper authorities. The Defendants Motion for Leave to Amend to Assert Counterclaim for Damages was filed by a Flordia attorney, Steven Selz, Esq. and he had evaluated much of the evidence prior to filing the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages and this constituted a solid foundation for the Judge to have examined the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages and taken actions with the Florida Bar and Federal authorities.

The allegations outlined in the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages are of crimes committed by various attorneys including those that were the Plaintiff/Attorneys (Proskauer Rose) in the case, and their action was filed after the law firm of Proskauer Rose had become confronted by the Board of Directors of Iviewit Holdings, Inc. to explain patent malfeasances including fraud on government agencies and stolen securities and cash. In fact, the Judges complete inaction forced the Company to file separate actions with the State Bar Associations and other Federal agencies and when the Company filed they were held up because the contention by The Florida Bar was that the various claims of the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages were in Judge Labarga's court and until final adjudication in the matter, they could not proceed to action. See attached Florida Bar Letter – Exhibit A. This burying of the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages and subsequent failure of the Judge to report the crimes under 3D2, has held up investigations into these highly time sensitive patent matters and criminal activities now for several years. Again, had the Judge acted according to the Canon 3D2 he would have been responsible himself for notifying the Bars and the Federal authorities regarding the allegations in the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages. By doing nothing, Labarga prevented agencies such as the Bar of Florida from investigating the claims and as is illustrated in

the Florida Bar letter (Exhibit A) it is apparent that the Florida Bar correctly anticipated that Jorge Labarga should have addressed the matters, which are similar to the Bar Complaint allegations.

In another instance of the Judge having knowledge of attorney misconduct in the very case before his court, during the case proceedings, we cite the manner in which Kenneth Rubenstein, Esq. an attorney for Plaintiff and main protagonist of many of the patent crimes alleged, submitted false and misleading information to the court. Again, we find Judge Jorge Labarga failed to report such incident to the proper authorities, namely the New York State Bar Association, as would be required under 3D2. Attorney Rubenstein claimed to the court that he should not be deposed in the civil case because he did not know the Company or its inventions and inventors. At his deposition, it becomes clear that Rubenstein not only knew the Company and its inventors and inventions but also had been involved as a Board member and had opined to several investors and clients of the Company and his name appeared frequently throughout the billings of Proskauer Rose. After leaving his deposition in the middle of questioning claiming he would not answer questions asked of him, the Judge later ordered him back to answer questions regarding his involvement but then limited the questions we could ask at the second deposition to the questions he did not answer at the first. Finally, Rubenstein in diametric opposition to his prior deposition statements, his statements to the Court and the NY Bar wherein he states that he does not know the Company, submits a written statement to the Court attempting to clarify his perjured deposition and prior lies to the Court of "not knowing the Company" and therefore not needing to be deposed since he "never heard of the Company" and tries to explain his numerous contacts with the Company and it's clients. The Judge then so favors and biases the outcome for the Plaintiff/Rubenstein whom he finds has lied to the Court and perjured his deposition since it becomes apparent he had intimate contact with the Company and much more knowledge than originally claimed, that Labarga then knowing of lies attempts to limit the re-deposition of Rubenstein to certain questions not allowing the Defendants a full and complete deposition of Rubenstein. Here again, Judge Labarga had knowledge of attorney misconduct in his court and failed again to report such knowledge to the proper tribunals. Ms. Kennerly it is our understanding of the 3D2 that the Judge needed in both instances cited above only to have **"information of a substantial likelihood"** that crimes or violations of the attorneys ethics were committed to be mandated to report them, the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages and Mr. Rubenstein lying to the Court and perjuring himself under deposition, again is far more than a **"substantial likelihood"** of attorney misconduct.

Under section 3B5, the Company alleges that by the mere fact that the Judge had received information and had actual knowledge that "**substantial likelihood** existed that lawyers

had committed violations of the Rules Regulating The Florida Bar" and failed to take appropriate action, constitutes clear and convincing evidence that the Judge was prejudicial in his decisions towards the Plaintiff and not only performed an act of favoritism to the law firm of Proskauer Rose (Plaintiff) in burying the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages and covering up and protecting Rubenstein and in so doing also committed a violation of Canon 3B5. As we have alleged in the initial complaint, the Judges ethical violations of 3B2 and 3B5, have acted as shield to protect the law firm of Proskauer Rose for now almost two years. Since the attorney's alleged to have committed the crimes, practice within the jurisdiction of Judge Labarga daily, it seems that the Judges bias towards the Company/Defendant was so prejudicial that he stepped outside the Judicial Canon's to favor and protect these attorneys from both prosecution, investigation and at a minimum reporting them to the proper authorities for investigation.

Canon 3B. Adjudicative Responsibilities.

> (2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.
>
> (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors when they are issues in the proceeding.

Under 3E1(a) the company cites that the Judge had an inherent working bias with attorney/Plaintiff's (Proskauer Rose) in so much as he violated Canon 3B2 and 3D5 to protect them, he should have disqualified himself from the trial and turned it over to someone who had NO daily working interaction with the attorney/Plaintiff's (Proskauer Rose) in the case.

3E. Disqualification.

> (1) **A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned**, including but not limited to instances where:
>
> > (a) **the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**;

Further under Canon 2B the Judge has allowed a bias to advance the interests of others, in this case for attorney's for the law firm of Proskauer Rose, the Plaintiff, by failure to properly notify the authorities and in fact used his court room to further protect and cloak the attorneys/Plaintiffs from discipline. Again, since the Judge is in constant contact with attorneys for the Plaintiff, an almost White Shoe NY law firm, with a large Florida satellite office, in his day to day activities, it can be claimed that the Judge had prejudicial favor for the Plaintiff and thus by not notifying the authorities he advanced their position and covered up exposing criminal and unethical activities, thereby it can be presumed that the Judge may also have aided and abetted these criminal activities. Certainly in light of the claim that he had knowledge of the attorney violations in the billing case and further knowledge of allegations within the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages, the billing case could have been postponed until further investigation or reporting had taken place.

> **Canon 2B -** A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. **A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others**; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

By virtue of the above allegations and the Judge's apparent violation of the Judicial Canons cited thus far, we further state that the Judge has violated Canon 1 of the code that states:

> **Canon 1 –** An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Under the above cited Canons we also claim that the Judge was aware of conflicting and false information given by attorneys in this case which led the Company to be denied not only a fair trial but a trial at all, as outlined in our first complaint. Even after learning of the false information submitted by attorneys in the case to cease representation of the Company, the Judge again turned a blind eye to the information given to him regarding false and misleading information presented by attorneys in the matter. Again, Judge Labarga acted in a prejudicial fashion towards the Plaintiff, as after learning of the false information presented to the Court he then left the Company with no counsel days before trial, he then refused to grant the Company time to get replacement counsel and ruled against the Company hearing no motions of the Company and denied the ability to take the case to trial.

We are certain that the in no way whatsoever is the law designed to allow a Defendant to be denied the right to a trial due to the failure to retain replacement counsel virtually overnight for a 2 year old very complex case, when counsel was denied Defendant based on false information submitted to the Judge by attorneys in the case, that the Judge was absolutely aware of the false and misleading information and he further failed to rectify his own errors caused by the false information presented by the attorneys in the case. In fact, it stands beyond reason that the Judge on the very same day at the same hearing, heard motions from two separate counsels of the Company that stated that their request to cease representation was based on the fact that the other counsel would be representing the Company at trial and let go of both of our counsels instead. Judge Labarga again acted so prejudicial that he instead allowed both counsels to withdraw, leaving the Company with no counsel and then rushed to grant Proskauer Rose a default judgment without trial for the Companies failure to retain new counsel. Thereby again, Labarga covered up and buried the Company's chance of presenting it's case which undoubtedly would have led to the unearthing of the crimes committed by the Plaintiff both occurring prior to the frivolous lawsuit and during the course of the case.

Labarga's decision again appears so prejudicial in favor of the Plaintiff, the law firm Proskauer Rose, that the Company lost the case without trial based on the Judges own errors and refusal to correct them. It stands to reason that once the Judge was aware of the misleading information that caused him to usurp the Company of counsel, that he should have re-heard the motions from the attorneys to withdraw and made one of the counsels continue or ruled based on true and correct information. This move by the Judge caused the Company to not be able to present any evidence at trial, since no trial existed, again forcing the Company into a completely helpless position and a huge loss of time and money. This has put the shareholders of Iviewit in dire risk of losing patent rights estimated in the billions and losing their investments of approximately $6,000,000

and Labargas failure to uphold his ethical Canons has prevented one single question from being asked of the very attorneys absconding with their investments and patents.

To clarify, a trial had been scheduled as evidenced in our first letter and we were prepared with counsel, in fact prepared to confront many of the allegations including the perjured depositions of several of the lawyers for Proskauer Rose the Plaintiff, when the trial had been cancelled unilaterally and without notice to the Company or the Companys attorneys. In fact, again, based on false and misleading information presented to the Judge by the Plaintiff that settlements were underway (factually they had ceased), the Judge postponed the scheduled trial date. Since the Company/Defendant had not been notified by the Court we showed up with attorney Steven Selz, Esq. prepared for trial amazed that it had been cancelled. By the next court hearing, the Company was denied counsel by the Judge. In the ensuing days, the Judge ruled again in prejudicial favor of the Plaintiff and allowed a default judgment for failure to retain counsel in a matter of days.

Further, due to his failure on all of the other Canons cited above, we state the Judge violated Canon 2 that states:

> **Canon 2 (a) –** A Judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The very implication that the Judge has aided and abetted the law firm Proskauer Rose in this case, and prejudiced the outcome in such a bizarre and biased way, finally failing to notify anyone or hear any information on the allegations in the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages, leads one to lose faith in the integrity and impartiality of the judiciary and the legal system in its entirety. If lawyers and law firms (Proskauer Rose) can cloak themselves in frivolous lawsuits against clients who are accusing them of fraud and other crimes, and then circumvent answering the questions regarding the crimes by using a local judge who aids them, I think the legal system will have lost all integrity and impartiality, eroding confidence in the judiciary.

Further, we have recently received a notice from the Florida bar which we are appealing, that indicates that due to the civil proceeding under Judge Labarga which has now concluded, they are not investigating the charges against Christopher Wheeler, Esq., thereby the court has again acted as a shield in which the charges of the attorneys misconduct and alleged criminal activities escape investigation and reporting by the Bar and act as a safe-harbor for the accused. Apparently, the judges' failure to uphold his

Judicial Canons to report the activities cited himself to the Bar and the authorities has lost the Company its rights to petition the State Bar of Florida. (Exhibit B)

Per our conversation, we have amassed a large collection of evidentiary documentation, witnesses and other forms of proof of the wrongdoings committed by these attorneys both prior to Judge Labarga's case and during, for your offices to review. There are mounds of evidence and witnesses to the allegations contained in both the Defendants Motion for Leave to Amend to Assert Counterclaim for Damages and the State Bar complaints and Judge Labarga has utilized his powers to bury and cover-up for the accused and allow them to never even be questioned in relation to the Federal criminal allegations of patent document fraud to the United States Patent & Trademark Office, stolen briefcases of cash witnessed by several employees, false and misleading depositions by the attorney's in the case, false statements to the court and the Florida Bar, and hosts of other crimes. Judge Labarga so prejudicially has repeated in this case that he "would not let the billing case become a Federal case", and to achieve that he simply did not follow the Canon's which should have forced him to report the allegations to the proper Federal and State authorities.

Since so many of the Canon's of the Judicial Canon's appear to be violated and Labarga's prejudice appears throughout almost every ruling to favor a local large almost White Shoe NY Law firm, in this case we are certain after our conversation with you that you will institute an investigation into the matter or clearly identify exactly why your office cannot investigate, as we have fiduciary responsibilities to report each investigation and the outcome to our shareholders. Finally, we again urge the Judicial Qualifications committee to review the case on the basis of the ethical Canons violated by the Judge, not for purposes of changing the ruling on the case as we clearly understand that you cannot intervene on that level, nor do we have an appeal planned. We submit the case in it's entirety as evidence of the violations and would be happy to provide additional evidence and witnesses as requested by your offices once we have an investigation proceeding, as much of the information is private and confidential and highly sensitive patent documentation.

Again, thank you for your valuable insight the other day as to how to re-file this matter in line with the cited Canons and we hope this complies with the outline you described. If you have any further questions, please feel free to contact me at 561.364.4240.

With best regards,

IVIEWIT HOLDINGS, INC.

By: Signature Valid

Digitally signed by Eliot I. Bernstein
DN: cn=Eliot I. Bernstein, o=I View It Holdings, Inc., c=US
Date: 2003.12.05 10:29:28 -05'00'
Location: Boca Raton, FL

Eliot I Bernstein
Founder

By: Signature Valid P. Stephen Lamont

Digitally signed by P. Stephen Lamont
DN: cn=P. Stephen Lamont, o=Iviewit Holdings, Inc., ou=Corporate, c=US
Date: 2003.12.11 13:45:34 -05'00'

P. Stephen Lamont
Chief Executive Officer

Exhibit A

THE FLORIDA BAR

CYPRESS FINANCIAL CENTER, SUITE 835
5900 NORTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33309

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

954/772-2245
WWW.FLABAR.ORG

July 1, 2003

PERSONAL/FOR ADDRESSEE ONLY

Mr. Eliot Bernstein
10158 Stonehenge Circle #801
Boynton Beach, Florida 33437

Re: Your complaint against Christopher Clark Wheeler
The Florida Bar File No. 2003-51,109(15C)

Dear Mr. Bernstein:

I have completed my review of your complaint, Mr. Wheeler's response, your letter of rebuttal and Mr. Wheeler's response thereto. I have also reviewed the banker's box of civil pleadings and orders, deposition transcripts, legal billing statements and other materials you submitted with the foregoing. Based on this review, I have found no basis for a bar investigation at this time.

Apparently, you retained Mr. Wheeler's law firm in 1998 to handle matters on behalf of your corporation, Iviewit.Com, Inc. In 2001, the firm sued your company for non-payment of legal bills in excess of $369,000. Thereafter, your company filed a counterclaim for damages, alleging the same misconduct set forth in your bar complaint, including malpractice. Significant discovery has taken place (and continues), and your case has been set for trial on July 29-31, 2003 (***Proskauer Rose LLP v. Iviewit***, Case No. CA01-04671 AB) in Circuit Court in Palm Beach County, Florida.

Accordingly, the matter you present is a civil dispute which may not be resolved by the intervention of The Florida Bar. This is not to say that The Florida Bar has considered and determined the veracity of Mr. Wheeler's position as to the validity of your specific charges. Rather, because Mr. Wheeler has advanced a viable position, the Bar has deferred its consideration of the matter until a determination has been made, on the merits, by the civil court before which the matter is currently pending.

Based on the foregoing, and absent any basis for further ethical inquiry, I have dismissed your complaint and directed that The Florida Bar's file on this matter be closed. This determination does not preclude you from refiling this matter for further bar consideration, after the civil trial is concluded.

Please note that a copy of this file will be retained by The Florida Bar for one (1) year, at which time it will be destroyed. It is suggested to you and the attorney who is the subject of your complaint to maintain a **complete** copy of this file for future reference, if needed.

Mr. Eliot Bernstein
Page 2
July 1, 2003

On behalf of The Florida Bar, I thank you for the opportunity to review and respond to your complaint.

Sincerely,

Lorraine C. Hoffmann
Assistant Staff Counsel

LCH/dm

cc: Christopher Clark Wheeler

G:\LCH\Wheeler col.wpd

Exhibit B

THE FLORIDA BAR
CYPRESS FINANCIAL CENTER, SUITE 835
5900 NORTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33309

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

954/772-2245
WWW.FLABAR.ORG

October 13, 2003

PERSONAL/FOR ADDRESSEE ONLY

Mr. Eliot Bernstein
10158 Stonehenge Circle, #801
Boynton Beach, Florida 33437

Re: Your complaint against Christopher Clark Wheeler, Esq
The Florida Bar File No. 2003-51,109(15C)

Dear Mr. Bernstein:

I have received and reviewed your letter of October 2, 2003, and its attachments. As this matter is still before a court of competent jurisdiction (per your motion filed on October 3, 2003), The Florida Bar's position regarding your complaint is unchanged.

Accordingly, and for the reasons set forth in my July 1, 2003, letter, The Florida Bar's file on this matter shall remain closed.

Sincerely,

Lorraine Christine Hoffmann
Bar Counsel

LCH/ma

cc: Christopher Clark Wheeler, Esq.

J:\Users\MAUGELLO\LCH\Bernstein.wpd

THE FLORIDA BAR
CYPRESS FINANCIAL CENTER, SUITE 900
5900 NORTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33309

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

954/772-2245
WWW.FLABAR.ORG

November 5, 2003

PERSONAL/FOR ADDRESSEE ONLY

Eliot Bernstein
10158 Stonehenge Circle, #801
Boynton Beach, Florida 33437

RE: Complaint against Christopher Clark Wheeler, Esq.
The Florida Bar File No. 2003-51,109(15C)

Dear Mr. Bernstein:

I have received and reviewed your letter of October 16, 2003, which was apparently delivered to my office via facsimile transmission. While The Florida Bar is unable to advance an investigation of the matter you present (for the reasons set forth in my letters to you of July 1 and October 13, 2003), your most recent letter sets forth several clear misunderstandings - - which must be addressed and clarified.

First, I must (again) reiterate that The Florida Bar's jurisdiction does not extend to the determination of civil disputes. In the instant case, the trial judge entered an order striking your pro se submissions, and entering a default against you for failure to retain replacement counsel.[1] While this judicial determination resulted in the default of your civil case, it did *not* change the character of the case or the forum in which it must be determined. Simply stated, the issue is purely jurisdictional: The Florida Bar ***may not*** function as a civil court nor may it determine purely civil disputes - - regardless of the financial status of the litigants or the exigencies of their circumstances.

Notwithstanding the foregoing, I am compelled to address several comments set forth in your letter of October 16, 2003. Unfortunately, you seem to have misunderstood The Florida Bar's position regarding your civil action. The Florida Bar may not (and has not) taken any position in the matter. Specifically, the Bar has ***not*** commented on what Judge Labarga should or should not have done - - in this or any other matter before him. Any dispute you may have with the trial judge is beyond the jurisdiction of The Florida Bar. Similarly, The Florida Bar has not (and will not, for the reasons stated herein) undertaken an investigation of this matter, and cannot comment on any fiduciary duties you may bear on behalf of your company's stockholders. Finally, The Florida Bar has advanced no "defenses" of any kind in this action, for any party - - and takes no position with regard to the patents, or any other subject of your civil case.

---

1 Order Striking the Defendant Corporations' *Pro Se* Submissions entered on October 15, 2003 in ***Proskauser Rose LLP v. IVIEWIT.COM, Inc.,*** Case No. CA 01-04671 AB, In the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida

Finally, should a court of competent jurisdiction make a finding of ethical misconduct against any of the attorneys involved in your civil cases, your are invited and indeed, encouraged, to bring such findings to the immediate attention of The Florida Bar.

Very truly yours,

Lorraine Christine Hoffmann
Bar Counsel

LCH/dm

cc: Christopher Clark Wheeler, Esq., w/copy of Mr. Bernstein's letter of 10/16/03

G:\LTR\bernstein.wpd