



THE FLORIDA BAR

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EXECUTIVE DIRECTOR

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July 9, 2004

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

Re: Eric Turner et al.

Dear Mr. Bernstein:

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

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

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

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

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

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

Boggs admits conflict citing it is "form over substance" and that no waiver was tendered by the Board

Boggs attempts to state that Triggs would have been granted a waiver but that is a unknown and Boggs only deals with one of the many conflicts we presented him with here, and in light of the multiple conflicts it would have been probably rejected. He also admits here that Triggs did not disclose the conflict or seek proper channels for approval

"would have" indicating it was not

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

The rules state nothing about being on any specific committee they state that Triggs cannot represent ANYONE for a period of one year, what is this guy thinking???

15.10 Waiver of Disqualification as Attorney for Respondents.

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

NO WAIVER = RULE VIOLATION.

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

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

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

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

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

Members of the former grievance committee member's law firm may represent a respondent in a disciplinary matter during the 1-year disqualification period if the former member may also do so under the terms of this policy.

(f)

Executive Director Authority. The executive director is hereby granted the authority to issue waivers under the terms of this policy. The executive director shall not deviate from this policy and if the executive director is in doubt regarding issuance of a waiver, the request shall be referred to the board of governors for resolution. The executive director shall report to the board listing all waivers granted and all waivers denied.

SOUNDS LIKE BOGGS IS TRYING TO DEVIATE FROM THE PROCESS - WITH A WOULD HAVE, SHOULD HAVE, COULD HAVE - BUT DIDN'T

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

TURNER COMPLAINT IS FAR MORE SERIOUS AND SHOULD HAVE BEEN FILED AS A BAR COMPLAINT FOR VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT.

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

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

SOUNDS LIKE HE IS TRYING TO DESTROY FILE TO HIDE CONFLICT AND OTHER TURNER ISSUES. SEEMS AN OBSTRUCTION OF JUSTICE.

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

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

Sincerely,



John Anthony Boggs
Director, Legal Division

cc: Kenneth L. Marvin
Eric M. Turner

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