UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIOT I. BERNSTEIN, et al.	**DOCKET NO: 07Civ11196 (SAS) [related 07 Civ. 09599 (SAS)]**
Plaintiffs,	
-against-	
APPELLATE DIVISION FIRST DEPARTMENT DEPARTMENTAL DISCIPLINARY COMMITTEE, et al.	**MOTION**
Defendants	

MOTION FOR PRO BONO COUNSEL

PLAINTIFFS, ELIOT I. BERNSTEIN, Pro Se, individually and P. STEPHEN LAMONT, Pro Se and Plaintiff BERNSTEIN on behalf of shareholders of Iviewit Holdings, Inc., Iviewit Technologies, Inc., Uview.com, Inc., Iviewit Holdings, Inc., Iviewit Holdings, Inc., Iviewit.com, Inc., Iviewit.com, Inc., I.C., Inc., Iviewit.com LLC, Iviewit LLC, Iviewit Corporation, Iviewit, Inc., Iviewit, Inc., and other John Doe companies (collectively, "Iviewit Companies"), and patent interest holders, continue to move this honorable Court to appoint Pro Bono counsel, and, in support, state as follows:

1. At the inception of this action, and in an Order[1] dated January 9, 2008, the Court set forth a legal standard for the appointment of Pro Bono counsel in *Hodges v. Police Officers*[2] that states a threshold requirement "[that a litigants' claim] seems likely to be of substance." At that time this Court determined that based on the claims at that time there did not appear enough to claim substance and awaited further information to reconsider.

[1] Order, Shira A. Scheindlin, U.S.D.J., January 9, 2008
[2] 802 F.2nd , 61-61 (2nd Circuit 1986).

2. As the parties continued their exchange of letters this Court has witnessed, *inter alia*, a continued procession of conflicts of interest and possible conflicts of interest, in utter and outrageous contempt to this Court and the rule of law, illustrated by: (i) the representation of certain defendants both officially and personally by the New York Attorney General[3], who just recently had reviewed and denied to investigate the complaints filed with that office of Plaintiffs regarding these same matters of public office corruptions by ~~the~~ certain of the defendants they now represent. Where the Attorney General has more recently received another request to revisit those same complaints denied prior, in light of the criminal allegations of whitewashing and other obfuscations of justice alleged in the "whistleblower"[4] case of *Anderson v. the State of New York*, Docket No. 07 Civ. 09599 ("*Anderson*"), making a conflict of interest a very real possibility in the state funded representation of many of the defendants by the Attorney General perhaps interfering or worse, precluding, their ability to fairly investigate the same defendants they now represent; (ii) the representation of Proskauer Rose LLP by Proskauer partners[5] where the conflicts of interest are in multitude[6]; (iii) the self representation of Foley & Lardner LLP by Foley partners, followed by representation from outside counsel after learning that bar complaints[7] were filed against the Foley partners acting as self counsel caught in a multitude of conflicts; (iv) the replacement counsel for Foley & Lardner, Kent K. Anker, attempting to misdirect this Court by stating upon asking admission to represent Foley & Lardner before this Court, that his clients were not prior representing themselves, "Foley & Lardner LLP is not representing itself or its current and former employees and has not appeared in this matter[8]". Instead of the more accurate portrayal that they were no longer representing themselves in conflict whether or not they had appeared before the Court. In fact, Foley & Lardner

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[3] Letter to Court of Monica Connell, March 4, 2008 and priors.

[4] Shira A. Scheindlin quote from transcript of hearing in case of *Anderson v. the State of New York*, Docket No. 07 Civ. 09599 cites that the case has both employment issues and a "whistleblower" component

[5] Id. at 2.

[6] 28 page fax to Court *Plaintiffs Opposition to Proskauer Rose March 4, 2008 to this Court in Eliot I. Bernstein, et al. v. Appellate Division, First Department Departmental Disciplinary Committee, et al., Docket No. 07 CV 11196 (SAS)* dated March 10th 2008

[7] Bar Complaints were filed against the firms Foley & Lardner and Proskauer Rose LLP and their members who acted as counsel in these matters already. Complaints were filed with the First Department and where such complaints are awaiting formal docketing by the First Department

[8] Letter to Court of Kent Anker dated March 28th 2008.

partners did appear before this Court, as acting counsel, in a letter by Monica Connell whereby Foley & Lardner partners had called her acting as counsel for Foley & Lardner in these matters and was thereby carbon copied as "counsel" by Connell in her letter to this Court. This misrepresentation to the Court by Anker attempts to exculpate Foley & Lardner partners who acted as counsel in these matters and were then charged with bar complaints at the First Department for the conflicts, yet it is this slight misrepresentation by Anker that calls into question his ability to represent his clients without bias and in truth to this Court (v) the representation of Raymond A. Joao by his counsel John Fried[9], and individual who may become a later defendant for his part in the alleged crimes committed at the First Department; and, most recently, (vi) the representation of The Florida Bar defendants by Greenberg Traurig P.A., prior patent counsel for Iviewit involved with the review of the Iviewit intellectual property portfolio which found inconsistencies with prior counsel Proskauer, Meltzer and Foley's dockets. Greenberg Traurig P.A. was retained on behalf of Iviewit with material information that makes them witness for Plaintiffs while simultaneously ~~they are~~ representing certain defendants, apparently defying conflict rules and regulations of both Florida and New York and which may, upon further discovery, make them future defendants as well.

3. Fast forward to April 8, 2008, where in an Order of the Court it is stated[10] "Any further consideration of the **SUBSTANTIVE ISSUES RAISED BY PLAINTIFFS** [emphasis supplied], including plaintiffs' requests regarding conflicts of interest, must await the resolution of anticipated motions to dismiss."

4. Where this Court states that it now considers Plaintiffs claims to be "substantive," Plaintiffs have met the Hodges test cited by this Court in the prior Order and thus should qualify for immediate Pro Bono counsel.

5. Plaintiffs also claim that the continued actions of certain defendants again acting in conflicts before this Court, at an ethics hearing, should also favor Plaintiffs request to this Court for Pro Bono counsel in that legal representation will be better prepared than Pro Se to ferret out further possible ethics violations and illegal legal tactics before they can taint these proceedings.

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[9] Id.

[10] Order, Shira A. Scheindlin, U.S.D.J., April 8, 2008

6. Plaintiffs state that the complexities of the amended complaint encompassing now the complexities of the RICO charges for the intellectual property theft and crimes, and, the RICO statement necessitating the inclusion of all known or possible conspirators versus those initially filed on in the original complaint that were only for the court cover ups relating to *Anderson*, should also be cause for Pro Bono counsel. The cover up crimes represented only a small part of the total conspiracy, whereby now under the RICO charge additional multitudes of local, state, federal and international laws will be alleged to have been violated, by now hundreds of defendants when analyzing the total number of persons involved in the whole conspiracy to steal the intellectual properties, including those named in original complaint for the complex ethics issues and violations of public offices, all of these new items in the amended complaint would be better prepared by qualified counsel and stand a greater chance of successful prosecution before this Court, greatly enhancing the prospect for a fair and equitable resolution.

7. *Anderson* also paints a case of complex public office crimes which may in fact be reason for criminal investigators and prosecutors to intercede to determine those factors first, especially as they relate to Plaintiffs civil case, which now requires specialized criminal counsel for the civil case, to represent the criminal matters alleged in *Anderson* properly before this Court.

8. Plaintiffs also claim that since the original IP crimes alleged involve not only crimes alleged to have been committed against Plaintiffs but the also against the United States Patent & Trademark Office, that the complexities of the IP issues, a specialized field of law requiring an additional federal bar license, coupled with the complexities of the alleged federal and international IP crimes against Plaintiffs, the United States and foreign nations, make this aspect of the case especially hard for Pro Se counsel to properly represent before this Court without Pro Bono counsel specialized in these complex issues of law.

9. Plaintiffs also claim that since the original IP crimes alleged involve not only crimes alleged to have been committed against Plaintiffs but the also against the federally backed Small Business Administration, that the complexities of these government security issues, another specialized field of law, make this aspect of the case

especially hard for Pro Se counsel to properly represent before this Court without Pro Bono counsel specialized in these complex issues of law.

10. Plaintiffs state that their suit was filed in support of the heroic actions of *Anderson,* who attempts to expose public office corruptions at the First Department, corruptions that may have interfered with Plaintiffs' due process rights. That Anderson provides substance to Plaintiffs claims in an "extraordinary" way, since prior to *Anderson*, Plaintiffs had made and validated similar allegations of conflicts and public office corruptions at the First Department. Combined with *Anderson's* similar claims this should lead this Court to presume that such actions to deny due process have made Plaintiffs' victims to corruptions in the legal system designed intentionally to bleed them financially, including legal funds and thus legal representation, while they were attempting to gain due process and procedure fairly with such counsel, where no due process could be had no matter the legal expense or counsel hired, as the top down corruptions acted to block any/all efforts. Plaintiffs have complained that in almost every venue of legal relief sought prior, similar actions of certain defendants have interfered with Plaintiffs' due process rights and have caused massive financial damages leading to the inability to now pay for counsel for a case as enormous as this will become, leaving them in dire need of Pro Bono representation due directly to damages caused by the alleged legal system corruptions. Plaintiffs thus feel this Court should grant Pro Bono counsel in that it appears onerous for Plaintiffs to have to regulate the courts and its officers and pay for such, where it appears those institutions, or more apropos, corrupt officials and actors within, have failed to uphold their duties to ensure due process in the first place. In fact, they have used such vested powers to aid and abet those committing the original crimes, compounding not only the number of Plaintiffs' complaints but the costs. This Court, based on *Anderson* alone, should therefore provide Pro Bono counsel to protect Plaintiffs from further abuse from the legal system and to protect the courts from further exposure and liabilities, as the hosts of cases asking to be, and now becoming related factually to *Anderson,* appears to indicate a far larger exposure to a broader public office corruption scheme. It also appears highly skewed that these same actors are now represented not by Pro Bono counsel but by far better, tax payer bankrolled counsel both officially and personally, which on the personal side seems

highly unethical, especially in light of the *Anderson* claims, whereby many of the defendants using the Attorney General as personal counsel are the same group that would be investigated by the Attorney General for their alleged participation in the crimes?

11. As the draft amended complaint submitted to this Court illustrates, based on the RICO case, the number of defendants involved in the totality of the conspiracy will grow well beyond the initial filing that was limited to the cover up conspiracies at the various bar associations and disciplinary departments and the number of allegations will now include alleged crimes at the local, state, federal and international level that involve numerous violations of complex law such as; RICO, antitrust, securities, public securities, international trade treatise, intellectual property, criminal, bankruptcy, public office and ethics, ~~trade treatises,~~ where Pro Bono counsel will become necessary due to the number of specialized legal fields involved to bring the case successfully before this Court.

12. As the cover up conspiracies have now entangled leading figures that this Court deemed "extraordinary" requiring "extraordinary evidence"[11], this creates a barrier of its own to Plaintiffs securing legal counsel, in that the extraordinary people the Court points to are leading figures in the very legal venues we seek relief from. This makes finding counsel willing to challenge the legal institutions and people controlling those institutions that their careers are dependent upon, almost impossible to find. Due to their extraordinary positions of influence upon the legal community, we have found it extraordinarily difficult to secure counsel not based on typical legal concerns of evidence or probability of success or even for retained fees but due instead to the fear in the legal community that even having a great case with "extraordinary evidence" one cannot win when the blocking emanates from the highest level of the legal establishment handling the matters. As many of the accused in these matters are leading figures in the legal community the damage this could do to ones career in the legal profession is enormous, acting as yet another block to due process and procedure. This effectively precludes Plaintiffs from counsel until the blocks are removed at the highest level they emanate from or protections for counsel are instituted, otherwise this stands as an effective form of subversion of the rights to counsel guaranteed under the Constitution, creating a

[11] [11] Order, Shira A. Scheindlin, U.S.D.J., January 9, 2008

paradox we pray this Court to solve through not only appointment but oversight of Pro Bono counsel to ensure a fair and level playing field for this round, as *Anderson* indicates fair play was commonly trumped by political influence, at minimum locally at the First Department. Plaintiffs also claim that prior hired, and paid for, legal counsel has consistently been either corrupted or scared off the handling of the Iviewit matters by their peers, as may be proven upon further discovery.

13. Finally, Plaintiffs state that at current Pro Se legal v. legal community, the playing field is so skewed as the defendants will now be composed of thousands of lawyers at the accused firms, state judges, the bar associations and disciplinary committees of five state Supreme Courts, several leading political figures and major blue chip companies making the need for at least one lawyer or law firm to aid Plaintiffs efforts in preparing these matters for this Court necessary, in order to successfully handle the myriad of local, state, federal and international rules and regulations required to prosecute the diversity of complex legal matters against these legal institutions and those corrupt actors within who have public funded legal counsel in many instances. Where the crimes and cover ups are continued to be funded as alleged, with our trillion dollar technologies royalties that have been converted through these crimes, again the need for at least one law firm with specialized lawyers in all necessary fields becomes tantamount to successful prosecution. We will continue to play in a David v. Goliath world of lawyers v. pro se litigants where almost the whole system of law seems on trial against those without representation, without representation that is caused with scienter by the lawyers and other officials, until this Court provides the opportunity for Pro Bono counsel.

WHEREFORE, based on the Plaintiffs meeting of the legal standard in *Hodges* and other extraordinary needs requiring the need for this Court to appoint Pro Bono counsel, Plaintiffs respectfully request this Court to enter an Order granting Plaintiffs Motion for Pro Bono Counsel. Additionally, if this Court so grants Pro Bono counsel,

Plaintiffs request additional extensions of time that this Court sees fit, staying any other time limits now in effect, to (i) seek Pro Bono counsel (ii) formulate and file the amended complaint with such new counsel, and (iii) formulate and file the necessary RICO statement, giving such new counsel time to adequately prepare and file the necessary documents and to respond to any motions etc. filed by defendants.

Respectfully submitted,

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Dated: April 24, 2008

AFFIDAVIT OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished to the following, this 7th day of April 2008.

Stephen M. Hall, Commonwealth of Virginia - Office of the Attorney General via US Mail
Todd C. Norbitz, Foley & Lardner LLP via email
Anne B. Sekel, Foley & Lardner LLP via email
Kent K. Anker, Friedman, Kaplan, Seiler & Adelman LLP
John W. Fried, Fried & Epstein LLP via facsimile
Glenn T. Burhans, Jr., Greenberg Traurig, LLP via email
Gregg M. Mashberg, Proskauer Rose LLP via US Mail
Joanna F. Smith, Proskauer Rose LLP via US Mail
Monica Connell, State of New York Office of the Attorney General via email and facsimile

Eliot I. Bernstein, Pro Se