

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 08-4873-cv

Caption [use short title]

Bernstein v. Appellate Division First Department

Motion for: Enlargement of time to file State Appellees' Brief until  
April 29, 2009.

Set forth below precise, complete statement of relief sought:

MOVING PARTY: \_\_\_\_\_

Plaintiff  Defendant  
 Appellant/Petitioner  Appellee/Respondent

OPPOSING PARTY: Plaintiff-Appellant

MOVING ATTORNEY:  
[name of attorney, with firm, address, phone number, and e-mail]

Patrick J. Walsh  
Office of the New York Attorney General  
120 Broadway, 25th Floor  
New York, NY 10271  
(212) 416-6197  
patrick.walsh@oag.state.ny.us

OPPOSING ATTORNEY:  
[name of attorney, with firm, address, phone number, and e-mail]

Eliot I. Bernstein P. Stephen Lamon  
39 Little Avenue 35 Locust Ave.  
Red Bluff, CA 96080 Rye, NY 10580  
(Pro Se) (Pro Se)

Court-Judge/Agency appealed from: United States District Court for the Southern District of New York (Hellerstein, J.)

Please check appropriate boxes:

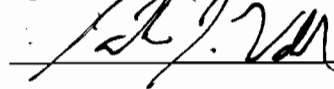
Has consent of opposing counsel:  
A. been sought?  Yes  No  
B. been obtained?  Yes  No

Is oral argument requested?  Yes  No  
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set:  Yes  No

If yes, enter date \_\_\_\_\_

Signature of Moving Attorney:



Date: 3/30/09

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND  
INJUNCTIONS PENDING APPEAL:

Has request relief been made below?  Yes  No

Has this relief been previously sought  
in this Court?  Yes  No

Requested return date and explanation of emergency:

Has service been effected?  Yes  No  
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is  GRANTED  DENIED.

FOR THE COURT: Catherine O'Hagan Wolfe, Clerk of Court

Date: \_\_\_\_\_

By: \_\_\_\_\_

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
ELIOT I. BERNSTEIN, et al.

Plaintiff-Appellant,

- against -

APPELLATE DIVISION FIRST DEPARTMENT  
DEPARTMENTAL DISCIPLINARY COMMITTEE,

Defendants-Appellees.  
-----X

**DECLARATION IN  
SUPPORT OF  
MOTION FOR ENLARGE-  
MENT OF TIME TO FILE  
STATE APPELLEES'  
BRIEF**

PATRICK J. WALSH, an attorney duly admitted to practice law in the State of New York, declares under penalty of perjury that the following is true and correct:

1. I am an Assistant Solicitor General in the Office of Andrew M. Cuomo, Attorney General of the State of New York, attorney for State defendants-appellees ("appellees"). The appellees' brief in this appeal is currently due on March 30, 2009. I respectfully submit this declaration in support of appellees' motion to extend the time for filing their brief until April 29, 2009.

2. The plaintiffs in this case served a brief upon the Office of the Attorney General by email on February 27, 2009. The document, which was 56 pages, was comprised of a brief and docket sheet. The Attorney General's Office has never received service by regular mail of any copies of the plaintiffs' brief or appendix.

3. On March 10, 2009, this Court issued a Notice of Defective Filing in this appeal, indicating that briefs submitted

by the plaintiffs on March 9, 2009, did not comply with the Federal Rules of Appellate Procedure or Second Circuit Local Rules. See Exh. A. Consequently, the State appellees awaited service of a new brief and appendix from the plaintiffs in order to appropriately draft a responsive brief.

4. As the March 30, 2009 due date for the State appellees' brief approached without service of new papers, I contacted Deborah Holmes, the Second Circuit's case manager for this appeal, to inquire as to the status of the filing, and to inform her that the Attorney General's Office had not been served with the plaintiffs' papers. She indicated that the plaintiffs had resubmitted a brief which appeared to be the same as the original filing, with an updated cover. I indicated that I would rely upon the original filing, in that case, but that I might need additional time to file the State appellees' brief, given the delay occasioned by the failure to be properly served, and the re-submission of the brief.


5. Upon calling the Court today to confirm that the plaintiffs' new papers were the same as the original filing, I learned that the new papers consist of a document of 101 pages, including an appendix. I requested that Ms. Holmes email me a copy of the new document, as it is different from the original document that was previously sent to my office by email. Upon inspection, the document includes new, additional material.

Moreover, I cannot tell from a cursory inspection whether the brief has changed from the initial filing. In any event, the Attorney General's Office has never been served with this document, and I have only obtained it by email from the Court today.

6. Given that I have only just received the plaintiffs' full submission, I respectfully request additional time, until April 29, 2009, to file the State appellees' responsive papers. This additional time is necessary because the plaintiffs never served this document upon my office. It is therefore necessary for me to review the new submission before completing the State appellees' brief. Should it become clear that the document does not differ in any material way from the original filing, I will most likely be able to file the State appellees' response prior to the deadline requested in this motion.

WHEREFORE, the State appellees request that this Court enlarge the time for filing their answering brief until April 29, 2009..

Dated: New York, New York  
March 30, 2009

  
PATRICK J. WALSH



UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

THURGOOD MARSHALL U.S. COURT HOUSE  
40 FOLEY SQUARE, NEW YORK, N.Y. 10007

Dennis Jacobs  
CHIEF JUDGE

Catherine O'Hagan Wolfe  
CLERK OF COURT

Date: 3/10/09

DC Docket Number: 07-cv-11196

Docket Number: 08-4873-cv

DC: SDNY (NEW YORK CITY)

Short Title: Bernstein v. Appellate Division First  
Department Disciplinary Committee

DC Judge: Honorable Shira Scheindli

**NOTICE OF DEFECTIVE FILING**

We received on 3/9/09 the BRIEFS submitted in the above captioned case. The document does not comply with the Federal Rules of Appellate Procedure or Second Circuit Local Rules for the following reason(s):

- Missing court forms (*C.A.M.P.*)
- Index/record has not been filed (*FRAP 11*)
- Missing appendix (*FRAP 30*)
- Missing special appendix (*Local Rule 32*)
- Missing motion information statement (*T-1080 - Local Rule 27*)
- Missing supporting papers for motion (e.g. affidavit / affirmation / declaration) (*FRAP 27*)
- Insufficient number of copies
- Improper proof of service (*FRAP 25*)
- Missing proof of service
- Served to an incorrect address
- Incomplete service (*Anders v. California*)
- Failure to submit document in digital format (*Interim Local Rule 25.1*)
- Failure to file appendix on CD-ROM (*Interim Local Rule 25.2*)
- Defective cover (*FRAP 32*)
- Incorrect caption (*FRAP 32*)
- Wrong color cover (*FRAP 28.1*)
- Docket number font too small (*Local Rule 32*)
- Incorrect font (*FRAP 32*)
- Oversized filing (*FRAP 32*)
- Untimely filing
- Other: UNBOUND, WRONG COLOR AND ONE OF THE PAGES IS BLANK.

You must cure the defect(s) and resubmit the document and the number of copies required to this office no later than 3/16/09. The resubmitted documents, if compliant with FRAP and the local court rules, will be deemed timely filed.

Failure to cure the defect(s) by the date set forth above will result in the document being stricken. An appellant's failure to cure a defective filing may result in the dismissal of the appeal.

Please direct all inquiries regarding this case to the undersigned at 212-857-8527.

cc: all counsel