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March 9, 2008

## **By Fax and U.S. Mail**

Honorable Shira A. Scheindlin  
United States District Judge  
Southern District of New York  
500 Pearl Street, Room 1620  
New York, NY 10007

Re: *Bernstein v. Appellate Division, First Department Departmental  
Disciplinary Committee, et al.*, Index No. 07 CV 11196 (SAS)

Dear Judge Scheindlin:

We represent defendants Proskauer Rose LLP, Kenneth Rubenstein, Steven C. Krane, and the Estate of Stephen R. Kaye. We write to request a pre-motion conference in order to bring a motion to (i) stay service of Plaintiffs' amended complaint, due to be filed by May 10, 2008, on all of the new defendants to be named therein (the "New Defendants"), pending Your Honor's disposition of the motions to dismiss the amended complaint (the "Dismissal Motions") to be filed by May 30, 2008 by the defendants named in the original complaint (the "Original Defendants"); or (ii) stay the time of the New Defendants to answer or move with respect to the amended complaint pending disposition of the Dismissal Motions.

Although the *pro se* Plaintiffs have not yet filed an amended complaint, Plaintiffs submitted a draft amendment to the Court as an attachment to their opposition to the Florida Bar Association's motion to dismiss. (See Docket Entry No. 48.) The draft amended complaint names 130 New Defendants, in addition to the 42 Original Defendants, most of whom are either not mentioned anywhere other than in the caption of the draft amendment or are not alleged to have taken any direct action as part of the so-called conspiracy that is the subject of this action. The New Defendants include judicial and other governmental bodies, individuals and corporations.<sup>1</sup>

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<sup>1</sup> Among the 130 New Defendants the draft amended complaint seeks to add are an additional 26 current and former Proskauer partners and associates, most of whom are not alleged to have had any involvement with the activities underlying this action. (Two of the New Defendants, Joanna Smith and myself, are only connected to this action in

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The claims asserted in the draft amended complaint against the New Defendants and the Original Defendants are substantially the same and are premised on the same alleged conduct. Thus, as our motion will set forth, should Your Honor find the allegations in the amended complaint cannot support a claim against the Original Defendants, the claims against the New Defendants will be subject to dismissal for the same reasons.

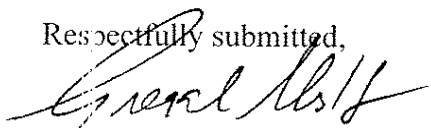
Our stay motion will argue that, in the interest of the sound and orderly administration of justice, where *pro se* Plaintiffs are carelessly adding scores of defendants *en masse*, it is appropriate and within the Court's inherent authority to stay service on the New Defendants until after Your Honor has disposed of the Dismissal Motions. Absent such a stay, the United States Marshall's Office will be required to effect (or obtain waivers of) service on 130 separate defendants, all of which will have to retain counsel and then burden the Court with motion practice.<sup>2</sup>

Alternatively, if service of on the New Defendants is to proceed, our motion will request that the New Defendants' time to answer or move be stayed pending the outcome of the Dismissal Motions. While service will inevitably cause the New Defendants to expend financial and human resources, such a stay would be in the interests of judicial economy and minimize the burden on the New Defendants.

Plaintiffs will not be prejudiced by the imposition of either stay. In the first instance, if a stay on service were to be granted, it would certainly be appropriate to toll the time for Plaintiffs to serve the New Defendants pursuant to Rule 6(b) Fed. R. Civ. P., for the period that the stay is in effect. Moreover, the Court's disposition of the Dismissal Motions, will likely greatly simplify if not eliminate the need for motions to dismiss to be filed by the New Defendants.

Accordingly, it is respectfully requested that we be permitted to file a motion to stay service of the amended complaint on the New Defendants, or, at a minimum, stay the New Defendants' time to respond to the amended complaint pending disposition of the Dismissal Motions.

Respectfully submitted,



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that we are representing the Firm and the original Proskauer defendants in this action.) Similarly, Plaintiffs seek to name as defendants scores of other individuals and entities, including one or more current Proskauer clients. The motion, however, will seek a stay with respect to all New Defendants.

<sup>2</sup> The New Defendants' responses to an amended complaint will be due prior to the expiration of the briefing schedule on the impending Dismissal Motions. Under that schedule, Original Defendants' motions are to be filed by May 30, 2008, Plaintiffs' response is due June 30, 2008 and replies, if any, are due July 14, 2008.

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