

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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JOSEPH RAKOFKSY, and
RAKOFKSY LAW FIRM, P.C.,

Plaintiffs,

Index No.: 105573/11

-against-

THE WASHINGTON POST COMPANY
KEITH L. ALEXANDER
JENNIFER JENKINS
CREATIVE LOAFING MEDIA
WASHINGTON CITY PAPER
REED SMITH
BREAKING MEDIA, LLC
ABOVETHELAW.COM
ELIE MYSTAL
AMERICAN BAR ASSOCIATION
ABAJOURNAL.COM
DEBRA CASSENS WEISS
SARAH RANDAG
MYSHINGLE.COM
CAROLYN ELEFANT
SIMPLE JUSTICE NY, LLC
BLOG. SIMPLE JUSTICE.US
KARVET & VOGEL,
SCOTT H. GREENFIELD
LAW OFFICE OF ERIC L, MEYER
ERIC L. MAYER, *individually*
GAMSO, HELMICK & HOOLAHAN
JEFF GAMSO, *individually*
CRIMEANDFEDERALISM.COM
"JOHN DOE #1"
ORLANDO-ACCIDENT LAWYER.COM
"JOHN DOE #2"
LAW OFFICE OF FARAJI A. ROSENTHALL
FRAHJI A. ROSENTHALL, *individually*
BENNETT AND BENNETT
MARK BENNETT, *individually*
SEDDIQ LAW
MIRRIAM SEDDIQ, *individually*
THE MARTHA SPERRY DAILY
ADVANTAGE ADVOCATES
MARTHA SPERRY; *individually*
ALLBRITTON COMMUNICATIONS

AFFIDAVIT OF
HARMONY KENNEY
IN SUPPORT OF MOTION
TO DISMISS THE
COMPLAINT

COMPANY
TBD.COM
RESTORINGDIGMTYTOTHELAW.BLOGSPOT.
COM
"J.DOG84@YMAIL.COM"
ADRIAN K. BEAN
HESLEP & ASSOCIATES
KOEHLER LAW
JAMISON KOEHLER, *individually*
THE TURKEWITZ LAW FIRM
ERIC TURKEWITZ, *individually*
THE BEASLEY FIRM, LLC
MAXWELL S. KENNERLY
STEINBERG MORTON HOPE & ISRAEL, LLP
ANTONIN I. PREBETIC
PALMIERI LAW
LORI D. PALMIERI, *individually*
TANNEBAUM WEISS, PL
BRIAN TANNEBAUM, *individually*
WALLACE, BROWN & SCHWARTZ
GEORGE M. WALLACE, *individually*
DAVID C. WELLS, P.C. and
DAVID C. WELLS, *individually*
ROB MCKINNEY, ATTORNEY-AT-LAW
ROB MCKINNEY, *individually*
THOMSON REUTERS
DAN SLATER
BANNED VENTURES, LLC
BANNINAYION.COM
"TARRANT84"
UNIVERSITY OF ST. THOMAS SCHOOL OF
LAW
DEBORAH K. HACKERSON
LAW OFFICES OF MICHAEL T. DOUDNA
MICHAEL T. DOUDNA, *individually*
MACE J. YAMPOLSKY & ASSOCIATES
MACE J. YAMPOLSKY, *individually*
THE LAW OFFICE OF JEANNE O'HALLERAN,
LLC
JEANNE O'HALLERAN, *individually*
REITER & SCHILLER, PA.
LEAH K. WEAVER
AVVO CORPORATION
JOSHUA KING
ACCELA, INC.
COLIN SAMUELS

THE BURNEY LAW FIRM, LLC and
NATHANIEL BURNEY, *individually*

Defendants.

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State of California)
) ss.:
County of Orange)

Harmony Kenney, being sworn, deposes and says:

1. Prior to April 2011, I was the principal of Kenney and Associates (“KA”), a marketing services company located in Costa Mesa, California. (KA went out of business in April 2011.) I make this affidavit in support of defendants Law Offices of Michael T. Doudna and Michael T. Doudna’s motion to dismiss the complaint.

2. In or about March 2011, KA was retained by the Law Offices of Michael T. Doudna to set up and maintain a blog to promote the firm. KA created a blog using the self-hosted blogging tool, WordPress (wordpress.org).

3. The blog went live on the internet in March 2011, at the internet address (URL) “doudnalaw.wordpress.com.” The blog contained information about the firm, including the types of cases Mr. Doudna handled (i.e, criminal defense and bankruptcies), and his contact information, namely his office address, telephone and fax numbers, email address, and URLs.

4. The blog also included at least one “Leave a Reply” section in which a visitor could post a “comment” to the blog. A poster would be required to provide his email address, which address would have been forwarded to me but not published on the blog. I do not recall if the blog had more than one “Leave a Reply” section. In any event, I did not at any time receive any notification that anyone had posted a comment to the blog.

5. A “Criminal Law News” section was included in the blog. In order to provide interesting content for that section, I reviewed articles that were publically available online, such

as those published by the ABA Journal (Online) of the American Bar Association. (See, <<http://www.abajournal.com/news>>).

6. When I located an article I considered interesting and noteworthy, I would draft an appropriate heading and summarize its contents in a short paragraph. Immediately below my summary I placed a hyperlink to the source article. Below that, I placed hyperlinks to the Doudna firm's which were, at the time <<http://jailout.com/>> for its criminal defense practice and <http://bankruptcyout.com> for its bankruptcy practice.

7. One of the articles I found interesting appeared in the "Criminal Justice" section of the ABA Journal (Online). The article still exists online¹, and is reproduced here in its entirety:

'Astonished' Judge Declares Murder Mistrial Due to Defense Lawyer Who Never Tried a Case

Posted Apr 4, 2011 6:00 AM CDT

By Debra Cassens Weiss

A Washington, D.C., judge declared a mistrial in a murder case Friday, saying he was "astonished" at the performance of the defense lawyer who confessed to jurors he'd never tried a case before.

Judge William Jackson said lawyer Joseph Rakofsky did not have a good grasp of legal procedures, citing as an example the attorney's rambling opening statement in which he told of his inexperience, the Washington Post reports. Rakofsky graduated from Touro law school in 2009 and obtained a law license in New Jersey less than a year ago, the story says.

Rakofsky had repeated disagreements with his local D.C. counsel, causing his client, Dontrell Deaner, to become "visibly frustrated," the Post says. On Friday, Deaner told the judge he wanted a new lawyer.

The judge declared a mistrial after reviewing a court filing in which an investigator had claimed Rakofsky fired him for refusing to carry out the lawyer's emailed suggestion to

¹<http://www.abajournal.com/news/article/astonished_judge_declares_murder_mistrial_cites_inexperienced_lawyer_who_ne>

"trick" a witness, the story says. Rakofsky's suggestion allegedly read: "Thank you for your help. Please trick the old lady to say that she did not see the shooting or provide information to the lawyers about the shooting."

Afterward, Rakofsky refused to comment and rushed out of the courthouse, the story says.

Annexed as Exhibit E.

8. On or about April 8, 2011, I drafted a synopsis of the ABA Journal article and posted it to Mr. Doudna's blog, under the title: "*D.C.'s Lawyer's Inexperience Obvious; Judge Declares Mistrial*".

9. To the best of my knowledge, the summary I posted is accurately set forth in paragraph 187 of the amended complaint:

Rakofsky described his inexperience the jury, saying that "he had never tried a case before". This behavior, as well as other tell-tale signs of inexperience led the judge on this case to declare a mistrial. Another disquieting fact is that Rakofsky fired an investigator for refusing to get a witness to lie about the crime in question. Talk about a breach of ethics.

10. As I did for every article posted, I placed a hyperlink to the source article immediately below my summary.

11. On April 14, 2011 Mr. Dounda cancelled our blog maintenance services, as there had been very little traffic on the blog. From that point, I did not edit nor add to the blog. However, since WordPress does not charge to keep the blog online, I did not take any action to remove it from the site.

12. On Wed, May 18, 2011, Mr. Doudna advised me that he had been named as a defendant as a result of the blog, and directed me to take it down from the internet. I did so immediately.

Harmony Kenney

State of California)
) ss.:
County of Orange)

Subscribed and sworn to before me on this ____ day of June, 2011,
by Harmony Kenney, proved to me on the basis
of satisfactory evidence to be the person who appeared before me.

Notary Public