

**SUMMARY STATEMENT ON APPLICATION FOR
EXPEDITED SERVICE AND/OR INTERIM RELIEF**
(SUBMITTED BY MOVING PARTY)

Date January 13, 2012

Title of Matter Rakofsky v. Washington Post Index/Indict # 105573-2011

Appeal by _____ from order judgment of Supreme Surrogate's Family Court entered on _____, 20____ County NY

Name of Judge Goodman Notice of Appeal filed on _____, 20____

If from: administrative determination, state agency _____

Nature of action or proceeding Defamation, Intentional Torts, etc.

Provisions of order judgment appealed from _____ decree

This application by appellant respondent is for Modification of stay

If applying for a stay, state reason why requested _____

Has any undertaking been posted No If "yes", state amount and type _____

Has application been made to court below for this relief yes If yes, state Disposition replied
Has there been any prior application herein in this court No If "yes", state dates and nature _____

Has adversary been advised of this application yes Does he/she consent _____

Attorney for Movant

Attorney for Opposition

Name Joseph Rakofsky

Anne Nicholson

Address 4400 US-9
Frenchtown NJ 07728

Flemming Mark Williamson
Zandover NJ

Tel. No. (877) 401-1529

Jennifer Jones
Proskauer Rose LLP

Appearing by pro se

John H. Jeschke and
Dario Boncema
Mimi Ranzazza
Eric Tuckewitz

MARK A. WEISSMAN, HERZFELD & RUBIN PC

(Do not write below this line)

DISPOSITION

moving papers to be served by overnight for delivery by
1/18/12
See exhibits 4 + 6 re 5704(a) orders to show cause
refused by Sup Ct (Goodman, J)

Justice

Date

1/13/12

Motion Date

2/2

Opposition

1/27

Reply

2/1

EXPEDITE

PHONE ATTORNEYS

DECISION BY

EM

Court Attorney

ALL PAPERS TO BE SERVED PERSONALLY.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION -- FIRST DEPARTMENT

-----X
: JOSEPH RAKOFSKY, *et ano.*, : N.Y. County Clerk's
: : Index No. 105573/11
: Plaintiffs, :
: IAS PART 57
: -against- :
: ASSIGNED JUSTICE:
: THE WASHINGTON POST COMPANY, *et el.*, : EMILY JANE GOODMAN
: :
: Defendants. : THIS APPLICATION WILL
: BE PRESENTED TO CLERK
: OF APPELLATE DIVISION
-----X 01-13-12 at 10:00 A.M.

**ORDER ON APPLICATION FOR APPELLATE
INTERVENTION PURSUANT TO CPLR 5704(a)**

On reading and filing the affidavit of Plaintiff JOSEPH RAKOFSKY ("Rakofsky"), sworn to on the ____ day of January, 2012; the documents annexed as Exhibits "1" through "8" thereto; and all prior proceedings had herein; on hearing Rakofsky in support of this application; on hearing the attorneys whose names are listed in the margin at the foot of this Order in opposition to this application; and due deliberation having been had thereon, it is

ORDERED that the stay originally granted on July 22, 2011 (Exhibit "1"); continued on September 15, 2011 (Exhibit "2"); and continued as modified by Supreme Court (Hon. EMILY JANE GOODMAN) on December 19, 2011, and December 20, 2011 (Exhibit "3"); is dissolved to the extent of allowing Rakofsky to make a motion, by no-

tice of motion, for relief previously requested in his two applications in Supreme Court, New York County, IAS Part 57, Hon. EMILY JANE GOODMAN, for an order to show cause; provided, that copies of this Order, the papers upon which it is made, the notice of motion, and the papers upon which such motion is made, shall be served, no later than January ____, 2012, upon counsel for Defendants who have appeared in this action, and upon counsel for all additional Defendants whose time to appear has not expired, or, if any such additional Defendants are *pro se*, upon such additional Defendants; and it is further

ORDERED that such service shall be effected by an overnight delivery service (CPLR 2103[b][6]) no later than January ____, 2012; and it is further

ORDERED that proof of such service shall be filed together with the original motion papers in accordance with the usual practice in Supreme Court, New York County; and it is further

ORDERED that Rakofsky may, if so advised, make a motion in this Court for leave to appeal from one or more of the orders made in Supreme Court; and such motion(s) shall be served in the manner and within the time limits specified herein for his proposed motion in Supreme Court; and that proof of such service shall be filed with his motion papers, if any; and it is further

ORDERED that such stay shall otherwise remain in full force and effect accordance with its terms.

Dated: New York, New York
January ____, 2012

E N T E R :

**Justice Presiding, Appellate
Division, First Department**

**Associate Justice, Appellate
Division, First Department**

**Associate Justice, Appellate
Division, First Department**

**Associate Justice, Appellate
Division, First Department**

**Associate Justice, Appellate
Division, First Department**

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION -- FIRST DEPARTMENT

-----X
JOSEPH RAKOFSKY, *et ano.*, :
 : **N.Y. County Clerk's**
 : **Index No. 105573/11**
 Plaintiffs, :
 : **AFFIDAVIT**
 -against- :
 :
 THE WASHINGTON POST COMPANY, *et el.*, :
 :
 Defendants. :
 :
-----X

STATE OF NEW YORK)
 : ss.:
 COUNTY OF NEW YORK)

JOSEPH RAKOFSKY, being duly sworn, deposes and says:

1. I am one of the two Plaintiffs in this action. At all times mentioned I have resided in New York County at 67 Wall Street, Apt. 24G, New York, New York 10005.

2. RAKOFSKY LAW FIRM, P.C. ("RLF") is a professional service corporation organized under the laws of New Jersey, with a place of business at 4400 Route 9, Freehold, New Jersey 07728. RLF is also a Plaintiff in this action at this time, but its involvement in this action is about to be voluntarily discontinued (without prejudice) because (A) I am not admitted to practice in the state of

New York, and (B) I cannot afford the services of an attorney who is admitted to practice in New York to represent RLF (and me).

3. I am the sole shareholder in RLF.

4. I make this affidavit in support of my application for relief pursuant to CPLR 5704(a). Specifically, I ask this Court to dissolve and lift only so much of a stay as prevents me from making a substantive motion in Supreme Court, New York County, IAS Part 57 (Honorable EMILY JANE GOODMAN), and a substantive motion in this Court before March 9, 2012. I do *not* ask this Court to lift the stay in all respects. I need to move forward *now*, not two months from now, for each of three reasons. First, the Statute of Limitations on certain intentional torts is in danger of running out. Second, this has utterly destroyed my professional life and done vast damage to my personal life and my health. Therefore, I should not be required to wait and suffer further injury when I could and should move forward. Finally, it all started with actions of The Washington Post, and the defense counsels for it have already advised me that I need to bring a different business entity for the correct entity to be held responsible.

5. The stay was originally granted in an order dated July 22, 2011 (Exhibit "1"), when Plaintiffs' attorney withdrew from his representation in this action. Such stay was continued, as modified, by a preliminary conference order dated September 15, 2011

(Exhibit "2"). On December 19 and 20, 2011, Justice Goodman's (now former) Law Secretary advised all concerned by email that her Honor intends to leave the stay in effect until March 9, 2012, and to dissolve it on that date. That date is perilously close to April 1, 2012, the date on which the first applicable Statute of Limitations is due to run out (I explain this in more detail below).

6. To comply with CPLR 2217(b), I state that no application has been made to this Court, to Supreme Court, or to any other Court for any of the relief requested herein, except as is expressly revealed in paragraphs "4," "5," and "12" hereof, and in Exhibits "1" through "7" hereof.

7. On Wednesday, January 11, 2012, I have given advance notice of my intention to make this application on this date and at this time to all concerned (Exhibit "8").

8. As I explain more fully below, every element of the relief I will request in such proposed motions is necessary and will be relatively simple.

9. This Court has authority pursuant to CPLR 5704(a) to grant the relief I seek. That statute provides, in full, as follows:

§ 5704. Review of ex parte orders. (a) By appellate division. The appellate division or a justice thereof may vacate or modify any order granted without notice to the adverse party by any court or a judge thereof from which an appeal would lie to such appellate division; and the appellate division may grant any order or

provisional remedy applied for without notice to the adverse party and refused by any court or a judge thereof from which an appeal would lie to such appellate division.

10. A leading commentator states as follows:

A judge cannot be compelled to sign an order to show cause, such as through a proceeding under Article 78 of the CPLR. Because the order to show cause is in the first instance a species of ex parte order, if the judge refuses to sign it an application for it can be made to the appellate court under CPLR 5704.

David D. Siegel, *New York Practice* § 248 at 434-35 (5th ed. 2011) (Practitioner Treatise Series) (two footnotes omitted) ("Siegel").

11. The first footnote omitted from the material quoted in paragraph "9" hereof is appended to the end of the first sentence, and consists of a citation to *Greenhaus v. Milano*, 242 A.D.2d 383, 661 N.Y.S.2d 664 (2d Dep't 1997), and a cross-reference to Professor Siegel's discussion of Article 78 proceedings. The second footnote omitted therefrom is appended to the end of the second sentence, and consists of a cross-reference to Professor Siegel's discussion of "Ex Parte Motions."

12. Because Justice Goodman cannot be compelled to sign my first proposed order to show cause (Exhibit "4"), which was denied "without prejudice" by an order dated October 17, 2011 (Exhibit "5"), and my second proposed order to show cause (Exhibit "6"), which was denied by an order dated January 3, 2012 (Exhibit "7") on

the alleged ground that it was "incomprehensible," my sole route to relief is this application to this Court.

UNDERLYING HISTORY

13. Last year RLF and I undertook to represent a man accused of various criminal acts, including a homicide, in the District of Columbia.

14. RLF and I associated with SHERLOCK GRIGSBY, ESQ., who is an experienced attorney admitted to practice law in the District of Columbia, with offices at 601 Pennsylvania Ave., N.W., Suite 900, Washington D.C. 20004.

15. I was admitted to practice law in the District of Columbia *pro hac vice* for the purposes of that case.

16. Difficulties, including a conflict with my client, led me to ask the trial judge to allow me to withdraw from that representation.

17. After I moved to withdraw, with my client's consent, the District of Columbia Court allowed me to withdraw, declared a mistrial, and directed a new trial with new defense counsel in my place.

18. On April 1, 2011, The Washington Post published a story concerning that case. Parts of that story "of and concerning" RLF and "of and concerning" me were false and libelous, and they have

inflicted great personal and professional damage upon RLF and upon me.

19. The story "went viral" (*i.e.*, "spread like wildfire") on the Internet and the World Wide Web, with some individuals and entities re-posting the original Washington Post article, and others embellishing that article with libelous commentary "of and concerning" RLF and "of and concerning" me.

THIS ACTION

Summons and Complaint

20. At the outset, RICHARD BORZOUYE, ESQ. of BORZOUYE LAW FIRM, P.C., 14 Wall Street, 20th Floor, New York, New York 10005, ("Attorney Borzouye"), represented RLF and me in this action.

21. As I explain more fully below, Attorney Borzouye was *threatened* by an out-of-state attorney to a point at which he became so intimidated that he sought and obtained leave to withdraw from his representation.

22. In view of the number of parties (there are more than 100 Defendants) and the magnitude of the record in Supreme Court, I am not burdening this Court with all the documents which have been submitted to Supreme Court. They are not necessary for the purpose of this application.

23. A copy of the original Summons in this action, which was signed by Attorney Borzouye and which was filed by the New York

County Clerk on May 11, 2011, was submitted to Supreme Court as **Exhibit "1"** on the December 2011 proposed Order to Show Cause (Exh. "6" at Rakofsky Aff. ¶ 14).

24. A copy of the original Complaint in this action, which was signed by Attorney Borzouye and which was filed by the New York County Clerk on May 11, 2011, was submitted as **Exhibit "2"** on the December 2011 proposed Order to Show Cause (Exh. "6" at Rakofsky Aff. ¶ 15) The first cause of action began in paragraph 77 on page 14, and was for defamation by libel. The second cause of action began in paragraph 185 on pages 63-64, and was for violation of New York Civil Rights Law §§ 50-51. The demand for relief began in paragraph 188 on page 64.

25. Attorney Borzouye neglected (A) to state the basis of venue in the original Summons; (B) neglected to state my residence address in the original Summons (which was necessary because venue was based on my residence in New York County); and (C) neglected to state on the faces of the service copies of the original Summons the date on which the Summons was filed by the New York County Clerk. In addition, he also neglected to state on the faces of the service copies of the original Complaint the date on which the original Complaint was filed by the New York County Clerk.

26. In the meantime, the story continued to be "viral" and continued to "spread like wildfire" on the Internet and the World

Wide Web, with additional individuals and entities re-posting the original Washington Post article, and additional individuals and entities embellishing that article with libelous commentary "of and concerning" RLF and "of and concerning" me.

"Amended Summons" and Amended Complaint

27. Accordingly, pursuant to CPLR 3025(a), only five (5) days later I availed myself of the right to amend the original Complaint to add additional defendants and additional causes of action.

28. A copy of the so-called "Amended Summons" in this action, which was signed by Attorney Borzouye, which should have been labeled "Supplemental Summons," and which was filed by the New York County Clerk on May 16, 2011, was submitted as **Exhibit "3."** This was just *five (5) days* after this action was commenced (see ¶¶ 23-24, above). This paper also suffered from the same three omissions as the original Summons (see ¶ 25 hereof).

29. A copy of the Amended Complaint in this action, which was issued as a matter of right pursuant to CPLR 3025(a), which was signed by Attorney Borzouye, and which was filed by the New York County Clerk on May 16, 2011, was submitted as **Exhibit "4."** Again, this was just *five (5) days* after this action was commenced (see ¶¶ 23-24, above). The first cause of action began in paragraph 84 on page 15 and was for defamation by libel. The second cause of action began in paragraph 195 on page 66 and was for intentional in-

fliction of severe emotional distress. The third cause of action began in paragraph 208 on pages 72-73 and was for intentional interference with contract. The fourth cause of action began in paragraph 214 on page 74 and was for the violation of New York Civil Rights Law §§ 50-51. The demand for relief began in paragraph 217 on page 74.

30. The caption of the so-called "Amended Summons" and the caption of the Amended Complaint added seven (7) new Defendants who were not named in the original Summons and who were not named in the original Complaint.

31. In the seven months between the filing of the Amended Complaint on May 16, 2011, and the filing of the December 2011 proposed order to show cause, the story continued to be "viral" and continued to "spread like wildfire" on the Internet and the World Wide Web, with additional individuals and entities re-posting the original Washington Post article, and additional individuals and entities embellishing that article with libelous commentary "of and concerning" RLF and "of and concerning" me.

32. A copy of a proposed Supplemental Summons to add fifteen (15) additional Defendants was submitted as Plaintiffs' **Exhibit "5."**

33. Pursuant to CPLR 3025(b), a copy of a proposed Second Amended Complaint (A) to discontinue this action as against eight

(8) Defendants, and to add fifteen (15) additional Defendants to this action; (B) to separately state and number (CPLR 3014) each libelous utterance as a separate cause of action; (C) to add and separately state and number (CPLR 3014) each cause of action for injurious falsehood as a separate cause of action; (D) to restate the cause of action for intentional infliction of severe emotional distress in certain respects; (E) to restate the cause of action for intentional interference with contract in certain respects; (F) to restate the cause of action for violation of Civil Rights Law §§ 50-51 in certain respects; (G) to add a new cause of action for prima facie tort based on "cyber-bullying" or "mobbing"; (H) to allow me to discontinue, without prejudice, all causes of action for "prior restraint" of further publication and re-publication; (I) to add a new cause of action against new Defendant Google for injunctive relief to prevent spoliation of critical evidence; and (J) to restate the *ad damnum* clause to clarify the relief requested on each cause of action, was submitted as **Exhibit "6."**

WITHDRAWAL OF PLAINTIFFS' COUNSEL AND STAY

34. An attorney who identified himself as JOHN RANDAZZA, ESQ. and whose firm has offices in Nevada ("Attorney Randazza") stated to Attorney Borzouye that he represents dozens of parties named as Defendants in this action; that he intended to move for admission *pro hac vice*; and that he was preparing to file criminal charges

against Attorney Borzouye for alleged violations of one or more California anti-wiretapping laws. Randazza threatened Borzouye because Borzouye permitted me to listen to his telephone conversation with Randazza without disclosing to Randazza that I was on the phone. We did this because countless people were calling and emailing me and we had no idea who Attorney Randazza was. I listened to protect our case.

35. Attorney Randazza told Attorney Borzouye that he would withdraw that threat if Attorney Borzouye were to pay money to one of several specified entities. Mr. Randazza admitted on his own Web site that he was a "proud member" of at least one of those entities.

36. On or about June 13, 2011, Attorney Borzouye moved for leave to withdraw from his representation of RLF and me.

37. That motion was *not* made by order to show cause and did *not* seek an *immediate* stay of all proceedings.

38. Various Defendants opposed that motion; RLF and I did not do so.

THE STAY

39. Although Attorney Borzouye did not obtain a temporary stay when he made his motion for leave to withdraw from his representation, this Court's Order dated July 22, 2011 (Exh. "1"), determining his motion contained a stay of all proceedings herein.

Later, on September 15, 2001 RLF and I were permitted to tender proof of service of the original Summons, the original Complaint, the so-called "Amended Summons," and the Amended Complaint to the New York County Clerk for filing (Exh. "2") (which we then did).

40. I do not know whether Attorney Borzouye served copies of the July 22, 2011, Order upon all Defendants in the manner and within the time limit provided therein. I do know that he did not serve that Order upon RLF and upon me in the manner and within the time limit provided therein.

41. Notwithstanding the facts set forth in paragraph 40, above, I treated the stay as binding and as in full force and effect. Therefore, the first paragraph of the December 2011 proposed order to show cause addressed the stay, and asked Supreme Court to modify it to allow me to proceed with the balance of my application at that time. This was rejected as "incomprehensible" (Exh. "7").

42. In paragraph "29" of my supporting affidavit, I said that given the number of Defendants named in this action, the complexity of this case, and the short Statutes of Limitations applicable to defamation and other intentional torts I had to make my application at that time.

**SECOND PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

43. The primary purpose of the second paragraph of the December 2011 proposed order to show cause was to allow me to proceed, pursuant to CPLR 305(a) and 3025(b), with a new Supplemental Summons and a Second Amended Complaint.

44. This relief is necessary for three reasons. One relates to The Washington Post; one relates to the joinder of additional Defendants; and one relates to better statement of my causes of action.

45. On or about July 25, 2011, I was advised by KEVIN T. BAINE, ESQ. and CHETAN PATIL, ESQ., counsel at THE WASHINGTON POST COMPANY, that it was improper for RLF and me to name "THE WASHINGTON POST COMPANY" as a Defendant in this action because it is merely a holding company; that the correct Defendant's name is THE WASHINGTON POST, LLC; and that they would *not* consent to a substitution of the correct party for the incorrect party. Thus, I must formally add the correct party as an additional Defendant. I will voluntarily discontinue this action against the incorrect party after all necessary steps are accomplished. This is an example of how dangerous the continuance of the stay really is. The story in The Washington Post is the genesis of all that followed; as it is now, the stay will not be lifted until March 9, 2012. A motion made at 9:00 a.m. on that date may not be determined before April 1, 2012, which is the one-year anniversary of the first publication

by The Washington Post. The door of the Statute of Limitations is likely to close on me (and on RLF).

46. Unfortunately for RLF and for me, after the Amended Complaint was filed by the New York County Clerk on May 16, 2011, additional persons and entities published false and libelous matter "of and concerning" RLF and "of and concerning" me on the Internet and the World Wide Web. I need to add them as additional Defendants as well.

47. Although I was unable to secure the services of a substitute attorney-of-record in Attorney Borzouye's place, either on a fee basis or a pro bono publico basis, I was able to obtain some legal advice concerning my pleading from attorneys who have more experience than I do.

48. The proposed Second Amended Complaint addresses various technical matters. For example, it obeys the part of CPLR 3014 which directs that separate causes of action shall be separately stated and numbered. Now, only the Defendant or Defendants who published a *particular* defamatory statement must answer for it. Therefore, while the new Second Amended Complaint is quite large, it actually *reduces* the Defendants' burdens regarding defamation by libel.

50. Similarly, I have added causes of action for injurious falsehood, and I have separately stated them and numbered them (CPLR 3014), just as I have with the causes of action for libel.

51. Because I am not admitted to practice law in New York, I cannot represent RLF at this time. The Second Amended Complaint deletes the reference to RLF from the caption, and deletes and discontinues (CPLR 3217[b]), without prejudice, all causes of action previously interposed by RLF. The "without prejudice" aspect of this relief is consistent with CPLR 3217(b) and (c), and preserves RLF's ability to interpose those causes of action in a new action if it becomes able to retain counsel before the Statutes of Limitations applicable to its causes of action expire.

52. Google presents a unique problem. It has refused to preserve information in its possession, custody, and/or control in the absence of a formal court order. I need that information to identify, locate, and serve a number of Defendants who are anonymous users of the Internet and the World Wide Web. I understand that I cannot obtain temporary and preliminary injunctive relief (CPLR 6301) unless I state a cause of action for permanent injunctive relief. The proposed Second Amended Complaint addresses this, too (last cause of action).

53. The proposed Second Amended Complaint also clarifies the causes of action for intentional infliction of severe emotional

distress, intentional interference with contract, violation of Civil Rights Law §§ 50 and 51, and adds a new cause of action for prima facie tort. It also clarifies the *ad damnum* clause. Finally, it withdraws all applications for prior restraints against additional publications and republications

54. I am *not* asking this Court to make any determination about the merits of the proposed Second Amended Complaint. I am asking *only* that it take a step that will allow me to proceed in Supreme Court *without further delay and before the Statute of Limitations runs out.*

**THIRD PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

55. On September 15, 2011, parties who chose to do so appeared before Supreme Court on the return date of Attorney Randazza's motion for admission *pro hac vice*. This Court granted that motion.

56. On the same occasion, this Court fixed a briefing schedule for motions to dismiss made by various Defendants. Approval of the Second Amended Complaint will entitle those Defendants who have pending motions to rest on those motions, but they should be afforded an opportunity to withdraw those motions, and to serve and file substitute motions if they deem themselves advised to do so.

57. Although I am not asking this Court to manage the briefing schedule in Supreme Court, one effect of a modification of the stay will allow me to move in this Court for leave to appeal from the order permitting Attorney Randazza to appear *pro hac vice*. I will maintain that an attorney who threatens to instigate criminal proceedings to gain an advantage in a civil case violates the new Rules of Professional Conduct (which has not changed the pre-existing law on this issue under the former Lawyers Code of Professional Responsibility). Such a violation makes him unfit to represent dozens of clients -- or even one client -- in this action. His unwarranted threat has cost me counsel of my choice; cost me any counsel at all; and has cost RLF the ability to prosecute this action on its behalf. ✓

58. A change in the briefing schedule or schedules may be necessary, but that is for Supreme Court, not this Court, to resolve. I wish to emphasize -- again -- that the only relief I seek on this application is the ability to press ahead in Supreme Court, and that does *not* require this Court to dissolve the stay in all respects. ✓

59. I tendered detailed scheduling proposals in the December 2011 proposed order to show cause, and I explained them in paragraph "42" of my supporting affidavit (Exh. "6"). They were not "incomprehensible" (Exh. "7"). If Supreme Court found that some ✓

other schedule would have been more desirable or advantageous, all it had to do was set dates as it saw fit to do so.

**FOURTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

60. In declining to sign the October 2011 proposed order to show cause (Exh. "4") Supreme Court cited the fact that I sought relief against Attorney Borzouye and he is not a party to this action (Exh. "5").

61. I believe that Attorney Borzouye failed to take all necessary steps to protect RLF and me when he decided that he wanted to terminate his representation and withdraw. I prepared and tendered to this Court a proposed order to show cause on that subject (Exh. "4"), but Supreme Court was of the view that I cannot seek relief against him in this action because he is not a party to this action, and so it declined to issue that proposed order to show cause (Exh. "5").

62. I understand that attorneys who have appeared on behalf of litigants, and certain others, can be non-party respondents under certain circumstances. I cannot take steps to appeal as of right or to move for permission to appeal from the July 22, 2011, Order (Exh. "1") unless this Court lifts and dissolves so much of the stay as prevents that.

**FIFTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

63. It is a privilege, not a right, for an out-of-state attorney to appear in a New York Court *pro hac vice*. Attorney Randazza demonstrated -- by threatening to instigate a criminal prosecution of Attorney Borzouye in California -- that he is not fit to appear *pro hac vice* for dozens of Defendants, or even one Defendant. Rule 3.4(e) of the Rules of Professional Conduct carries forward former DR 7-105 unchanged. The current Rule provides as follows: "A lawyer shall not * * * (e) present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter." Plainly, Attorney Randazza obtained a distinct advantage for dozens of Defendants by intimidating Attorney Borzouye to the point at which he quit and left both RLF and me "high and dry."

64. I cannot take steps to appeal as of right or to move for permission to appeal from the September 15, 2011, Order (Exh. "2") unless this Court lifts and dissolves so much of the stay as prevents that.

**SIXTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

65. This part of the proposed order to show cause is simple. It provides for the removal of RLF from the caption of this action and for the voluntary discontinuance of its causes of action, with-

out prejudice, so that they can be brought again if circumstances change and I find an attorney who will represent it.

**SEVENTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

66. This part of the proposed order to show cause is also not complex. The original Summons and the so-called "Amended Summons" have three identical deficiencies. The so-called "Amended Summons" also has a fourth deficiency. None of these irregularities and omissions is jurisdictional; all of them are subject to repair or being disregarded; and no Defendant has complained about any of them.

67. First, the original Summons and the so-called "Amended Summons" failed to state that the basis of venue in New York County is my residence in New York County at all times material to this case. Second, both of those papers failed to state that my residence address in New York County has been 67 Wall Street, Apt. 24G, New York, New York 10005, at all times material to this case. Third, both of those papers failed to state the date on which they were filed by the New York County Clerk. It was May 11, 2001, for the original Summons, and it was May 16, 2011, for the so-called "Amended Summons."

68. The statement of the nature (CPLR 2101[c]) of the so-called "Amended Summons" should have been "Supplemental Summons."

69. The face of the Complaint and the face of the Amended Complaint should be deemed to state that they were filed by the New York County Clerk on May 11, 2011, and May 16, 2011, respectively, for the same reasons.

70. No Defendant has complained about any of these irregularities and omissions. They should be deemed corrected and/or disregarded (CPLR 305[c], 2001).

71. I am *not* asking *this* Court to resolve that *now*; I am only seeking the ability to proceed in Supreme Court to resolve such matters.

**EIGHTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

72. This part of the proposed order to show cause is also not complex, and it is directly related to the sixth and seventh parts thereof. It seeks coordinated correction of proof of service of papers erroneously labeled "Amended Summons" when they should have been labeled "Supplemental Summons."

73. Thus, this part of the order to show cause seeks an order, to be made pursuant to CPLR 305(c), 306(a), 2001, and 2101(c), deeming the expression "Supplemental Summons" to be substituted in every affidavit of service filed with respect to the service of a paper labeled "Amended Summons" on the grounds that no Defendant has (i) objected to the sufficiency of such proof of service; or

(ii) moved to strike such proof of service; or (iii) claimed that a substantial right has been prejudiced; or (iv) claimed any other legally cognizable prejudice.

74. Once again, I am *not* asking *this* Court to resolve that *now*; I am only seeking the ability to proceed in Supreme Court to resolve such matters.

**NINTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

75. This, too, is not a complex element of my application. I am willing to voluntarily discontinue all causes of action I have interposed against (A) MARTHA SPERRY, INDIVIDUALLY; (B) THE MARTHA SPERRY DAILY; (C) ADVANTAGE ADVOCATES; (D) LORI D. PALMIERI, INDIVIDUALLY; (E) PALMIERI LAW; (F) HESLEP & ASSOCIATES; (G) UNIVERSITY OF ST. THOMAS SCHOOL OF LAW; and (H) DEBORAH K. HACKERSON -- with prejudice.

76. Here, too, I am *not* asking *this* Court to resolve that *now*; I am only seeking the ability to proceed in Supreme Court to resolve such matters.

**TENTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

77. This request for relief stems from the fact that some Defendants have committed torts anonymously. Their anonymity has made service of process upon them impossible, despite duly diligent efforts. This dovetails with the joinder of Google and the request

for orders temporarily, preliminarily, and permanently forbidding Google to destroy material evidence pertaining to such parties who have been anonymous users of the Internet and the World Wide Web. I require a substantial, and, indeed, indefinite extension of time to track down these individuals and/or entities so that service of process may be effected (CPLR 306-b). The foregoing constitutes good cause shown and/or (ii) the interest of justice within the meaning of the statute.

78. Once more I am *not* asking *this* Court to resolve that *now*; I am only seeking the ability to proceed in Supreme Court to resolve such matters.

**ELEVENTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

79. This part of the proposed order to show cause pertains to proposed new Defendant Google. Unfortunately, Google has refused to preserve information that will or may enable me to determine the identities and locations of the anonymous Defendants.

**TWELFTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

80. Attorney Randazza represents ERIC TURKEWITZ, THE TURKEWITZ LAW FIRM, SCOTT GREENFIELD, SIMPLE JUSTICE NY, LLC, BLOG.SIMPLEJUSTICE.US, KRAVET & VOGEL, LLP, CAROLYN ELEFANT, MYSHINGLE.COM, MARK BENNETT, BENNETT AND BENNETT, ERIC L. MAYER, ERIC L. MAYER, ATTORNEY-AT-LAW, NATHANIEL BURNEY, THE BURNEY LAW FIRM, LLC, JOSH

KING, AVVO, INC., JEFF GAMSO, GEORGE M. WALLACE, WALLACE, BROWN & SCHWARTZ, "TARRANT84," BANNED VENTURES BANNI, BRIAN L. TANNEBAUM, TANNEBAUM WEISS, COLIN SAMUELS, ACCELA, INC., CRIME AND FEDERALISM, "JOHN DOE" #1, ANTONIN I. PRIBETIC, STEINBERG MORTON, ELIE MYSTEL, ABOVEHELAW.COM, BREAKING MEDIA, LLC, DAVID C. WELLS AND DAVID C. WELLS, P.C.

81. He has asserted that one or more of these Defendants was entitled to receive additional copies of papers by mail and that they did not receive such additional copies of papers by mail.

82. I *do not know* whether either part of that proposition is true. I am, however, willing to serve additional copies of papers by mail if Supreme Court (A) finds that any such Defendant was entitled to additional copies of papers by mail, and (B) did not receive such additional copies by mail; and if it will extend the time for me to do so (CPLR 2004). It should also allow me to file proof of such additional service.

83. Plainly, I am *not* asking *this* Court to resolve that *now*; I am only seeking the ability to proceed in Supreme Court to resolve such matters.

TECHNICAL MATTERS

84. As I stated at the outset (see ¶ 6 hereof), no prior application has been made to this Court or any other Court for any of the relief requested herein or any similar relief except as is

revealed in this affidavit. It is important to remember that the only relief I seek on this application is a modification of the stay so I will not be compelled to stand absolutely still for 55 additional days, until March 9, 2012.

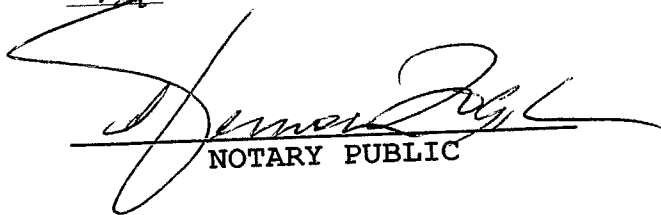
85. A stamped, self-addressed envelope ("SASE") is submitted herewith in case this Court reserves its decision.

86. My fax number is (212) 618-1705. The Court may use that number to furnish to me a copy of its order on this application.

87. In setting the dates in the proposed order, I ask this Court to bear in mind the magnitude of the papers and the large number of sets of papers I must prepare and serve. In view of the fact that Google will be entitled to a prompt hearing on the temporary restraining order, the papers should be served upon it forthwith, but there should be additional time for me to accomplish service on the many remaining Defendants.


JOSEPH RAKOF\$KY

Sworn to before me on this
12 day of January, 2012


NOTARY PUBLIC

HERMAN FOGAH -25-
Notary Public, State of New York
Qualified in Queens County
Reg. No. 01FO6214379
My Commission Expires Dec. 7, 2013