

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

----- x  
: Index No. 105573/2011  
JOSEPH RAKOFSKY, and RAKOFSKY LAW :  
FIRM, P.C., : **AFFIRMATION OF**  
: **MARGARET A. DALE**  
Plaintiffs, :  
- against - :  
THE WASHINGTON POST, *et al.*, :  
Defendants. :

----- x  
Margaret A. Dale, an attorney in good standing admitted to practice in the Courts of the State of New York, hereby affirms under penalties of perjury that:

1. I am a member of Proskauer Rose LLP, resident in the New York office. This affirmation is submitted in support of the ABA Defendants’ reply memorandum in support of its motion for costs and reasonable attorney’s fees pursuant to CPLR § 8303-a and NYCRR § 130-1.1(a) (the “ABA Costs and Fees Motion”).

2. On Friday, December 21, 2012, in the late morning, I received a telephone call from Matthew Goldsmith, Esq. The call had been transferred to me after Mr. Goldsmith had called Mark Harris, counsel for the ABA Defendants, who was not in the office. I did not know who Mr. Goldsmith was as I do not work on the above-captioned case.

3. Mr. Goldsmith told me that he was calling from the courthouse, and that he was seeking permission to submit his opposition papers on the Rakofsky v. ABA case. He explained that he had mistakenly gone to the wrong room, and arrived at Room 130 late, after the case had been called. He said that the clerk had advised him to contact Proskauer for our consent to accept his opposition papers, otherwise he would have to prepare an application.

4. I asked a few questions, including who were the attorneys on the case. Mr. Goldsmith told me that the clerk had instructed him to contact Mr. Harris, whose name was on the original motion. At no time did Mr. Goldsmith tell me that Jennifer Jones was another Proskauer lawyer on the case. I asked Mr. Goldsmith how he ended up getting transferred to me, and he said that he had spoken to the secretary who answered Mr. Harris' telephone and explained that since Mr. Harris was not available, he needed to speak to the managing partner or another partner.

5. At one point during the conversation, I repeated to Mr. Goldsmith my understanding of the situation; to wit, that he was down at the courthouse and was late to submit his opposition papers because he mistakenly went to the wrong room instead of going to Room 130, and now was asking for our consent to submit the papers since the case had already been called and the Proskauer attorney who had answered the call was no longer there. I also asked Mr. Goldsmith if Proskauer had been served with the opposition, and he answered that he had served Proskauer the prior day, December 20, 2012. Mr. Goldsmith answered that my understanding was correct. (I now understand from speaking with Ms. Jones that Mr. Goldsmith was not truthful when he represented to me that his papers were served on December 20; in fact, the opposition papers were postmarked December 21.)

6. I then told Mr. Goldsmith that I would try to locate someone else on the team. Again, Mr. Goldsmith never told me that Jennifer Jones was another Proskauer lawyer on the case. Mr. Goldsmith gave me his cell phone number, and I agreed to call him back. I contacted the Director of Litigation in New York and asked him if he knew who else was on the case. He did not. I decided that, in the spirit of the season, I would tell Mr. Goldsmith that it was all right to submit the papers. I called Mr. Goldsmith back on his cell phone and told him that Proskauer

did not object to him submitting his opposition to the clerk “late”, which I understood from my conversation with Mr. Goldsmith to be a matter of minutes.

7. I then sent an email to Mr. Harris to explain what had transpired with Mr. Goldsmith. Thereafter, I learned from Mr. Harris and Ms. Jones that Mr. Goldsmith had not been honest with me regarding the procedural posture of the motion for which he was seeking to submit his opposition. I learned that there was a stipulation in effect between the parties – that Mr. Goldsmith had negotiated solely with Ms. Jones – concerning the timing of Mr. Goldsmith’s opposition, which required Mr. Goldsmith to serve his opposition a week prior (on December 13, 2012) by electronic mail, and that Mr. Goldsmith had failed to comply with the stipulation. I also learned that Mr. Goldsmith had not contacted anyone from Proskauer to explain why he failed to abide by the stipulation or to request more time to serve his opposition.

8. By failing to explain to me the relevant facts concerning the motion, Mr. Goldsmith misled me. If he had explained the posture of the motion, including the fact of the stipulation and Ms. Jones’ work on the case, I would not have agreed that he could submit his opposition papers “late”, but would have told him that he needed to speak to Mr. Harris or Ms. Jones about the request.

New York, New York  
January 16, 2013

  
Margaret A. Dale