

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

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

Plaintiffs,

**MEMORANDUM  
OF LAW IN  
OPPOSITION TO  
CERTAIN  
DEFENDANTS'  
MOTION TO  
ADMIT COUNSEL  
PRO HAC VICE**

Civil Action

-against-

IndexNo.: 105573/11

THE WASHINGTON POST COMPANY, *et al.*

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**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS'  
MOTION TO ADMIT MARC RANDAZZA, *PRO HAC VICE***

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**PRELIMINARY STATEMENT**

This Memorandum of Law is submitted in opposition to the motion for admission, *pro hac vice*, of Marc Randazza, filed in this action by Eric Turkewitz on behalf of himself, 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 Mystal, AboveTheLaw.com and Breaking Media, LLC, all of whom are defendants in this action.

Mr. Rakofsky, has not been admitted to practice in the State of New York or sought admission, *pro hac vice*, in this action and is filing this Memorandum of Law on behalf of himself and, if permitted by this Court, his law firm, because plaintiffs’ prior counsel has withdrawn from the action and he has not yet obtained substituted counsel, which he is actively seeking to do.

### ARGUMENT

Mr. Turkewitz's motion seeks three types of relief: 1) an extension of time to answer on behalf of all defendants, whether or not they are represented by Mr. Turkewitz, 2) the admission of Marc Randazza, *pro hac vice*, on behalf of the defendants represented by Mr. Turkewitz in the action, including Mr. Turkewitz himself, and 3) that a copy of such order as may be granted by the Court on this motion be served upon all defendants.

#### **I. As to the request for an extension of time to answer.**

From the outset, it is respectfully submitted that the motion currently before the Court is fatally defective for the following reasons:

- a) No Certificate of Good Standing was attached thereto for Eric Turkewitz, Esq.

- b) No Certificate of Good Standing was attached thereto for Marc Randazza, Esq.

Respectfully, these omissions demonstrate Mr. Turkewitz is not familiar with the CPLR to the extent necessary to warrant admission of Mr. Randazza, *pro hac vice*. Moreover, Mr. Turkewitz and Mr. Randazza, through their actions, established the fact that they are either not familiar with the rules of this Court governing the conduct of attorneys or conversely, do not care to honor and be bound by such rules.

Considering the relief in the order provided, plaintiffs have never been requested by Mr. Turkewitz for an extension of time to answer on behalf of any defendants, much less refused such a request, much less one with respect to defendants whom Mr. Turkewitz does not represent, as Mr. Turkewitz alleges in his motion and supporting affidavit. Mr. Rakofsky had instructed his former attorney of record, Richard Borzouye, to grant any reasonable extension to any defendant who requested it. When requested by Mr. Randazza, prior to the present motion, Mr. Borzouye agreed to grant an extension of time to answer for those defendants whom Mr. Randazza claimed to represent as counsel, to June 28, 2011, which was one month from the date of a conversation between Mr. Randazza and Mr. Borzouye in which such request was made by Mr. Randazza. If such an extension is not acceptable to Mr. Turkewitz, Mr. Rakofsky would be pleased to consider his request for an extension to another specific date, noting that nowhere in Mr. Turkewitz's motion or in his accompanying affidavit is any specific date mentioned, which seems odd given that he wishes the date to apply to all defendants. In fact, on June 9, 2011, after returning from a trip abroad, Mr. Rakofsky stated to Mr. Turkewitz:

[T]here seems to have been a communication failure. We never opposed your request for an extension of time. Didn't Richard [Borzouye] give you an

additional month to answer? Was that not enough time? Which defendants need more time? How much more time do you need?

Mr. Turkewitz refused to respond to Mr. Rakofsky's inquiry, even though on June 9, 2011, Mr. Borzouye wrote to Mr. Turkewitz that: "Pursuant to 4.2(a), you, and only you (and not Mr. Randazza) may communicate with Mr. Rakofsky," Mr. Turkewitz has persisted in refusing to communicate with Mr. Rakofsky or to respond to Mr. Rakofsky's questions concerning Mr. Turkewitz's own request for an extension of time to answer the Amended Complaint. Mr. Turkewitz's suggestion to "unify" the answers on behalf of all of the defendants, i.e., including defendants he does not represent, seems unworkable, since a defendant's time to answer runs from the date of service upon the defendant and it is unlikely, given the number of defendants, that all will have been served by the same date. It might be more logical to agree to grant an extension of a specific number of days based upon the time a defendant's answer is due. Had Mr. Turkewitz made such a suggestion, rather than moving hastily, the perceived need for his motion could have been obviated.

Further, on June 9, 2011, Mr. Rakofsky wrote to Mr. Turkewitz and stated:

I have been made aware that you recognized I was in the process of retaining new counsel...Richard [Borzouye] will no longer be representing me in this matter. Until I retain new counsel, you have my permission to communicate with me directly, through email. (Given that you are a defendant, I'm surprised that you would reference "ethical rules" as a reason to refuse to communicate with me.) However, Mr. Randazza does not have my permission to attempt to make contact with me in any way, at any time. Do you have any suggestions with respect to my proposal so we may achieve a disposition of this matter without requiring the Court to become involved?

In addition, on June 9, 2011, Mr. Rakofsky wrote to Mr. Turkewitz and stated:

As you know, I have been out of the country for several weeks and just returned yesterday. I have an enormous amount of work that has accumulated in my

absence that must also be addressed. I would appreciate a reasonable extension of time to respond to the aforementioned motion you submitted to the Court last week. An extension to July 15, 2011 should be sufficient. Thank you.

However, again, Mr. Turkewitz refused to suggest to Mr. Rakofsky, despite Mr. Rakofsky's request, what he (Mr. Turkewitz) considers a reasonable extension of time, even though plaintiffs have offered to grant the defendants represented by Mr. Turkewitz an extension of time to answer, not once, but twice, on both occasions when they were requested by Mr. Randazza.

As noted, an extension of time to answer has never been refused by Mr. Rakofsky or Mr. Borzouye. The subject was raised by Mr. Randazza, who did so before Mr. Turkewitz's motion was filed, and apparently before having been retained by any defendants to act for them, which seems to be in clear violation of Model Rule 5.5(a), which provides that a lawyer may not practice law in a jurisdiction where doing so violates the regulation of lawyers in that jurisdiction, relating to the practice of law where one is not admitted to the bar of that jurisdiction. This occurred during a telephone conversation initiated by Mr. Borzouye to Mr. Randazza on or about May 16, 2011 in response to a call Mr. Randazza placed to him, to which Mr. Rakofsky was a party, with Mr. Borzouye's specific consent, Mr. Rakofsky and Mr. Borzouye having no advance knowledge of Mr. Randazza's role, if any, in this case. Upon Mr. Rakofsky's disclosure to Mr. Randazza that he too was on the telephone line and was listening to and wished to participate in the conversation, Mr. Randazza tacitly consented to Mr. Rakofsky's involvement in the conversation by continuing the conversation with him and Mr. Borzouye.

In that phone call, while Mr. Rakofsky was attempting to start a dialogue on the possibility of resolving the litigation through settlement, Mr. Randazza vilely and insultingly told him to "shut the fuck up." (Such behavior seems to be in clear violation of Model Rule 8.4, which not only governs an attorney's professional conduct but his personal conduct as well. Mr. Randazza's vile language may have prompted him to seek Mr. Turkewitz to be counsel of record for the defendants, whose representation he had solicited in a variety of jurisdictions in which Mr. Randazza is apparently not admitted to practice, since Mr. Turkewitz, writing in his own "blog" intended to be read by numerous lawyers and members of the public on the internet, speaking of Mr. Rakofsky, in vile and vulgar terms, published on May 18, 2011, in his article "Joseph Rakofsky – I Have an Answer for You" that Mr. Rakofsky should "Go shit in a hat and pull it down over [his] ears" adding "But that doesn't sound very lawyerly. So I'll say it in Latin. *Vado shit in a hat quod traho is down super vestri ears.\**" )

It is noted that Model Rule 8.5(a) provides that one is subject to discipline everywhere he is licensed to practice, including the State of New York, regardless of where the conduct in question occurred.

There can be no doubt that the plaintiffs have been placed in an untenable situation by Mr. Turkewitz. Not only has he refused to grant to plaintiffs a reasonable extension of time to respond to the motion Mr. Turkewitz filed on June 3, 2011, but he has publicly defamed and insulted Mr. Rakofsky, an act which places the bar in disrepute, thereby ignoring his duty to safeguard the integrity of the practicing bar. On May 18, 2011, Mr. Turkewitz published in his article "Joseph Rakofsky – I Have an Answer for You":

So let me go on to say that: In addition to being incompetent, I also think, based on the comments of the presiding judge, his co-counsel and the juror that spoke up, that he is unskillful, incapable, inept, unqualified, untrained, unprofessional, and clumsy. This is in addition to being a bumbler, blockhead, dolt, dingbat and chucklehead for having brought this suit, guaranteed to rain much unhappiness unto his name. I've got a thesaurus and I'm not afraid to use it.

As odious and egregious as Mr. Turkewitz's conduct has been thus far, Mr. Rakofsky has continued, in good faith, to communicate with Mr. Turkewitz, with the hope of disposing of the instant matter without the need for unnecessary litigation. However, the conduct exhibited by Mr. Randazza is immeasurably more offensive and egregious than Mr. Turkewitz's and cannot be ignored or forgotten.

Without intending to respond to the statements made by Mr. Turkewitz in his affidavit with respect to Mr. Rakofsky, many of which are false, scandalous and defamatory, suffice it to say that none are germane to the relief sought in Mr. Turkewitz's motion.

## **II. As to the motion to admit Mr. Randazza, *pro hac vice*.**

Turning to Mr. Turkewitz's motion for the admission of Mr. Randazza, *pro hac vice*, plaintiffs oppose the motion on the ground that Mr. Randazza's vile and scandalous conduct violates the code of conduct for attorneys and all norms of behavior and foretells repetitions of such misbehavior by Mr. Randazza should he be admitted *pro hac vice*. In addition, unbelievably, Mr. Randazza threatened Mr. Borzouye and "vowed to file grievances and a wiretapping crim[inal] complaint" against him if Mr. Rakofsky were to oppose Mr. Randazza's admission, *pro hac vice*. As a result of Mr. Randazza's threats to Mr. Borzouye, Mr. Borzouye withdrew as plaintiffs' attorney of record, thereby requiring

Mr. Rakofsky to seek new counsel, and interfering with Mr. Rakofsky's right to be represented by counsel of his choice. According to Mr. Borzouye:

I avoided Randazza at all costs pursuant to your wishes and he in fact fedexed a letter to get my attention to my office. He emailed me several times demanding to speak with me and threatening a whole bunch of things for not doing so, so I do not know how else I could have honored your request. Simply put, I have a family to worry about and protect and I will do so at all costs whether you disagree or not or if you are upset.

Consequently, Mr. Rakofsky is absolutely unable to communicate with Mr. Randazza, as will any counsel who may be retained by Mr. Rakofsky and his firm to represent plaintiffs, as a direct result of Mr. Randazza's extremely vile, inflammatory and insulting comments made to Mr. Rakofsky, at a time when Mr. Randazza had not yet even been retained by any client, thereby raising issues of the unauthorized practice of law. Further, the extremely vile remarks made by Mr. Randazza were made when Mr. Rakofsky, in good faith, was trying to settle this action so there would be no need to expend valuable judicial resources in litigating this action, which, it is submitted, constitutes a violation of Model Rule 5.5 by Mr. Randazza.

Not only has Mr. Turkewitz's own behavior been vile and offensive, but Mr. Turkewitz, though aware of Mr. Randazza's conduct towards Mr. Rakofsky and Mr. Borzouye, has failed to disclose to this Court this relevant and material fact in his motion when applying for Mr. Randazza's admission, *pro hac vice*, which is an apparent violation of Model Rule 8.4(a), which states that, "[a] lawyer having knowledge that another lawyer has committed a violation of the rules of professional conduct that raises a substantial question as to that lawyer's...fitness as a lawyer...shall inform the appropriate professional authority." Further, Mr. Turkewitz may have thereby apparently violated Model Rule 8.3(a), which provides that a lawyer has a duty to report any unprotected



information of another lawyer's professional misconduct that "raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer."

There is simply no way Mr. Rakofsky could ever discuss or authorize his attorney to discuss the possibility of a settlement of this action with Mr. Randazza, were he to be admitted *pro hac vice*, requiring the matter to proceed to trial. Consequently, such an eventuality would necessarily result in needless waste of valuable judicial resources. Further, such an outcome would irreparably and unfairly prejudice the plaintiffs, as there could be no real possibility for reaching an out of court disposition as any other litigant would ordinarily be permitted to seek.

In general, the plaintiffs have absolutely no objection to the admission of an attorney, *pro hac vice*, on behalf of the defendants named herein. However, it is the specific admission of Marc Randazza (or any of the 4 other attorneys associated with his law firm), who, through his egregious and offensive conduct, has already proven that he does not consider the code of conduct in the State of New York or the Rules of Professional Responsibility when engaging in litigation and, as such, makes absolutely no room for the litigants to achieve a settlement in this action.

**III. As to the request that the order be served upon all defendants.**

Plaintiffs have no objection to the furnishing to all defendants upon whom process has been served of copies of such order as may be entered by this Court.

Dated: New York, New York  
June 13, 2011

Respectfully Submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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