

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

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

Plaintiffs,

-against-

THE WASHINGTON POST COMPANY, et al.,

Defendants.

Affidavit of Eric Turkewitz
Opposing Plaintiffs'
Application for Appellate
Intervention Under CPLR §
5704(a)

Index # 105573/11

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**Affidavit of Eric Turkewitz Opposing Plaintiffs' Application for Appellate Intervention
Under CPLR § 5704(a)**

1. Eric Turkewitz, being duly sworn, deposes and says:
2. I am a defendant in this action and also local counsel to the following defendants:(1) Eric Turkewitz, (2) The Turkewitz Law Firm, (3) Scott Greenfield, (4) Simple Justice NY, LLC, (5) blog.simplejustice.us, (6) Kravet & Vogel, LLP, (7) Carolyn Elefant, (8) MyShingle.com, (9) Mark Bennett, (10) Bennett And Bennett, (11) Eric L. Mayer, (12) Eric L. Mayer, Attorney-at-Law, (13) Nathaniel Burney, (14) The Burney Law Firm, LLC, (15) Josh King, (16) Avvo, Inc., (17) Jeff Gamso, (18) George M. Wallace, (19) Wallace, Brown & Schwartz, (20) "Tarrant84", (21) Banned Ventures LLC, (22) BanniNation, (23) Brian L. Tannebaum, (24) Tannebaum Weiss, (25) Colin Samuels, (26) Accela, Inc., (27) Crime and Federalism, (28) John Doe # 1, (29) Antonin I. Pribetic, (30) Steinberg Morton, (31) David C. Wells, (32) David C. Wells P.C., (33) Elie Mystal, (34) AboveTheLaw.com, and (35) Breaking Media, LLC.

3. This lawsuit arises from Joseph Rakofsky's participation in *United States v. Deaner*¹ in the Washington, D.C. Superior Court. *Deaner* was a first-degree murder case, and Mr. Rakofsky defended Mr. Deaner. It was Mr. Rakofsky's first trial of any kind.

4. On April 1, 2011, Judge William Jackson confronted Mr. Rakofsky about a copy of an e-mail he had received by an investigator Rakofsky hired to develop Mr. Deaner's defense. In this email Mr. Rakofsky asks the investigator to "trick" a potential witness into misstating her observations. A copy of this e-mail as produced at trial, with certain redactions, is attached as Exhibit A.

5. Rakofsky was heavily criticized on the Internet for his handling of Deaner's case, and the ethical issues raised by his e-mail asking the investigator to "trick" a potential witness.

6. Plaintiffs started this suit in May 2011 in response to existing Internet criticism of Mr. Rakofsky. A copy of the Plaintiffs' Summons and Complaint are attached as Exhibit B.

7. Plaintiffs amended the Complaint almost immediately to include defendants who criticized the instant litigation, and then tried to serve the Complaint, Summons, Amended Complaint and Amended Summons during the months of May and June, 2011. A copy of the Plaintiffs' First Amended Complaint in this action is attached as Exhibit C.

8. All of the statements Rakofsky claimed to be defamatory and injurious in his Complaint and Amended Complaint are traceable to the remarks of Judge Jackson during the Deaner trial. A copy of the transcript from the proceedings occurring April 1, 2011, in *United States v. Deaner*, Case No. 2008-CF1-30325, is attached as Exhibit D.

9. Within this transcript, presiding Judge William Jackson criticizes Joseph Rakofsky's skill and competence as an attorney, saying, among other things, that he was not

¹ Case No. 2008-CF1-30325

providing competent counsel to his client. This was a murder defense, and Rakofsky's first trial, and he was just a year out of law school.

10. On June 13, 2011, the Plaintiffs asked the Supreme Court to stay the action until they could obtain new counsel. A copy of Joseph Rakofsky's affidavit requesting this relief is attached as Exhibit E.

11. On September 15, 2011, the Supreme Court granted the stay, and a briefing schedule permitting pre-answer, dispositive motions was created with the motions to be served by January 13, 2012. Plaintiffs' opposition briefs were due on February 13th, and reply briefs by Defendants were due March 13th. The return date on the motions was to be March 14th.

12. My group of defendants prepared a motion to dismiss (Exhibit I) and served it on all other parties, including Plaintiffs, on December 15, 2011. It was served so far in advance of the March 14th return date, in fact, that the motion support office wouldn't yet accept it for filing.

13. Four days after serving our motion, and while waiting to file it with motion support, Judge Goodman alerted us by email that she was extending the stay until March 9th. We remain, therefore, unable to file a finished product. (When finally permitted, we intend to simply do an amended Notice of Motion and rely on the affidavits and extensive Memo of Law previously served.)

14. Our group of defendants is obviously anxious to see this meritless suit dismissed as soon as possible. Long delays in frivolous defamation cases have a chilling effect on speech. We would therefore be delighted to see the stay lifted in its entirety by the lower court.

16. The partial lifting of the stay that Rakofsky seeks -- so that only he can file motions and engage in discovery -- creates an unreasonable financial burden on the Defendants, who have already written the motion to dismiss (Exhibit I) and are simply awaiting an opportunity to file it with the clerk.

17. In addition, we have been subjected to the financial obligation of extensively litigating Attorney Randazza's *pro hac vice* admission in this matter, which included a cross-country trip for an appearance in Supreme Court due to the Plaintiffs' wasteful opposition. And now we must bear the costs of litigating Rakofsky's emergency application to this Court.

18. On January 3, 2012, Supreme Court Judge Emily Goodman rejected the Plaintiffs' request for relief, stating "decline to sign" and "papers are incomprehensible." A copy of this order, which I received on January 10, 2012 from co-defendant's counsel John Teschner, is attached as Exhibit F.

19. One of the plethora of issues Plaintiffs raise in their emergency application is the allegedly improper conduct of Marc J. Randazza, my *pro hac vice* co-counsel.

20. Mr. Randazza has already addressed the Plaintiffs' contentions in two prior affidavits filed with the Supreme Court in support of his *pro hac vice* admission. A copy of the first affidavit, dated June 17, 2011, is attached as Exhibit G. A copy of the second affidavit, dated June 29, 2011, is attached as Exhibit H.

21. A copy of the memorandum of law this group of defendants has served on the Plaintiffs and other defendants in this case in support of their motion to dismiss, but have been unable to file with the Supreme Court, is attached as Exhibit I. This memorandum exposes the many flaws in the Plaintiffs' case and explains why, exactly, their case must be dismissed.

22. Unless the stay is completely dissolved, we wish to keep it in place entirely, and do not consent to allowing the Plaintiffs to unilaterally make motions and undertake discovery while the rest of us have our hands tied behind our backs.

Dated this 26th day of January, 2012



Eric Turkewitz
The Turkewitz Law Firm
Pro se and as counsel to the
Defendants listed above
228 East 45th Street – 17th Floor
New York, NY 10017
(212) 983-5900

Sworn to me on the 26th day of January, 2012



NOTARY PUBLIC

MARIBEL RODRIGUEZ
Notary Public, State of New York
No. 01RO6042210
Qualified in Kings County
Commission Expires May 22, 2014