

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
Kenneth E. Bruce, Esq.,

Plaintiff,

-against-

Guy J. Mangano, et al.,

Defendants.  
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NOTICE OF MOTION FOR  
SUMMARY JUDGMENT

91 CIV. 1114 (GLG)

S I R S:

PLEASE TAKE NOTICE, that upon the (1) annexed affirmation of RICHARD E. GRAYSON, ESQ., dated March 15, 1991; (2) Plaintiff's filed verified complaint, dated February 14, 1991; (3) Plaintiff's filed verified amended complaint, dated March 1, 1991; (4) Plaintiff's Statement of Uncontroverted Facts; and (5) Plaintiff's Memorandum of Law, Plaintiff will move the U.S. District Court for the Southern District of New York, before the Hon. Gerard L. Goettel, held at the Courthouse thereof, 101 East Post Road, White Plains, New York 10601, on Friday, April 5, 1991 at 10:00 a.m., or as soon thereafter as counsel can be heard, for (1) an Order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment in favor of Plaintiff and against the Defendants; or (2) alternatively, if summary judgment is not granted to Plaintiff, then the Court, by examining the pleadings and evidence before it, ascertain what material facts exist without substantial controversy, and thereupon issue an Order specifying the facts that exist without substantial controversy, and directing such further proceedings in this action as are just; and (3) for such other relief as this Court deems appropriate.

PLEASE TAKE FURTHER NOTICE, that opposing papers, if any, are to be served upon the undersigned and filed with the Court, as provided by the Rules of this Court.

Dated: March 15, 1991

Yours, etc.,

RICHARD E. GRAYSON, ESQ.  
Attorney for Plaintiff  
199 Main Street, Suite 405  
White Plains, New York 10601  
(914) 949-2826

To: New York State Attorney General  
202 Mamaroneck Avenue  
White Plains, New York 10601

New York State Ninth Judicial  
District Grievance Committee  
399 Knollwood Road, Suite 200  
White Plains, New York 10603

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
Kenneth E. Bruce, Esq.

Plaintiff,

AFFIRMATION

91 CIV. 1114 (GLG)

-against-

Guy J. Mangano, et al.,

Defendants.  
-----

RICHARD E. GRAYSON, ESQ., an attorney admitted to practice before this Court, affirms the following under penalties of perjury:

As Plaintiff's attorney, I am familiar with the facts and circumstances of this action and submit this affirmation in support of the motion for summary judgment.

During my entire career as an attorney, I have been involved in disciplinary matters, first as a prosecutor with the Defendant Grievance Committee (1978-1982) and since then, representing attorneys being investigated and prosecuted by grievance committees.

I believe that the allegations set forth in the annexed statement of uncontroverted facts are true and cannot be controverted. Those allegations are based on my experience in the grievance disciplinary field. Therefore, there is no genuine issue as to any material fact.

WHEREFORE, it is respectfully requested that summary judgment be granted in favor of Plaintiff and against all Defendants, but alternatively, if summary judgment is not granted to Plaintiff, then this Court, by examining the pleadings and evidence before it, ascertain what material facts exist without substantial controversy and thereupon issue an order specifying the facts that exist without substantial controversy and directing such further proceedings in this action as are just, and for such other relief as this Court deems appropriate.

  
RICHARD E. GRAYSON, ESQ.

DATED: White Plains, New York  
March 15, 1991



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
Kenneth E. Bruce, Esq.

Plaintiff,

Civil Action No.  
91 CIV. 1114 (GLG)

-against-

Guy J. Mangano, et al.,

Defendants.  
-----

PLAINTIFF'S STATEMENT OF UNCONTROVERTED FACTS  
PURSUANT TO LOCAL RULE 3(g)

1. Pursuant to New York Judiciary Law Section 90[2], the discipline of attorneys in the State of New York is limited to those

who ... [are] guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice.

2. 22 New York Code, Rules and Regulations (NYCRR) Section 691.2 (Professional Misconduct Defined), provides:

Any attorney who fails to conduct himself, either professionally or personally, in conformity with the standards of conduct imposed upon members of the bar as conditions for the privilege to practice law, and any attorney who violates any provision of the rules of this court governing the conduct of attorneys, or any disciplinary rule of the Code of Professional Responsibility, as adopted by the New York State Bar Association, as amended to May 1, 1978, or any canon of the Canons of Professional Ethics, as adopted by such bar association, or any of the special rules concerning court decorum, shall be deemed to be guilty of professional misconduct with the meaning of subdivision (2) of section 90 of the Judiciary Law.

3. The disciplining of attorneys occurs in a quasi-criminal proceeding, which is required to follow the United States Constitution and the laws of the United States.

4. The statutory disciplinary standards of the State of New York and the Appellate Division cited above, are null and void as being unconstitutionally vague, overbroad, providing no notice of proscribed conduct, and are easily susceptible of prosecution by invidious selectivity.

5. As a matter of "custom and usage" by the Grievance Committee and by the Appellate Division, acting under "color of law", the following practices are uniformly employed, in all matters where the proceedings are not based upon a conviction for a felony, despite the requirements of the United States Constitution and the laws of the United States:

a(1) Upon information and belief, at no time, in any proceeding, is the attorney being investigated or accused warned of the right not to incriminate himself, as guaranteed by the 5th Amendment to the United States Constitution. (Spevack v. Klein, 385 US 511, [1967])

(2) On the contrary, all attorneys being investigated or accused are specifically and emphatically warned that failure to fully cooperate with the Grievance Committee will result in charges of non-cooperation being lodged against them.

(3) In every case, in the event the accused does not cooperate with the investigation, even if such cooperation would result in self-incrimination, charges of non-cooperation are lodged against the attorney by the Grievance Committee.

b(1) Upon information and belief, before the authorization of every disciplinary proceeding against an



attorney by the Appellate Division, a confidential report is filed by the Grievance Committee with the Appellate Division.

(2) At no time is the accused attorney advised of the contents of the confidential report, although it is an essential part of the proceedings, and the report is before the Appellate Division when it renders its final determination on the charges against the attorney.

c. Upon information and belief, at no time, in any proceeding, does the Grievance Committee correct or modify the confidential report, even if it later appears that the report is erroneous or misleading,

d(1) Upon information and belief, at no time, in any proceeding, is Brady v. Maryland (373 U.S. 83 [1963]) material given to the accused attorney.

(2) Similarly, in all cases, neither the referee appointed by the Appellate Division in the disciplinary proceeding nor the Appellate Division is advised by the Grievance Committee of any exculpatory or mitigating material.

e. Upon information and belief, at no time, in any proceeding, is the accused attorney informed of prior dispositions, which, under substantially similar facts, resulted in findings favorable to other accused attorneys, nor is such information available to the accused attorney because of Judiciary Law Section 90(10), which states:

Any statute or rule to the contrary, notwithstanding, all papers, records and documents...upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of any attorney or attorneys, shall be sealed and be deemed private and confidential.

f(1) Upon information and belief, at no time, in any proceeding, is the accused attorney advised of the prior testimony, statements, or inconsistent statements of the accuser or of any witness.

(2) Similarly, neither the appointed referee nor the Appellate Division is advised of any prior testimony, statements, or inconsistent statements of the accuser or of any witness.

g(1) Upon information and belief, the attorney who prosecutes every disciplinary proceeding against all attorneys as counsel for the Grievance Committee, is appointed, serves at the pleasure of, and can be terminated, not by the Grievance Committee, but by the Appellate Division. In point of law, counsel for the Grievance Committee is really counsel for the Appellate Division.

(2) As a result, every accused attorney is prosecuted by the attorney for the Appellate Division, before a referee designated by the Appellate Division, and the final determination is made by the Appellate Division, which almost always is not any further reviewable.

h. As a matter of "custom and usage", the disciplinary scheme noted above violates the United States Constitution, the laws of the United States and the decisions of the United States Supreme Court.

6. Although the four Appellate Divisions of the Supreme Court of the State of New York do not have any substantive law



authority, and may not, under the guise of rule-making, enact substantive law, an examination of the rules of the four departments, the disparate disciplinary practices employed by those four departments, and the disparate discipline imposed on attorneys by those four departments, reveals irrational, irreconcilable, substantive law differences within the State of New York.

7. Every order of suspension or disbarment issued by Appellate Division (under Judiciary Law 90[2] and [3]) states as follows:

Section 90[2]:...It shall be the duty of the appellate division to insert in each order of suspension or removal hereinafter rendered a provision which shall command the attorney and counsellor-at-law thereafter to desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another. In addition it shall forbid the performance of any of the following acts, to wit:

a. The appearance as an attorney or counsellor-at-law before any court, judge, justice, board, commission or other public authority.

b. The giving to another of an opinion as to the law or its application, or of any advice in relation thereto. ...

If a certified copy of such order or of such amended order, be served upon the attorney and counsellor-at-law suspended or removed from office, a violation thereof may be punished as a contempt of court.

Section 90[3]: The suspension or removal of an attorney or counsellor-at-law, by the appellate division of the supreme court, operates as a suspension or removal in every court of the state." [emphasis added]

8. 28 U.S.C. 132[a] provides:

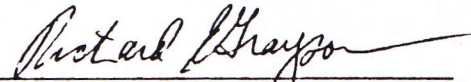
There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district. [emphasis added]

9. Contrary to Judiciary Law Section 90[2], neither the State of New York, nor any entity existing under its authority, including the Hon. Robert Abrams, the New York State Attorney General, (who is specifically authorized to prosecute those unlawfully practicing law under Judiciary Law 476) can prosecute any attorney suspended or disbarred by Defendant-Justices, for practicing in a U.S. District Court in which the attorney is admitted to practice or from practicing as a pro se litigant. (Judiciary Law Section 90[2][a].)

10. "[G]iving to another of an opinion as to the law", certainly cannot mean that plaintiff cannot advise successor counsel of such information, law, or fact, as may be necessary to protect the interests of former clients, or cannot mean such opinions regarding the law, which are part of a person's common conversation. (Judiciary Law Section 90[2][b].)

11. The legislative enactment cited above suffers from, among other maladies, overbreadth and vagueness, conflicts with the 1st Amendment to the United States Constitution, and cannot support a criminal prosecution or even the threat of a criminal prosecution, and should be declared a nullity, and enforcement by the Attorney General of the State of New York and all other agencies of government should be enjoined (City of Houston v. Hill, 482 U.S. 451 [1987]).

12. All attorneys investigated prosecuted, suspended or disbarred under Defendants' disciplinary scheme have been damaged by Defendants' actions and are entitled to summary judgment.



RICHARD E. GRAYSON, ESQ.  
Attorney for Plaintiff  
199 Main Street, Suite 405  
White Plains, New York 10601  
REG-2620

Dated: White Plains, New York  
March 15, 1991



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Kenneth E. Bruce, Esq.,

Plaintiff,

91 CIV. 1114 (GLG)

-against-

Guy J. Mangano, et al.,

Defendants.

MOTION, AFFIRMATION,  
STATEMENT OF UNCONTROVERTED FACTS

RICHARD E. GRAYSON, ESQ., of counsel  
ROBINOWITZ COHLAN & DUBOW  
*Attorneys for Plaintiff*

199 MAIN STREET, Suite 405  
WHITE PLAINS, NEW YORK 10601  
(914) 949-2826

To:

Department of Law  
West Regional Office

Attorney(s) for

Service of a copy of the within

MAR 15 1991

is hereby admitted.

Dated:

*Guy J. Mangano*  
3/18/91  
G. C. 9th J.D.

Received By  
*Steven A. Rosenthal*  
Assistant Attorney General

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF  
ENTRY

that the within is a (certified) true copy of a  
entered in the office of the clerk of the within named Court on

19

NOTICE OF  
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the Hon.  
one of the judges of the within named Court,  
at  
on

19

, at

M.

Dated:

ROBINOWITZ COHLAN & DUBOW  
*Attorneys for*

To:

199 MAIN STREET  
WHITE PLAINS, NEW YORK 10601

Attorney(s) for