UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GEORGETTE FRANZONE,

CASE NO.14 cv 03043 GHW

Plaintiff,

-against-

SUSAN LASK,

Defendant.

<u>MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR DISQUALIFICATION OF COUNSEL</u>

Law Office of Edward R. Grossi, LLC.
Counsel for Defendant
244 Fifth Avenue, Suite E-284
New York, New York 10001
917-410-7273

TABLE OF CONTENTS

Page No.

I. PRELIMINARY STATEMENT 1

II. STATEMENT OF FACTS ……………………… 1

III. ARGUMENT.. 5

A. Disqualification is Warranted Because Dollinger's Conflict of Interest as Ms. Lask's Former Counsel Taints this Matter. Moreover, Attorneys Cannot Sue Their Former Clients.……………………………………….. 5

B. RPC 1.10 Imputes Dollinger's Disqualification to His Three Person Operation of Him, Mr. San Jose and Franzone …….. 8

C. Disqualification and Denial of the *Pro Hac Vice* is Mandated as the Dollinger Office's Sham Complaint and Established History of Deceiving the Courts Impugns the Integrity of the Court and Public Confidence in the Profession ……………………………………………….. 9

D. Disqualification is Warranted Because Dollinger Violated Disciplinary Rules …………………………… 10

E. Disqualification is Mandated Because Dollinger is an Adverse Witness ……………………………………… 11

IV. CONCLUSION.. 12

TABLE OF AUTHORITES

Amalfitano v. Rosenberg,
428 F.Supp.2d 196 [S.D.N.Y. 2006], *affd.* 572 F. 3d 91(2d Cir. 2009)…. 1,10

A.V. by Versace, Inc. v. Gianni Versace, S.p.A.,
160 F.Supp.2d 657, 664 (S.D.N.Y.2001)…………………. 11

Cardinale v. Golinello,
372 N.E.2d 26, 30 (2d Cir., 1977)……………………. 8

Divot Golf Corp. v. Citizens Bank, No. 02-CV-10654-PBS,
2003 U.S. Dist. LEXIS 187, at *4 (D. Mass. Jan. 8, 2003)……………… 5

Gov't of India v. Cook Indus., Inc.,
569 F.2d 737, 739-40 (2d Cir. 1978)………………….. 6,7

GSI Commerce Solutions, Inc. v. BabyCenter, L.L.C.,
618 F.3d 204, 209 (2d Cir. 2010)…………………………………. 6

Hempstead Video, Inc. v. Inc. Vill. of Valley Stream,
409 F.3d 127, 132 (2d Cir. 2005) …………………… 5,6

Hull v. Celanese Corp.,
513 F.2d 568, 572 (2d Cir.1975)…………… 9

Page No

In the Matter of Rosenberg,
947 N.Y.S.2d 54 (1st Dept, 2012) ………………………………………… 1
In re Charbel Elias,
2014 WL 1248042 (EDNY, 2014)…………………….. 5,12
In re von Bulow,
828 F.2d 94, 100 (2d Cir.1987)………………………. 8
Lamborn v. Dittmer,
873 F.2d 522, 531 (2d Cir.1989)……………………… 11
Monzon v. United States,
2013 U.S. Dist. LEXIS 128129, at page 8 (SDNY, 2013)……………….. 6
Northwestern Nat. Ins. Co. v. Insco, Ltd.,
Not Reported in F.Supp.2d, 2011 WL 4552997 (S.D.N.Y.,2011)…………….. 11
Paramount Commc'ns, Inc. v. Donaghy,
858 F.Supp. 391, 394 (S.D.N.Y.1994)…………………. 12
Pierce & Weiss, LLP v. Subrogation Ptnrs. LLC,
701 F. Supp. 2d 245, 257 (EDNY,2010)………………………. 9
Republic Gear Co. v. Borg–Warner Corp.,
381 F.2d 551, 556 (2d Cir.1967)…………………… 8
Silver Chrysler Plymouth, Inc.,
518 F.2d at 753……………………. 6
Skidmore v. Warburg Dillon Read LLC,
No. 99 Civ. 10525(NRB), 2001 WL 504876, at *2 (S.D.N.Y. May 11, 2001)…….. 6
Tekni–Plex,
674 N.E.2d at 667………………… 8

STATUTES, RULES & OTHER CITATIONS

22 NY.C.R.R. § 1200.00 R. 8.4(c)-(d)……….. 11
Judiciary Law §487……………. 1,10
Local Civil Rule 1.5(b)(5)……………. 11
*R.*11…………………. 5
RPC 1.6………………….. 7
RPC 1.9……………….. 6,7
RPC 1.10……………….. 8

I. Preliminary Statement

Defendant Susan Lask had once represented Plaintiff Franzone. Dollinger then represented Ms. Lask to obtain a release from Franzone arising out of that attorney-client relationship. As alleged in the complaint, that attorney-client relationship underlies this lawsuit. Now Dollinger represents Franzone against Ms. Lask regarding that same relationship. The Plaintiff will not be prejudiced by the disqualification of Dollinger at this early stage. The causes of action alleged in the Complaint are clearly time barred, based upon fabricated facts and legal theories, and duplicate currently active complaints that Dollinger and Franzone filed against 30 other persons in State and Federal Court. Thus, there is no cognizable complaint before this court. Presently, several Federal Courts have *sua sponte* ordered sanctions hearings against Dollinger for similar frivolous and deceitful filings in those courts. Disqualifying the Dollinger Office will protect the integrity of the court.[1]

II. Statement of Facts[3]

Defendant Susan Lask had previously represented Plaintiff Franzone by a retainer, which expressly excluded any action against a Ms. Narbone, stating that Ms. Lask "shall not be counsel to [Franzone] with respect to her corporate and **Narbone** cases" (**6/11/14 Grossi Cert.[4] Exh. A, p.1, ¶3)(emphasis added)**. Franzone was to pay Lask $20,000.00 for the retainer but only paid $15,000 and the attorney-client relationship terminated February 2011(**Compl. ¶53).**

From May 9, 2011 through June 14, 2011**,** Dollinger directly represented Ms. Lask to obtain releases from Franzone and Ms. Narbone. Ms. Lask and Dollinger had countless conversations and written communications regarding the underlying representation wherein Dollinger obtained Ms.

---

[1] Dollinger and Mr. San Jose, by aiding and abetting the deceits, are subject to Judiciary Law §487 and referral to the disciplinary committees. *In the Matter of Rosenberg*, 947 N.Y.S.2d 54 (1st Dept, 2012), an attorney was suspended after being referred by the Federal Court to the disciplinary committee in *Amalfitano v. Rosenberg*, 428 F.Supp.2d 196 [S.D.N.Y. 2006], *affd.* 572 F. 3d 91(2d Cir. 2009), which found the attorney engaged in fraudulent conduct violating Judiciary Law § 487, and imposed treble damages of $268,245.54.

[3] Facts are taken from Ms. Lask's 6/11/14 Cert filed herewith, unless otherwise indicated.

[4] Further Cert. references will omit the date as the Grossi and Lask Certs are both dated 6/11/14.

Lask's secrets and confidences regarding her representation of Franzone and Narbone. Dollinger advised Lask that he would obtain the release first from Ms. Narbone and then get the release from Franzone. He obtained the release from Narbone as Ms. Lask's counsel. But then, much to Ms. Lask's surprise, she learned that Dollinger began representing Franzone personally against Ms. Narbone and Ms. Lask, ultimately having Franzone join his firm as "Director of Legal Affairs" (**Dkt 9-** Dollinger Letterhead). Ms. Lask raised the impropriety of this conduct with Dollinger through counsel and filed an action to obtain a protective order to protect her confidences. Dollinger responded by contacting Ms. Lask's counsel and associates to threaten that he would destroy Lask's good reputation as she was at "the height of her career." He directly contacted Ms. Lask with the same threats[5].

Since 2011, Dollinger and Franzone commenced a campaign of filing multiple absurd pleadings and complaints against thirty different entities in various State and Federal courts in seven actions[6]. On April 22, 2014, Dollinger and Franzone filed the 27-page prolix and time-barred Complaint alleging 13 false and fabricated causes of action against Ms. Lask, lumping them together as (i) legal malpractice/breach of fiduciary duty, (ii) unjust enrichment, (iii & iv) two counts of extortion/coercion, (v) invasion of privacy, (vi) interstate stalking, (vii) abuse of process/malicious prosecution, (viii) false advertising/deceptive trade practices act and (ix) intentional and/or negligent infliction of emotional distress.

The complaint omits its own "Exhibit A" (**Cmpl. ¶46),** which is the retainer that flatly contradicts the false allegation of legal malpractice (**Grossi Cert. Exh. A)**. The Retainer states Ms. Lask "shall not be counsel to Client with respect to her corporate and Narbone cases." (**Retainer p.1, ¶3**). The only specific act of legal malpractice alleged is that Ms. Lask did not file a civil-

[5] Dollinger's misconduct of representing one client then using their confidences to extract money from them is documented in cases filed in various venues. See **Grossi Cert. Exh. H**. Also see recent SDNY Dkt 14-cv-01819 of Dr. Victor Schwartz alleging Dollinger's extortion against his career, the same as occurs here.

[6] Index Nos. 040593/2007, 040594/2007, 025674/2009 and 16633/11, Kings County Supreme Court; Dkt. 13–01269 EDNY, Docket 13-05282 EDNY and this docket.

rights complaint against the City of New York and Narbone (**Cmpl. ¶¶57 64,68**). Dollinger further deceives this court by concealing that he and Franzone actually filed State and Federal complaints against Narbone and the City. Those cases are currently active, alleging the same damages for "false arrest, malicious prosecution and other intentional torts" that the complaint here falsely denies were ever filed, while they complain here that Ms. Lask caused Franzone a "loss in direct (sic) state court claims for false arrest, malicious prosecution and other intentional torts. **(Cmpl. ¶¶63-64)** (**Grossi Cert. Exhs. B & C**). In those complaints, Dollinger and Franzone allege RICO, conspiracies and civil-rights violations naming Lilliana Narbone and retired NYC Detective Farije Sheridan as two of thirty conspirators causing Franzone's arrest and emotional distress[7]. Seven months later, while those competing cases are active, they filed this disjointed Complaint, now alleging that only Ms. Lask and Narbone conspired to cause the same arrest and emotional distress that Franzone complains 30 other people caused. All of these frivolous filings are made by the Dollinger Office, which is comprised of Dollinger who resides in North Carolina, a foreign attorney named Miguel San Jose residing in North Carolina and Franzone listed as "Director of Legal Affairs" (collectively, the "Dollinger Office"). Finally, exactly as the Dollinger Office filed a false complaint fictionalizing a plaintiff that did not exist in the Northern District California, Docket 13-04280, that resulted in a June 6, 2014 sanctions hearing against Dollinger, they do it

[7] That prolix, unintelligible 88 page complaint was reported by the Courthouse News Service deciphering Dollinger and Franzone's fictional culprits there as "Sheridan then used her position as a former police officer to falsely arrest Franzone based on Narbone's complaint. Plaintiff says Sheridan contacted Officer Juan Tejera, a friend, to have him arrest her and that she 'had to be dealt with.' Tonuzi, Elias and Sheridan then filed a false claim for Franzone's arrest in the Midtown South Precinct. Franzone says she spent at least 30 hours in police custody without charges ever being filed. Officer Ann Guerin agreed to help, according to the complaint. Franzone says the aforementioned individuals and entities 'illegally using their friends and family, each of whom were at the time active New York City Police Officers or retired officers' to 'instill fear and intimidation' in her. She seeks nearly $100 million for violations of federal anti-racketeering law, breach of contract, unjust enrichment, unfair competition, negligence and conversion." (http://www.courthousenews.com/2013/09/30/61593.htm)

again here by naming a Jonathan Mann who has no relation to Ms. Lask, did not retain her and they falsely claim he is a "guarantor" to fictionalize standing[8].

On May 26, 2014, Ms. Lask informed this court that the Dollinger Office must be disqualified because it formerly represented her against Franzone, was engaging in a conflict and that they concealed from this and other courts the fact that they made duplicate filings of this complaint, now in three different forums (**Dkt. 6).** On May 27, 2014, the Dollinger Office responded by attempting to *pro hac vice* a foreign attorney listed on its letterhead as Miguel San Jose **(Dkt. 7,9)**. On May 28, 2014, Ms. Lask objected to that *pro hac vice* (**Dkt. 8).** On June 3, 2014, the Dollinger Office retaliated by uploading on ECF a sealed document by using a cover letter as a pretext to defy Judge Barbara Jones' November 18, 2011 Order sealing that document (**Dkt. 9 1-3, 15**). The Dollinger Office's violation of that Federal Court Order caused this court to hold an immediate conference on June 4, 2014. There, Dollinger, with Mr. San Jose present, denied that Judge Jones' order sealed that document despite the fact that Dollinger and Franzone were present when that order was made against them. The transcript of that hearing proves Judge Jones explicitly stated she wanted it "filed under seal" and ordered it filed "under seal" (**Grossi Cert. Exh. D**-11/18/11 Trans. 2:14-25; 3:1-4; 4:17-22;13:6,13-14). On June 4 and 10, 2014, this court ordered that document sealed per Judge Jones's earlier Order. (**Dkt. 10,15**). That document, now twice sealed, contains the same false allegations in the present false complaint filed by the Dollinger Office.

The Dollinger Office's similar frauds upon the Federal courts recently resulted in two Federal Court orders for sanction proceedings against Dollinger, *sua sponte*. On June 6, 2014, the Northern District California Federal Judge Vince Chhabria held a hearing against Dollinger,

[8] Pursuant to General Obligations Law § 5–701(a)(2), every agreement, promise or undertaking which is a special promise to answer for the debt of another is void unless it is in writing. As well, there was no benefit to Mann from Lask.

resulting in an order scheduling a sanctions hearing against the Dollinger Office using the court's inherent powers to sanction Dollinger for his deceits there similar to his deceits here[10] **(Grossi Cert, Exhs. E & F).** On that same day, in the duplicate complaint as this one against thirty other parties, Magistrate Orenstein issued an Order recommending that Judge Gershon set a briefing schedule for sanctions against Dollinger **(Grossi Cert, Exh. G).** A few months before those sanctions orders, on March 25, 2014, Chief Judge Amon issued an opinion dismissing a fraudulent complaint filed by the Dollinger Office and Franzone. *In re Charbel Elias,* 2014 WL 1248042 (EDNY, 2014). That opinion details Dollinger and Franzone denying facts and then blaming each other to conceal their deceptions to the court. Prior to that, on January 11, 2013, in 05-03097 SDNY, Federal Judge McMahon dismissed another baseless complaint that Dollinger filed *pro se* after the Dollinger Office defied a court order to appear before the court and after the Dollinger Office dragged that frivolous case on for seven years **(Grossi Cert, Exh. I).**

III. Argument

A. Disqualification is Warranted Because Dollinger's Conflict of Interest as Ms. Lask's Former Counsel Taints this Matter. Moreover, Attorneys Cannot Sue Their Former Clients.

"The authority of federal courts to disqualify attorneys derives from their inherent power to preserve the integrity of the adversary process." *Hempstead Video, Inc. v. Inc. Vill. of Valley Stream*, 409 F.3d 127, 132 (2d Cir. 2005) (citation omitted). "In deciding whether to disqualify an attorney, a district court must balance a client's right freely to choose his counsel against the need to maintain the highest standards of the profession." *GSI Commerce Solutions, Inc. v. BabyCenter,*

[10] In the May 22, 2014 Reply Brief supporting Sanctions, FN 1 noted "In fact, this would not be the first time Mr. Dollinger has been sanctioned for making reckless and frivolous misrepresentations of fact and law to a court. *See, e.g., Divot Golf Corp. v. Citizens Bank*, No. 02-CV-10654-PBS, 2003 U.S. Dist. LEXIS 187, at *4 (D. Mass. Jan. 8, 2003) ("The Court holds that sanctions are appropriate, because plaintiffs' counsel Douglas R. Dollinger failed his Rule 11 duty to make a reasonable inquiry into the facts and law before filing the Amended Complaint, despite being put on notice by defendants of serious factual and legal deficiencies in the original Complaint."). While recklessness, frivolity and bad faith were not required for these Rule 11 sanctions against Mr. Dollinger, the court's comments indicate they were present; Dollinger's "misstatements [were] even more egregious … given that defendants had already shown them to be false." *Id.* at *7.

L.L.C., 618 F.3d 204, 209 (2d Cir. 2010) (citation omitted). Federal courts adjudicating questions involving the ethics of New York attorneys look to the New York Rules of Professional Conduct ("RPC") for guidance. *Hempstead Video, Inc.*, 409 F.3d at 133 (relying on a previous version of the New York attorney professional conduct rules); *Silver Chrysler Plymouth, Inc.,* 518 F.2d at 753 ("A starting point is of necessity the Code of Professional Responsibility") and Second Circuit precedence. *Skidmore v. Warburg Dillon Read LLC,* No. 99 Civ. 10525(NRB), 2001 WL 504876, at *2 (S.D.N.Y. May 11, 2001). The Dollinger Office has no right to proceed as counsel here when RPC 1.9 squarely addresses his misconduct.

Under New York's RPC 1.9(a), "a lawyer who has formerly represented a client in a matter **shall not** thereafter represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client gives informed consent in writing." The Second Circuit has determined that the "substantial relationship" test is met when "the relationship between issues in the prior and present case is patently clear . . . [and when] the issues involved have been 'identical' or 'essentially the same.'" *Monzon v. United States*, 2013 U.S. Dist. LEXIS 128129, at page 8 (SDNY, 2013) (quoting *Gov't of India v. Cook Indus., Inc.,* 569 F.2d 737, 739-40 (2d Cir. 1978). All of the requirements of RPC 1.9(a) are met here. Dollinger formerly represented Ms. Lask to secure a release from Franzone arising out of her attorney-client relationship with Ms. Lask. Dollinger falsely denies he was Ms. Lask's counsel so he can now represent Franzone to sue Ms. Lask based on that very past relationship related to that very release. However, at page 4, the fifth paragraph of the sealed letter that he attempted to upload here as Dkt. 9-3**,** he admits he was Ms. Lask's counsel to secure a release from Franzone for Ms. Lask then falsely claims he was waiting for Franzone to

obtain her own counsel[11]. And in this case he admits again his representation of Ms. Lask by claiming he will try to put up a screen between him and his associate if this court directs. It is indisputable that Dollinger was Ms. Lask's counsel as he obtained the first release for her from Ms. Narbone, whom he now implicates in this sham Complaint against Ms. Lask, and he admits he was also to obtain a release for her from Franzone**.** As both representations arise out of and hinge on events that occurred during the attorney-client relationship, there is no argument that these matters are identical, essentially the same, and substantially related.

Further, a court should not require proof that an attorney actually had access to or received privileged information while representing the client in a prior case. *Govt. of India v. Cook*, 569 F.2d at 740. This is not a requirement under section (a) of RPC 1.9[12] because it is inferred that when an attorney directly represents a party on a matter then they are privy to and cannot help but learn information protected by RPC 1.6. Nonetheless, it is a fact beyond an inference that Dollinger had access to and did learn from Ms. Lask during the underlying representation her secrets and confidences.

Despite his denials and vacant attempt to claim that after the fact he will put up some sort of screen between him and the only other attorney at the Dollinger Office, that does not work. There is a historical prohibition against a lawyer suing their former client because of the expected duty of loyalty, irrespective if confidences were gained. The New York Court of Appeals found thirty five years ago that:

> "The proscription against taking a case against a former client is predicated, however, on more than the possibility of use in the second representation of information confidentially obtained from the former client in the first

[11] Ms. Lask's Declaration filed herewith proves by the e-mails attached that Dollinger represented Ms. Lask regarding her issues with Franzone and Narbone and he was not waiting for Franzone to get counsel. He was contacting Franzone on behalf of Ms. Lask to obtain the release.

[12] Subsection (b) of the rule applies to situations where the conflict is with a client of an attorney's former firm. In those situations, a movant must establish that the attorney learned information protected by Rule 1.6 that is material to the matter.

> representation. The limitation arises simply from the fact that the lawyer, or the firm with which he was then associated, represented the former client in matters related to the subject matter of the second representation. Accordingly, it is no answer that the lawyer did not in fact obtain any confidential information in connection with the first employment, or even that it was only other members of his firm who rendered the services to the client. Irrespective of any actual detriment, the first client is entitled to freedom from apprehension and to certainty that his interests will not be prejudiced in consequence of representation of the opposing litigant by the client's former attorney. The standards of the profession exist for the protection and assurance of the clients and are demanding; an attorney must avoid not only the fact, but even the appearance, of representing conflicting interests. With rare and conditional exceptions, the lawyer may not place himself in a position where a conflicting interest may, even inadvertently, affect, or give the appearance of affecting, the obligations of the professional relationship."

Cardinale v. Golinello, 372 N.E.2d 26, 30 (N.Y.1977) (citation omitted); *see also Tekni–Plex,* 674 N.E.2d at 667 (citing *Cardinale* for this proposition). Ms. Lask, like any client, deserves the right to an attorney who will respect the duties of confidentiality and loyalty which is personal to the client. *In re von Bulow,* 828 F.2d 94, 100 (2d Cir.1987) ("the [attorney-client] privilege belongs solely to the client and may only be waived by him. An attorney may not waive the privilege without his client's consent."); *Republic Gear Co. v. Borg–Warner Corp.,* 381 F.2d 551, 556 (2d Cir.1967) ("the privilege is the client's, not the attorney's"). Ms. Lask does not waive her right to confidentiality and the Dollinger Office cannot waive it for her.

B. RPC 1.10 Imputes Dollinger's Disqualification to His Three Person Operation of Him, Mr. San Jose and Franzone.

An attorney's conflict of interest with a former client is imputed to other attorneys in his or her firm. *See* RPC 1.10. While in some circumstances a firm can implement screening procedures to screen out the conflicted attorney from involvement with the conflicted case, that would be impossible here. The Dollinger Office has two attorneys, and the Plaintiff, herself, is the firm's "Director of Legal Affairs." In this three-person outfit, it is entirely implausible to think that Dollinger's conflict could be effectively screened. Dollinger, himself, has admitted that screening has not taken place. (**Dkt. 9**-states that screening procedures *would* be implemented if desired by

the court)*; Pierce & Weiss, LLP v. Subrogation Ptnrs. LLC*, 701 F. Supp. 2d 245, 257 (EDNY, 2010) (denying a motion for *pro hac vice* admission to attorney where partner at a three-person firm had a conflict and did not implement screening procedures). Also, Mr. San Jose is listed on the Dollinger letterhead as a partner, associate or member, but certainly not in a lesser designation as "of counsel". He cannot be separated from Dollinger. He attends conferences regarding the Dollinger Office cases, including recently travelling with Dollinger to the June 6, 2014 sanctions hearing in San Francisco as the Dollinger Office attorney before Northern District of California Federal Judge Vince Chhabria. He contacts other counsel as the Dollinger Office attorney in that two lawyer office. His *pro hac vice* filing here confirms he is the Dollinger Office attorney as he lists that office as his office (**Dkt. 7,7-2**)

C. Disqualification and Denial of the *Pro Hac Vice* is Mandated as the Dollinger Office's Sham Complaint and Established History of Deceiving the Courts Impugns the Integrity of the Court and Public Confidence in the Profession

Consistent with the Court's duty to preserve the integrity of the adversary process and maintain the highest standards of the profession, the Court should not grant a *pro hac vice* motion that will only further Dollinger's fraudulent and frivolous filing. Ultimately, the issue is one of preserving the public's trust in the "scrupulous administration of justice and in the integrity of the bar." *Hull v. Celanese Corp.,* 513 F.2d 568, 572 (2d Cir.1975). For that reason, even any doubt must be resolved in favor of disqualification. *Id* . at 571.

Beyond the irreconcilable conflict the Dollinger Office has with Ms. Lask, the Dollinger Office is simply unworthy to proceed considering their patent deceits in this court, similar to what it does in other courts. That office, made up of two attorneys, Dollinger and a foreign attorney San Jose, impugns the integrity of this court and the profession in so many ways. This Court cannot be persuaded by the false complaint's excessive repetition of what is alleged to be factual allegations, but in reality are only conclusory. Furthermore, the inclusion of *ad hominem* attacks, inappropriate

characterizations and disparaging remarks made against Ms. Lask and unrelated parties, and the excursions into non-relevant and immaterial matters, does not establish one judicially recognized cognizable claim. It is an illegitimate filing for an illegitimate purpose, the same as every other false filing the Dollinger Office makes in various venues. Those are now the subject of sanctions hearings in other courts.

This fraudulent complaint is rife with deceits violating *Amalfitano v. Rosenberg*, 428 F.Supp.2d 196 (S.D.N.Y. 2006), *affd.* 572 F. 3d 91(2d Cir. 2009). *Amalfitano* found that just one deception upon the court mandated liability under Judiciary Law §487. Here, the complaint conceals the Retainer with Lask, which specifically excludes filing an action against Ms. Narbone yet the complaint is based on legal malpractice for not filing an action against Ms. Narbone. This Retainer is possessed by the Dollinger Office, alleged to have been attached to the Complaint, but was not. It is no coincidence that this Retainer was omiited from the complaint because it completely eradicates the complaint, where the Dollinger Office alleges legal malpractice for failing to file something that Ms. Lask was not retained to file.

The Dollinger Office, with Franzone as the "Director", also conceals from this court that they filed two duplicate actions in State and Federal court for the exact civil-rights action they deny was ever filed in the Complaint.. There cannot be legal malpractice for failure to file a complaint that is actually filed not once but twice in State and Federal Courts and currently active. In addition to those deceptions, the complaint is time barred and rife with delusional causes of action that do not exist. Despite the fact that no reasonable attorney would file such a sham, the Dollinger Office insists on continuing to deceive this court by insisting a foreign attorney in that office, Mr. San Jose, *pro hac vice* in to promote the fraud.

D. Disqualification is Warranted Because Dollinger Violated Disciplinary Rules

Local Civil Rule 1.5(b)(5) binds attorneys appearing before this court to the New York

Rules of Professional Conduct ("RPC"). *See* Local Civ. R. 1.5(b)(5). The New York State Rules of Professional Conduct state that a "lawyer or law firm shall not ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation; ... engage in conduct that is prejudicial to the administration of justice."_22 NY.C.R.R. § 1200.00 R. 8.4(c)-(d). The record demonstrates Dollinger's and San Jose's utter disregard for the judicial process and the law by their filing a patently fraudulent complaint to harass Ms. Lask and, as explained above, deceiving this court on numerous occasions that violates the RPCs, including using this false complaint to defy a federal court order as the complaint repeats what was previously ordered sealed. To compound the defiance, the Dollinger Office used the complaint as an excuse to actually upload the sealed document. Furthermore, he has deliberately made material misrepresentations of fact to this court, the same as he does in every other forum. The deceits engaged in by the Dollinger Office in this brief time that the case has been active is deplorable, violates ethics and mandates disqualification. *Northwestern Nat. Ins. Co. v. Insco, Ltd*., Not Reported in F.Supp.2d, 2011 WL 4552997 S.D.N.Y.,2011 and *Northwestern Nat. Ins. Co. v. Insco, Ltd*. Not Reported in F.Supp.2d, 2011 WL 5516973 (S.D.N.Y. 2011) (upholding disqualification for violating disciplinary rules).

E. Disqualification is Mandated Because Dollinger is an Adverse Witness

Dollinger will be called to testify regarding the history between him and Ms. Lask as her counsel against Franzone and then his switching sides becoming Franzone's counsel to threaten and harass Ms. Lask and other parties. His testimony will contradict or undermine his client's Franzone complaint or testimony. *Lamborn v. Dittmer,* 873 F.2d 522, 531 (2d Cir.1989) (see **Lask Cert**.). The "Attorney Witness Rule" prohibits testimony that is both necessary and substantially likely to be prejudicial to the attorney's client. *A.V. by Versace, Inc. v. Gianni Versace, S.p.A.,*_160 F.Supp.2d 657, 664 (S.D.N.Y.2001); *Paramount Commc'ns, Inc. v. Donaghy,* 858 F.Supp. 391, 394 (S.D.N.Y.1994). Dollinger's testimony will be prejudicial as "sufficiently adverse to the factual

assertions or account of events offered on behalf of the client, such that the client might have an interest in ... discrediting that testimony." *Donaghy,* 858 F.Supp. at 395. Dollinger will have to testify against his client Franzone regarding the patently fraudulent complaint they filed here fictionalizing facts and causes of action that do not exist. Most disturbing, he will have to testify as to why he and Franzone concealed the Retainer in their possession and concealed the fact that they already filed two duplicate actions against thirty other persons while they allege here that never occurred to falsely accuse Ms. Lask of legal malpractice. Those facts alone patently refute this false complaint filed by Dollinger in collusion with Franzone. His misconduct puts this court in the same position he has recently placed two other Federal Courts wherein his false filings will as well force this court to have Dollinger testify regarding his deceits and he will then blame his client Franzone while she blames him, leading to a sanctions hearing (see *In re Charbel Elias,* 2014 WL 1248042 (EDNY, 2014) explained hereinabove and see **Grossi Cert. Exh. F**).

IV. CONCLUSION

Ms. Lask respectfully requests that this court grant her motion to disqualify the Dollinger Office and deny the *pro hac vice* at this early stage of the proceeding for the reasons stated herein. It is the integrity of this court's process and the confidence of the public in the court system that indisputably mandates disqualifying the Dollinger Office.

Dated: June 11, 2014

Law Office of Edward R. Grossi, LLC.

/s Edward R. Grossi

Edward r. Grossi, Esq.
Counsel for Defendant
244 Fifth Avenue, Suite E-284
New York, New York 1001
917-410-7273