

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

BRIANNA BOE, et al., 2024 MAR -8 1:00

*Plaintiffs,*

and

UNITED STATES OF AMERICA,

*Plaintiff-Intervenor,*

v.

STEVE MARSHALL, et al.,

*Defendants.*

TREY GRANGER, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

Case No. 2:22-CV-184-LCB

**\*\*Filed Under Seal\*\***

**MOTION FOR LEAVE TO SUBMIT ADDITIONAL EVIDENCE**

Respondents Melody H. Eagan and Jeffrey P. Doss (“these Respondents”), seek leave to present testimony on the following topics in response to the Court’s Order to Show Cause (Doc. 406):

1. These Respondents propose to file additional declarations outlining their records as attorneys since their admission to the Bar and the impact that the pendency of the threat of sanctions since May 2022 has had on them personally and professionally. In addition, absent further instruction from the Court, each proposes to submit additional testimony regarding the three subjects outlined in Respondents’ Motion to Receive Clarification of Order and to Show Cause and Notice of Proposed Testimony (*filed contemporaneously herewith under seal*).

2. These Respondents also propose to submit the testimony by declaration or other means, at the Court's direction, of Gregory P. Joseph. Mr. Joseph, whose biography is attached, is the author of *SANCTIONS: THE FEDERAL LAW OF LITIGATION ABUSE* (6<sup>th</sup> edition 2020; Supp. 2024), a member of the Board of Editors of *MOORE'S FEDERAL PRACTICE* (1994-present), and an active federal litigator for almost 50 years. Mr. Joseph is expected to provide opinion testimony as an expert witness, based on his years of practice and particularized knowledge of the law of sanctions and federal procedure, concerning (i) the dilemma reasonable lawyers like Ms. Eagan and Mr. Doss face given their duty of zealous representation in the particular procedural setting in which Ms. Eagan and Mr. Doss found themselves; (ii) whether, in light of the standards governing the sanctions issue, the attorneys in the *Ladinsky* matter acted inappropriately under the circumstances in dismissing the *Ladinsky* case and filing the *Eknes-Tucker* case two business days later; and (iii) the impact that the process to which these Respondents have already been subjected has had on them and their firm and how that should be taken into account in deciding whether sanctions should be imposed.

These Respondents reserve the right to amend this motion in the event the Court provides additional information about what conduct these Respondents allegedly committed that the Court is considering as the basis for any sanction, as requested in Respondents' Motion to Receive Clarification of Order to Show Cause.

Respectfully Submitted,



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One of the Attorneys for Melody H. Eagan  
and Jeffrey P. Doss

**OF COUNSEL:**

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M. Christian King

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Harlan I. Prater, IV

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of March, 2024, the foregoing was filed under seal pursuant to the Court's Order (Doc. 419) with the Clerk of Court for the United States District Court for the Middle District of Alabama and a true and correct copy was served on all counsel of record *via* electronic mail.



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OF COUNSEL

**GREGORY P. JOSEPH**

JOSEPH HAGE AARONSON LLC  
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Curriculum Vitae  
April 2020

**PROFESSIONAL EMPLOYMENT**

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(Formerly, Gregory P. Joseph Law Offices LLC)  
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[www.jha.com](http://www.jha.com)

Managing Member  
March 17, 2001 - present

Fried, Frank, Harris, Shriver & Jacobson  
One New York Plaza  
New York, New York 10004  
Chair, Litigation Department, New York  
Partner, 1982-2001  
Associate, 1979-1982

Office of the United States Special Prosecutor  
Investigation of U.S. Secretary of Labor Raymond Donovan  
New York and Washington, D.C.  
Assistant United States Special Prosecutor, 1981-1982, 1985

James R. Schwebel & Associates P.A. (now Schwebel, Goetz & Sieben P.A.)  
5120 IDS Center  
Minneapolis, Minnesota 55402  
Trial lawyer, 1975-1978

**EDUCATION**

University of Minnesota  
College of Liberal Arts (1969-72)  
B.A. summa cum laude; Phi Beta Kappa  
  
Law School (1972-75)  
J.D. cum laude; Law Review

**PROFESSIONAL ACTIVITIES**

**President, American College of Trial Lawyers (2010-11)**

Executive Committee (2007-12)

Board of Regents (since 2002, with a six month hiatus)

Formerly:

Chair, Federal Rules of Civil Procedure Committee

Chair, Task Force on the Vanishing Trial

Chair, Downstate New York Committee

**Chair, American Bar Association Section of Litigation (1997-98)**

Litigation Section Council (1992-2001)

Principal Drafter, ABA CIVIL TRIAL PRACTICE STANDARDS (1998)

Principal Drafter, STANDARDS AND GUIDELINES FOR PRACTICE UNDER RULE 11 OF  
THE FEDERAL RULES OF CIVIL PROCEDURE, 121 F.R.D. 101 (1988)

Chair, Trial Evidence Committee (1985-88)

ABA Advisor to National Conference of Commissioners on Uniform State Laws,  
Uniform Rules of Evidence Drafting Committee (1985-87)

Liaison to ABA Coordinating Committee on RICO (1992-95)

Editorial Board Member, HUMAN RIGHTS Magazine (1987-1993)

Fellow, American Bar Foundation

**Chair, U.S. Supreme Court Historical Society (2018-)**

President (2011-17)

**Member, United States Judicial Conference Advisory Committee on the Federal  
Rules of Evidence (1993-99)**

**American Law Institute**

Council (2016-present)

Member (1987-present)

**Association of the Bar of the City of New York**

Executive Committee (1999-2003)

Chair, Committee on Professional Responsibility (1993-96)

**Co-Chair, Third Circuit Task Force on Selection of Class Counsel (2001-02)**

**Chair, N.Y. State Courts' Committee of Lawyers to Enhance the Jury Process  
(1998-99)**

**New York State Bar Association**

Executive Committee, Section of Commercial & Federal Litigation (1989-94)

Chair, Trial Evidence Committee (1989-94)

Fellow, New York State Bar Foundation

## BOOKS

Author, **SANCTIONS: THE FEDERAL LAW OF LITIGATION ABUSE** (6th ed. 2020, Supp. 2024))

Author, **CIVIL RICO: A DEFINITIVE GUIDE** (5th ed. 2018)

Author, **MODERN VISUAL EVIDENCE** (1984; Supp. 2018)

Board of Editors, **MOORE'S FEDERAL PRACTICE** (3d ed.) (1994 - present)

Co-Author and Editor, **EVIDENCE IN AMERICA: THE FEDERAL RULES IN THE STATES** (4 vols. 1987; Supp. 1994)

General Editor/Reporter, **EMERGING PROBLEMS UNDER THE FEDERAL RULES OF EVIDENCE** (1st ed. 1983; 2d ed. 1991)

Co-Editor and contributor, **SANCTIONS: RULE 11 AND OTHER POWERS** (1st ed. 1986; 2d ed. 1988)

Co-Editor, **PREPARING FOR AND TRYING THE CIVIL LAWSUIT** (1st ed. 1987)

## ARTICLES

*Foundations of U.S. Federalism* (with Hon. Lee H. Rosenthal), 101 JUDICATURE 38 (2017)

*Authenticating Digital Evidence* (with Hon. Paul W. Grimm and Prof. Daniel J. Capra), 69 BAYLOR L. REV. 1 (2017)

*2016-17 Supreme Court Civil Procedure Decisions*, 63 PRACTICAL LAWYER, No. 5 at 33 (October 2017)

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*Authentication: What Every Judge and Lawyer Needs to Know About Electronic Evidence*, 99 JUDICATURE No. 2 at 48 (Autumn 2015)

*Social Media and Internet Evidence*, LITIGATION (Summer 2015, vol. 41, issue 4)

*Judicial Notice of Internet Evidence*, U.S. LAW WEEK, Vol. 82, No. 34 (March 11, 2014)

- The Temptation to Depose Every Expert*, 40 LITIGATION, No. 2 at 35 (Winter 2014)
- Major Changes in Federal Subpoena Practice*, 82 U.S.L.W. 584 (Oct. 22, 2013)
- We Need to Do Something about Arbitration*, 39 LITIGATION, No. 3 at 7 (Summer 2013)
- Practical Issues Arising in U.S., Foreign Arbitration*, NATIONAL LAW JOURNAL, May 6, 2013
- Notable Circuit Splits on Federal Procedural Issues*, NATIONAL LAW JOURNAL, November 26, 2012
- An Instinct for the Capillary*, 38 LITIGATION No. 4, at 9 (Summer/Fall 2012)
- Experts, Privilege and Civil Procedure*, NATIONAL LAW JOURNAL, July 2, 2012, at 14
- Internet & Email Evidence (Part 2)*, PRACTICAL LITIGATOR, April 2012, at 17
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- Recent Developments in Rulings on Sanctions*, NATIONAL LAW JOURNAL, February 6, 2012, at 12
- Sanctions: The Lawsuit Abuse Reduction Act of 2011*, 38 LITIGATION No. 1 at 8 (2011)
- Developments in Federal Arbitration Law So Far This Year*, NATIONAL LAW JOURNAL, Sept. 5, 2011, at 13
- Supreme Court on Civil Practice 2011*, 80 U.S.L.W. 250 (Aug. 23, 2011)
- Developments in the Federal Law of Sanctions*, 79 U.S.L.W. 2347 (April 12, 2011), reprinted in 27 LAWYERS' MANUAL ON PROFESSIONAL CONDUCT, No. 9 at 1 (April 27, 2011)
- The Lawsuit Abuse Reduction Act of 2011*, NATIONAL LAW JOURNAL, April 11, 2011, at 13
- Privilege and Work-Product Rulings in 2010*, NATIONAL LAW JOURNAL, Nov. 8, 2010, at 13
- 2010 Expert Witness Rule Amendments*, PRACTICAL LITIGATOR, November 2010, at 51
- Recent Developments in Federal Practice*, NATIONAL LAW JOURNAL, June 21, 2010, at 20.
- Key Federal Practice Developments in 2009*, NATIONAL LAW JOURNAL, Jan. 18, 2010 at 16.

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*Supreme Court on Federal Practice 2009*, 77 U.S. LAW WEEK 2787 (June 30, 2009)

*Circuit Splits*, NATIONAL LAW JOURNAL, April 13, 2009, at 18

*RICO Developments 2009*, NATIONAL LAW JOURNAL, March 2, 2009, at 17

*Internet and Email Evidence and A Simplified Approach to Computer-Generated Evidence and Animations*, reprinted in part in Shira A. Scheindlin, Daniel J. Capra & The Sedona Conference, ELECTRONIC DISCOVERY AND DIGITAL EVIDENCE (West 2009).

*Impact of Rule 502(d)*, NATIONAL LAW JOURNAL, Nov. 17, 2008, at 13

*Expert Witness Rules*, NATIONAL LAW JOURNAL, Sept. 8, 2008, at 13

*Federal Litigation: Where Did It Go Off Track?* 34 LITIGATION No. 4 at 5 (2008)

*Arbitration 2008*, NATIONAL LAW JOURNAL, June 30, 2008

*Privilege Developments II*, NATIONAL LAW JOURNAL, April 21, 2008, at 14

*Privilege Developments I*, NATIONAL LAW JOURNAL, Feb. 11, 2008, at 15.

*RICO Developments 2007*, NATIONAL LAW JOURNAL, Nov. 19, 2007, at 13, reprinted in 46 RICO LAW REPORTER 778 (Dec. 2007).

*Pleading Requirements*, NATIONAL LAW JOURNAL, Sept. 3, 2007, at 13.

*Spoliation: Truth or Consequences*, PRACTICAL LITIGATOR, vol. 18, no. 5, at 13 (Sept. 2007).

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- Post-Settlement Sanctions*, NATIONAL LAW JOURNAL, Oct. 24, 2005, at 16
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- A Simplified Approach to Computer-Generated Evidence and Animations*, 22 COMPUTER & INTERNET LAWYER No. 6 at 17 (June 2005)
- Proposed Electronic Discovery Amendments to the Federal Rules of Civil Procedure*, 6 FIFTH CIRCUIT CIVIL NEWS No. 1 at 1 (April 2005)
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- American College of Trial Lawyers Ad Hoc Committee on the Future of the Civil Trial, *The “Vanishing Trial.” The College, The Profession, The Civil Justice System*, 226 F.R.D. 414 (April 2005) (principal author)
- The Class Action Fairness Act of 2005: A Preliminary Analysis*, 20 BNA TOXICS LAW RPTR. 264 (Mar. 10, 2005)
- Sanctions 2005*, NATIONAL LAW JOURNAL, Feb. 14, 2005, at 10
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*A Simplified Approach to Computer-Generated Evidence and Animations*, 43 NEW YORK LAW SCHOOL LAW REVIEW 875 (1999/2000).

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*Civil Rules Amendments II*, NATIONAL LAW JOURNAL, Apr. 24, 2000, A17.

*Civil Rules Amendments*, NATIONAL LAW JOURNAL, Mar. 13, 2000, at A19.

*1999 Sanctions Update II*, NATIONAL LAW JOURNAL, Jan. 31, 2000, at A16.

*Lawyers and Jurors*, NEW YORK LAW JOURNAL, Jan. 13, 2000, at 2.

*1999 Sanctions Update*, NATIONAL LAW JOURNAL, Dec. 13, 1999, at A18.

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*RICO "Conduct,"* NATIONAL LAW JOURNAL, July 26, 1999, at B11.

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*Ethical Issues*, NATIONAL LAW JOURNAL, Dec. 14, 1998, at B17.

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*Sanctions Update*, CORPORATE COUNSEL, Oct. 1998, at 1.

- ABA Trial Standards*, NATIONAL LAW JOURNAL, Sept. 14, 1998, at B8.
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- The Jury: The Ideal and the Reality of an American Institution*, 80 ABA JOURNAL 83 (Sept. 1994) (book review).
- A New Look at Removal, Jurisdiction*, NATIONAL LAW JOURNAL, Aug. 1, 1994, at B9.
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- In Court, One Imaging System Is Worth a Thousand Documents*, NEW YORK LAW JOURNAL, July 19, 1993 at S-4.
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Second Circuit Judicial Conference Proceedings, *The Lawyer at Risk*, 136 F.R.D. 243 (July 1991) (transcript).
- Redrafting Rule 11*, NATIONAL LAW JOURNAL, Oct. 1, 1990 at 13.
- Supreme Court Shapes Rule 11*, 26 TRIAL 65 (Sept. 1990).
- Keeping Child Witnesses Out of Court*, 16 HUMAN RIGHTS 22 (Summer 1989).
- The Law of Sanctions*, 24 TRIAL 40 (May 1988).
- Rule 11 Is Only the Beginning*, 74 ABA JOURNAL 62 (May 1, 1988).
- The Trouble with Rule 11*, 73 ABA JOURNAL 87 (Aug. 1, 1987)
- Jury Trials: The Psychology of Winning Strategy*, 73 ABA JOURNAL 104 (Feb. 1, 1987) (book review).
- Federal Rules of Evidence Manual*, 72 ABA JOURNAL 68 (June 1, 1986) (book review).
- Demonstrative Videotape Evidence*, 22 TRIAL 60 (June 1986).
- Social Science Research Methods for Litigation*, 71 ABA JOURNAL 92 (Oct. 1985) (book review).
- What Makes Juries Listen*, 71 ABA JOURNAL 90 (March 1985) (book review).
- Videotape Evidence in the Courts—1985*, 26 SOUTH TEXAS LAW JOURNAL 453 (1985).
- Videotapes as Evidence*, NATIONAL LAW JOURNAL, Sept. 6, 1982 at 15.
- Speedy Trial Rights in Application*, 48 FORDHAM LAW REVIEW 611 (1980).
- Less Than “Certain” Medical Testimony*, 14 TRIAL 50 (Jan. 1978), reprinted in 25 MEDICAL TRIAL TECHNIQUE QUARTERLY 10 (1978).

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- U.S. Tax Court Judicial Conference
- U.S. Court of Claims Judicial Conference
- Standing Committee on Rules of Practice and Procedure of the U.S. Judicial Conference
- Advisory Committee on the Federal Rule of Civil Procedure of the U.S. Judicial Conference
- Judges of the United States District Court for the Southern District of New York
- Judges of the United States District Court for the Eastern District of New York
- American Arbitration Association
- American Association of Law Schools
- American Bar Association
- American College of Trial Lawyers
- American Law Institute
- American Law Institute-American Bar Association
- Association of the Bar of the City of New York
- Association of the Federal Bar of New Jersey
- Association of Trial Lawyers of America
- Columbia University Law School
- Duke Law School

- Federal Bar Association
- Federal Bar Council
- Federal Judicial Center
- Fordham Law School
- Georgia Institute of Continuing Legal Education
- Georgetown University Law School
- Kentucky Academy of Trial Lawyers
- Law Society of Upper Canada
- Minnesota Institute of Legal Education
- Minnesota Trial Lawyers Association
- National Conference of Bankruptcy Judges
- National Foundation for Judicial Excellence
- National Judicial College
- New York County Lawyers Association
- New York Law School
- New York State Courts
- New York State Bar Association
- New York University Law School, Brennan Center
- Philadelphia Bar Association
- Philadelphia Patent Law Association
- Practising Law Institute
- Renmin University, Beijing
- Shanghai Jiang Tao Law School
- The Advocates' Society

- Union Internationale des Avocats
- University of Houston Law School
- University of Nebraska Law School
- University of Pennsylvania Law School
- University of Virginia Trial Advocacy Institute
- Wayne State University Law School
- West Virginia Defense Trial Lawyers
- Yale Law School

## **RECOGNITION**

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  - BENCHMARK LITIGATION
- ONE OF TOP 30 LITIGATORS IN THE WORLD
  - THE BEST OF THE BEST 2013
- ONE OF TOP 25 LITIGATION LAWYERS
  - THE BEST OF THE BEST 2011
- LAWYER OF THE YEAR—BET-THE-COMPANY LITIGATION—NEW YORK
  - BEST LAWYERS 2011
- ONE OF THE 10 “MOST HIGHLY REGARDED INDIVIDUALS – GLOBAL”
  - WHO’S WHO LEGAL—COMMERCIAL LITIGATION (2009)
- NEW YORK SUPERLAWYERS cover story (2009)

- INTERNATIONAL WHO’S WHO OF COMMERCIAL LITIGATORS (2008)
  - One of the 10 “Most Highly Regarded Individuals” in the world
- INTERNATIONAL WHO’S WHO OF COMMERCIAL LITIGATION LAWYERS (2006)
  - One of the 10 “Most Highly Regarded Individuals—Global”
- THE BEST OF THE U.S. BEST (2009, 2008, 2006)
  - One of the “25 top practitioners in the U.S.” in litigation
- INTERNATIONAL COMMERCIAL LITIGATION Magazine (May 1996)
  - One of the 10 best commercial litigators in the United States
- WHO’S WHO IN THE WORLD
- WHO’S WHO IN AMERICA
- WHO’S WHO IN AMERICAN LAW
- WHO’S WHO IN THE EAST
- William J. Brennan, Jr., Award of the University of Virginia Trial Advocacy Institute
- From the opinion in *Sec. Nat’l Bank v. Jones Day*, 800 F.3d 936, 944 (8th Cir. 2015): “The leading authority on sanctions law”
- From the opinion in *Gregory v. Oliver*, 2002 U.S. Dist. LEXIS 24730 at \*5 & n.1, 2002 WL 31972165 at \*2 & n.1 (N.D. Ill. Dec. 27, 2002) (Shadur, J.):

“One of the *true* experts on federal practice, Gregory Joseph ... is one of this country’s leading litigators (a few years ago he served as chairman of the Section on Litigation of the American Bar Association) and is an extraordinarily prolific author in addition to maintaining an active law practice: Each year he updates his excellent works on SANCTIONS: THE FEDERAL LAW OF LITIGATION ABUSE ... and on MODERN VISUAL EVIDENCE ... and he is a regular contributor to the NATIONAL LAW JOURNAL with his periodic columns on Federal Practice). This Court and Greg were fellow members of the Judicial Conference’s Advisory Committee on Rules of Evidence from the time of its reconstitution by Chief Justice Rehnquist during the early 1990s through the bulk of this Court’s service as chairman of that Committee, which has just been completed on September 30, 2002.”

**BAR ADMISSIONS**

- Minnesota 1975
- New York 1979
- United States Supreme Court 1983
- United States Court of Appeals for the First Circuit
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Fifth Circuit
- United States Court of Appeals for the Sixth Circuit
- United States Court of Appeals for the Seventh Circuit
- United States Court of Appeals for the Eighth Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Eleventh Circuit
- United States Court of Appeals for the District of Columbia Circuit
- United States Court of Appeals for the Federal Circuit
- United States District Courts, including the Southern District of New York, Eastern District of New York, District of Minnesota and others.
- United States Tax Court