

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BEN EZRA, WEINSTEIN AND COMPANY, INC.

Plaintiff,

v.

No. CIV 97-0485LH

AMERICA ONLINE, INC.,

Defendant.

**DEFENDANT'S MOTION FOR RELIEF FROM DEADLINES PENDING
DETERMINATION OF WHETHER ITS NEW LOCAL COUNSEL
IS DISQUALIFIED FROM REPRESENTING DEFENDANT**

Defendant America Online, Inc. ("AOL"), by and through its undersigned attorneys, hereby moves this Court for an Order temporarily staying AOL's obligation to comply with certain litigation deadlines pending a determination by this Court concerning Plaintiff's assertion that AOL's new local counsel in this matter, the law firm of Eaves, Bardacke & Baugh, P.A., has a conflict of interest that bars it from representing AOL in this matter. The deadlines from which AOL seeks relief through this motion are as follows:

- (1) The deadline (currently May 22, 1997) for AOL's response to Plaintiff's Motion to Disqualify Counsel for Defendant, which seeks an order that Defendant's lead counsel, Wilmer, Cutler & Pickering ("WC&P"), and all of Defendant's in-house lawyers are disqualified from representing AOL in this case based on a theory (vigorously disputed by AOL) that AOL's original local counsel in this matter (James W. Browning) had a disqualifying conflict of interest that must also be imputed to all other defense counsel.

(2) The deadline (currently May 28, 1997) for AOL's response to Plaintiff's Motion for Leave to Take Limited Discovery, which seeks an order permitting Plaintiff to take depositions of Mr. Browning and perhaps other counsel for AOL for purposes related to the aforementioned motion to disqualify.

(3) The various deadlines established by this Court's Initial Scheduling Order, including most imminently the deadline of May 20, 1997 for the required meeting of counsel pursuant to Rule 26(f). (This motion contemplates that both AOL's and BEW's obligations to comply with the deadlines set in the Initial Scheduling Order would be temporarily suspended.)

(4) The deadline (currently May 19, 1997) for AOL's answer or other response to the Complaint.

AOL seeks this extraordinary relief because, as set forth in the accompanying memorandum, Plaintiff Ben Ezra, Weinstein and Company, Inc. ("BEW") has taken a series of extraordinary steps to challenge AOL's right to be represented by counsel of its choice in this litigation. AOL is convinced that BEW's disqualification efforts are meritless and represent abusive tactics designed to undermine AOL's ability to defend itself in this case. The purpose of this motion is to free AOL from the unfair dilemma of having to choose between, on the one hand, replacing its local counsel for a second time in the face of what it believes to be groundless allegations of conflict of interest, and, on the other hand, running a risk that BEW will argue that by failing immediately to discharge its local counsel, AOL's lead counsel and in-house legal staff should be disqualified themselves.

In support of this motion, AOL submits the accompanying memorandum, which includes a number of exhibits reflecting BEW's actions in seeking to deprive AOL of its choice of counsel in this case.

Although BEW has itself served AOL with a motion seeking indefinite postponement of the dates specified in the Court's initial scheduling order and has consented to postponement of AOL's time to answer or otherwise respond to the complaint, counsel for BEW has declined to consent to the balance of the relief sought by this motion.

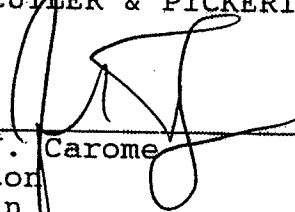
Respectfully submitted,

WILMER, CUTLER & PICKERING

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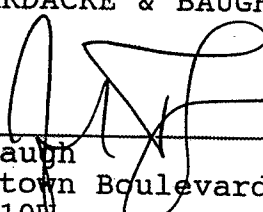
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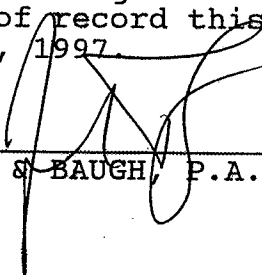


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May 16, 1997

Attorneys for Defendant America
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We hereby certify that a copy of
the foregoing pleading was mailed
to all counsel of record this
16th day of May, 1997.



EAVES, BARDACKE & BAUGH, P.A.

5/16/97 (Fri) 12:46pm
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