



conceivability that Markham may at some point in the future have some remembrance that triggers recollection of some fact which is still among that small amount of facts about the 1988 LaRouche case not yet made public over the past 22 years, not known to defendants, related to the issues in this case, and usable to “the material disadvantage of” Lyndon LaRouche.

The election of this Court to disqualify Markham surely protected against that eventuality, since it assured that those four conditions would never all come to pass in combination. Yet the ethics provision is not written with the invitation to apply what we submit is an overbroad use of “appearance of impropriety” prophylactic when a Court is presented with undemonstrated, potential, but unlikely, future remembrance of things now 22 years in the past that may, if someday remembered by Markham, not be known to defendants *and* be materially disadvantageous to them. That sweeps too broad.

Nor is this a case of Markham switching sides—it is not a situation in which, having once been trusted by a client with confidential details that that client thought would always be protected from adverse use or disclosure, Markham now turns on that very client. There is, in that situation, a manifest appearance of impropriety against which the cases (and these were the ones cited to this Court by defendants) protect with a bright-line prohibition because of the appearance. The present-tense wording of the ethics provision involved in Kronberg’s case does not admit of that sweeping construction.

Nor, we submit, is it facially troubling that, having prosecuted LaRouche, a lawyer 22 years later represents someone against him. This is different from, indeed, the opposite of, switching sides. The appearance of impropriety is not as easily implicated, and in any event should not be as sweeping in this speculative circumstance, particularly when it creates such

hardship to plaintiff Kronberg as is noted in this Court's opinion, and upon which we elaborate in her Declaration and Brief accompanying this motion.

## **II. Certification for Interlocutory Appeal**

In the alternative, pursuant to Title 28 U.S.C. § 1292(b) plaintiff Kronberg seeks a certification allowing an interlocutory appeal of the disqualification order, and staying further proceedings in this Court until the Court of Appeals has ruled on the interlocutory appeal.

The certification herein sought is in the interests of justice and fairness and involves a controlling question of law with respect to which there is a substantial ground for difference of opinion—and that immediate appeal may materially advance the ultimate termination of this litigation.

The hardship imposed upon plaintiff by this order justifies the stay pending any interlocutory appeal, if this Court allows one. Plaintiff's situation is worse than the normal hardship accompanying the loss of counsel. She now finds herself without lead counsel, has had much difficulty obtaining one despite attempts (she shows in her declaration how difficult it was to find counsel to begin with, and thus how difficult it will be to proceed to locate one now). Because of the unique circumstances of this case, she finds arrayed against her a team of quite capable lawyers including the lead counsel for Lyndon LaRouche in the Boston and Alexandria cases, who was also advising counsel in the New York prosecutions in which she was a defendant. The defense team also includes defendant Barbara Boyd, who was a paralegal in all three of those cases (Boston, Alexandria, and New York) and who, unlike plaintiff Kronberg or attorney Markham, has continuing access to many documents generated by those 22-year-old case—access that Kronberg does not have, including to Molly Kronberg's Federal grand jury testimony.

This motion is based upon the accompanying Brief, the Declaration of Molly Kronberg, and the prior pleadings and proceedings in this case.

Respectfully submitted,

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By Counsel

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### **CERTIFICATE OF SERVICE**

I hereby certify that on April 19, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing (NEF) to the following:

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