

Firm, Lawyer Jockey Over BAR/BRI Class

By Rebecca Beyer
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LOS ANGELES — Attorneys continue to jockey for position to represent a class of 300,000 BAR/BRI bar-review-course takers weeks after the former lead counsel was fired from his firm.

Eliot G. Disner, formerly of McGuireWoods in Century City, has led the charge against West Publishing's BAR/BRI in a pair of class actions that claim the bar-review provider monopolized the market in a deal with Kaplan. *Rodriguez v. West Publishing Corp.*, CV05-3222 (C.D. Cal., filed April 29, 2005).

Last week, Disner filed an application to act as co-counsel in the case for three class representatives who, like Disner, are not satisfied with the \$36 million settlement with BAR/BRI. The class members have no objection to the \$13 million settlement with Kaplan.

McGuireWoods filed a brief opposing Disner's ex parte application, and Disner has replied — though ex parte rules do not call for a reply.

"The filing ... is admittedly unusual," Disner wrote in his reply, filed Thursday. "Therefore, this brief is conditionally filed, [that is], subject to this court's striking it, if it so chooses. If this should occur, counsel apologizes to the court here for the neurosis that suggested to him its importance."

Richmond, Va.-based attorney and firm spokesman William Allcott said McGuireWoods declines comment on the filings.

"There's three things I'm after here," Disner said Thursday. "One is to have a right to talk on the record. Second, [the firm] is shutting me out of documents; I need documents when I stand up for my three clients. And the last thing: I want to be appointed co-lead counsel."

Disner said he represents three class representatives who oppose the settlement: Lisa Gintz, Loredana Nesci and Ryan Rodriguez.

On May 17, Nesci filed a brief Disner had written opposing the settlement, after the firm forbade Disner from filing it.

On May 23, McGuireWoods' Richmond-based managing partner, William J. Strickland, hand-delivered a letter to Disner, informing him that the firm was terminating his contract because, the letter said, his "activities with respect to the BAR/BRI case have caused substantial damage to McGuireWoods and its reputation."

Disner has said the firm was referring to his objections to the settlement, filed on his behalf by Nesci.

On May 31, Disner filed an ex parte application to speak on the record without risk of liability from McGuireWoods, to access records held by McGuireWoods and to be designated co-lead counsel.

Disner argues that McGuireWoods cannot best represent the interests of the whole class because the whole class does not support the settlement for which it is seeking approval. McGuireWoods filed a motion to withdraw as class counsel for Gintz, Nesci and Rodriguez, but U.S. District Judge Manuel L. Real denied that motion.

In his brief opposing Disner's position as co-counsel, McGuireWoods Century City partner Sidney Kanazawa wrote that Disner "now seeks to 'speak freely' against the proposed settlement on behalf of opposing plaintiffs who have not substituted Mr. Disner as their counsel of record."

Disner participated in the mediations and agreed to the settlement's terms, Kanazawa wrote.

But Disner said his request is not for substitution of attorney, which requires court approval, but for association of counsel, which requires only client approval. He added that he was careful not to approve the settlement, so as not to undermine the interests of opposing class members.

Disner has said that if the case against BAR/BRI went to trial, the class could recover \$400 million, plus the injunctive breakup of the bar-review provider.

The \$49 million settlement with BAR/BRI and Kaplan has received Real's preliminary approval. A final approval hearing is scheduled for June 18.

Disner, now of the Disner Law Corp., will get a chance to argue his case in open court. On Monday, Real set a hearing for Thursday on Disner's application to act as co-lead counsel.