

THE PEOPLE OF THE STATE OF NEW YORK

**CLAYTON MOTION
FOR DISMISSAL IN THE
INTEREST OF JUSTICE**

-against-

Ind. No.: 34-7323

BARBARA BOUCHEY,

Hon. Stephen W. Herrick

Defendant.

AFFIRMATION OF COUNSEL

Pamela Hayes Esq., an attorney duly admitted to practice law in the courts of this state, swears to the following under penalty to law:

I have been retained by Barbara Bouchey since 2010 to assist her counsels in the numerous court cases NXIVM and the complainant, Clare Bronfman, have filed against her, and with the filing of said Clayton Motion. I am completely familiar with the facts of this case and I file this affirmation in support of that motion.

ISSUES

Whether or not the Albany County Special Prosecutor has jurisdiction over said case?

1. The act complained of took place outside the jurisdiction of this court.
2. The Albany District Attorney's office over-stepped its jurisdiction by allowing the complaining victim to usurp the power of the Saratoga Springs County District Attorney's office and obtain personal documents of co-defendants, which poisoned the Grand Jury presentation of Defendant Bouchey.
3. Defendant Barbara Bouchey's grand jury presentation was poisoned by allowing illegally obtained evidence from co-defendants O'Hara and Foley to be considered by the same grand jury hearing her case, which had nothing to do with Defendant Bouchey.
4. The grand jury presentation suborned perjury by allowing New York State Trooper Inv. Roger Kirsopp to testify to non-existent facts.

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5. Defendant Bouchey's criminal prosecution is based on selective prosecution and an attempt to use a criminal action against her to do what they haven't been able to do civilly.
6. The Albany District Attorney used illegally obtained evidence by allowing an employee of NXIVM, Kristin Keeffe, in the Albany DA's office as a plant to spy and use it as a vendetta against Bouchey.
7. While the Albany District Attorney applied for a special prosecutor due to a conflict of interest, he had the new special prosecutor use the evidence he illegally used. The conflict was never spelled out to the Court.
8. The current special prosecutor, Holly Trexler, was illegally influenced and pressured by the complaining witness in this case to bring as a criminal case against Defendant Bouchey.
9. Clean Hands Violation – information has come to light about NXIVM's possible clean hands violation

BACKGROUND INFORMATION

1. Barbara Bouchey was indicted in March 2015 by a Special Prosecutor after the Albany County District Attorney recused itself as having a conflict (See Attached Exh. A: Prosecutor Court Order); although no specific reason was given. The indictment charged Defendant Bouchey with one count of computer trespass in contravention of CPL 156.10 sub 2 (an E -felony). This application is pursuant to *People v. Clayton*, 41 A.D. 2d 204 (NY App. 2d 1973), as a motion to dismiss in the interest of justice.
2. Due to the compelling facts of this particular case co-defendant Bouchey demands a hearing on this motion in combination with Bouchey's other motion to dismiss.
3. Prior to co-defendant Bouchey being indicted by an Albany County Grand Jury, she had a long sorted relationship with a group called NXIVM, including member Clare Bronfman who is the complaining witness in this case.

4. NXIVM along with long-standing members, Clare and Sara Bronfman, have wrongfully sued Defendant Bouchey 7 times, dragged her into another 6 civil litigations as a witness in each case against others in 4 states before 10 Judges, containing over 800 court filings filled with false allegations, lies, and fabrications totaling 13 litigations. In order to be responsive, this has cost Bouchey over \$600,000 while forcing her to file for temporary relief under a Chapter 11 Reorganization Bankruptcy Reorganization. There are currently two New York State Supreme Court civil cases in Albany County Court against co-defendant Bouchey.

Below is a listing of these 13 litigations:

	COMPLAINTS	DATE	COURT FILED	TYPE	STATUS
1	Precision Bronfmans v Plyams	Jun 09	LA Superior State Court #BC384285	Witness	Dismissed
2	NXIVM v The Ross Institute	Oct-09	NJS Federal Court #06-1051	Witness	Pending
3	Bronfmans v O'Hara	Jan-10	NYS Northern Bankruptcy #09-90055	Witness	Dismissed
4	Bronfmans v Bouchey	Feb-10	LA Superior State Court #BC432595	Defendant	Dismissed
5	CFP Ethics & Disciplinary Commission	Jun-10	CFP Ethics Board #MC-10-0679	Defendant	Suspended
6	FINRA Securities Board	Jun-10	FINRA Case #1	Defendant	Dismissed
7	Bouchey Chapter 11 Bankruptcy	Jun-10	NYS Northern Dist. Bankruptcy #10-12207	Defendant	Dismissed
8	NXIVM v Bouchey Bankruptcy	Nov-10	NYS Northern Dist. Bankruptcy #10-90155	Defendant	Dismissed
9	Bronfmans v Bouchey Bankruptcy	Nov-10	NYS Northern Dist. Bankruptcy #10-90156	Defendant	Dismissed
10	Bronfmans v Bouchey	May-11	NYS Supreme Court #3715-11	Defendant	Pending
11	NXIVM v Bouchey	May-11	NYS Supreme Court #3714-11	Defendant	Pending
12	NXIVM v Woolhouse Bankruptcy	Nov-11	WA Western Dist. Bankruptcy #10-45608	Witness	Dismissed
13	People of NYS v Bouchey	Mar-15	NYS Northern Dist. Bankruptcy #09-90055	Defendant	Pending

5. There were also filings with co-defendant Bouchey's Certified Financial Planning Ethics Board where complainant Clare Bronfman launched a similar complaint with false allegations against Bouchey. *However, by "preponderance of the evidence" provided by Bouchey at her Ethics Board Tribunal, the complaint did not move forward.* Complainant Bronfman tried to also launch a complaint with FINRA Securities Board against Bouchey, however, it was dismissed as they had no jurisdiction over their allegations.

6. In addition to these civil allegations, NXIVM has tried to bring litigation against any of its foes with the Saratoga County District Attorney's office or with the Attorney General for the State of New York. Each of these organizations passed on NXIVM's allegation based on their concerns on whether any crimes were committed.

7. Thereafter this investigation was brought to the Albany County District Attorney's office and the State Trooper Barracks in Saratoga Springs County of New York.
8. Quarry: Why the Albany County District Attorney's office would be re-investigating a case outside of their jurisdiction, using evidence used by the Saratoga Springs District Attorney, which the Saratoga Springs County DA obviously wanted no part of. There are further questions as to why the City of Albany's Police Department wasn't utilized, and why the jurisdiction of the New York State Trooper Barrack of Saratoga Springs Counties was utilized.
9. In 2006, a woman by the name of Kristin Keeffe began to work in the Albany County District Attorney's office falsely claiming to be an intern while continuing to work for NXIVM. While she was at the Albany DA's office (6 months) she was given access to the run of the office.
10. Her actions went unnoticed until Kristin Keeffe severed ties with NXIVM last year, and informed certain individuals exactly what NXIVM was doing with regard to individuals they are currently prosecuting (See Attached Exh. B: Keeffe Email).
11. NXIVM has maintained an enemy's list and over the years have attacked certain individuals who have chosen to leave their organization.
12. On numerous occasions, the lawsuits have been dismissed by several courts and pretty much closed as baseless (See Attached Exh. C: *Bankruptcy vs. Natalie Foley and People vs. O'Hara and NXIVM vs. Dones*).
13. Since there are no wins against Defendant Bouchey on the civil side, NXIVM and the Bronfmans have conducted a new approach trying instead to bring a criminal case, which they would obviously utilize to bring a summary judgment motion to close out their remaining dormant cases against Defendant Bouchey in Supreme Court or in an

administrative forum such as Defendant Bouchey's *Certified Financial Planning* Ethics Board.

14. Fortunately, this should not happen if the Court focuses on Defendant Bouchey's motion to dismiss or in the Clayton Motion. This matter should be dismissed, because it isn't clear that the Albany District Attorney had any jurisdiction over the alleged crimes. Inv. Kirsopp's investigative report should leave this court with the belief that there was no illegality happening in the Saratoga Springs County or Albany County with regard to Defendant Bouchey. As a result the Albany County Special Prosecutor was brought in, because of blatant forum shopping and political pressure.
15. This was confirmed through the investigation. However, once the law firm of O'Connell and Aronowitz representing NXIVM and the Bronfmans began to get involved by picking up Co-Defendant O'Hara's computer parts in Brooklyn auspiciously on behalf of the Saratoga Springs County DA's Office, the DA backed off, and did not move forward with its prosecution.
16. Obviously, the Saratoga Springs County DA's Office had some issues. But, still it was moved to Albany County as if the venue to these alleged crimes actually changed. The Albany DA's Office was now involved, and suddenly, there was some sort of conflict; without ever revealing to the Court what the conflict was (See Attached Exh. D: Affirmation for a Special Prosecutor).

CLEAN HANDS VIOLATION

17. On February 12, 2014, Defendant Bouchey received a call (which is audio taped) from Kristin Keeffe, a long standing NXIVM member, and their legal liaison who oversaw NXIVM and the Bronfman's 13 litigations in 4 states with 7 prominent law firms for over ten years. She wanted to apologize to Defendant Bouchey for the egregious, wrongful legal

attack NXIVM launched against her that she participated in, and begin to inform her about the lies, fabrications and wrongful actions taken against her. She further informed her that Inv. Kirsopp had just helped her leave NXIVM with her 7 year old son taking them to a domestic violence shelter as she was concerned for their well-being. Ms. Keeffe informed Defendant Bouchey that three months earlier she had begun providing information to the authorities regarding what she deemed "massive criminal activities" committed by NXIVM Founder, Keith Raniere, NXIVM President, Nancy Salzman, and NXIVM Officer, Clare Bronfman, including their illegally hacking into Defendant Bouchey's computer, banking and Emails. Ms. Keeffe stated that when the time came that she felt "safe" from any harm that Mr. Raniere could do to her that she would begin to reveal more specific information regarding these criminal activities, and Mr. Raniere's sexual and psychological abuse to upon many women, which she did do a year later in May, 2015.

18. On March, 2015, Ms. Keeffe copied Defendant Bouchey on an email she had sent to NXIVM Albany lawyers, Steve Coffey and Pamela Nichols, and ten NXIVM members involved, detailing numerous criminal activities performed by them, and fraud committed in all of their litigations, including illegally obtaining the banking records of nine Federal Court Judges residing over their cases. In the Email she reminded NXIVM's attorneys about their being agents of the court responsible to bring forth information involving criminal activities in litigations represented by them (See Attached Exh B: Keeffe Email).

SEVERANCE

19. On May, 2015, Ms. Keeffe called speaking to Defendant Bouchey for three hours (which is audio taped) stating that she felt safe, and wanted to now begin giving explicit details of NXIVM's criminal activities including the third party providers used that could be subpoenaed validating these facts such as: Email account names, fax numbers, dates, facts,

banking information, people involved, charities fraud, corporate money laundering, abuses, and their illegal hacking into many people's banking, computer, phone and Email accounts – all with an intent to use said information to bribe, coerce, and manipulate the legal system to their advantage.

20. The underlying facts of co-defendants O'Hara and Foley's alleged misconduct took place in 2010. However, it had nothing whatsoever to do with Defendant Bouchey as her alleged crime didn't take place until years later in January, 2014.
21. So the joinder of Defendant Bouchey with co-defendants O'Hara and Foley was misplaced and improper since there was no charge of a conspiracy or acting in concert, and the evidence of the co-defendants crime should not have been brought in the same Grand Jury proceeding of Defendant Bouchey.
22. In the matter of *People vs. Cruz*, 66 NY 2nd 61 (1964), the Court talked about the unfair prejudice resulting to the defense. In this instance, the joint presentation to the Grand Jury between co-defendants O'Hara, Foley and Bouchey has the same effect, or should be should be viewed in the same light. The Grand Jury presentation resulted in an unfair prejudice and impaired the process. Consequently, the case must be dismissed as it cannot be salvaged by re-presentment or by severance.
23. In the matter of *Rhone vs. United States*, 365 F. 2nd 980 (1966), the Court focused on the danger that the jury's ability to infer the Defendant guilt, because they believed the other Defendant's guilt. This Court should use the same analysis and apply this rationale to the Grand Jury presentation. In Defendant Bouchey's case, the People did not even charge her with acting in concert or with conspiracy. Thus, there was no evidence presented to the Grand Jury that links Defendant Bouchey to any of the acts of Co-Defendants O'Hara and Foley. Consequently, this court should apply these Rhone principles to the Grand

Jury presentation in this particular case before the matter proceeds to trial and it will have to be revisited. As a result, Defendant Bouchey's Grand Jury presentation was poisoned. Therefore, this Court must hold a hearing to determine if the Albany County Special Prosecutor even has jurisdiction, much less whether there is a prejudicial effect of joining Defendant Bouchey with the other two co-defendants for the Grand Jury presentation. Furthermore, this case should not go to trial joined because of the potential Bruton and Cruz issues. Thus, the Defendant's would have conflicting defenses and would not be able to protect themselves against the others and bring about a defense.

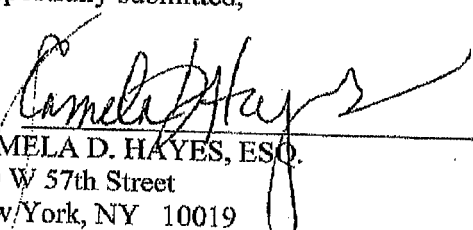
24. Furthermore, this case should not go to trial enjoined, because there are going to have both Bruton and Cruz issues. Thus, Defendants would have conflicting defenses and would not be able to protect themselves against the others.

CONCLUSION

For the above and foregoing reasons, and the specific facts in this particular case, this matter should be dismissed in the interest of justice as it is sufficiently different and does not need to be a part of a criminal justice prosecution.

Dated: August, 7th, 2015

Respectfully submitted,

By: 
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