

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

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CA 09-01598

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GREEN, AND GORSKI, JJ.

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LEONARD M. ENGLERT AND YVONNE ENGLERT,  
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

GERALD W. SCHAFFER, JR., ESQ., STEVEN  
BARNES, ESQ., INDIVIDUALLY AND DOING BUSINESS  
AS THE BARNES FIRM, AS SUCCESSORS IN INTEREST  
TO CELLINO & BARNES, AND ROSS CELLINO,  
INDIVIDUALLY AND AS A PARTNER IN THE LAW FIRM OF  
CELLINO & BARNES, DEFENDANTS-APPELLANTS.

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MARK R. UBA, WILLIAMSVILLE (CHRISTINE UBA OF COUNSEL), FOR  
DEFENDANTS-APPELLANTS.

BURKE AND BURKE, ROCHESTER (PATRICK J. BURKE OF COUNSEL), AND S.  
ROBERT WILLIAMS, PLLC, SYRACUSE, FOR PLAINTIFFS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Monroe County (David Michael Barry, J.), entered January 9, 2009 in a legal malpractice action. The order, insofar as appealed from, denied the cross motion of defendants seeking to disqualify plaintiffs' attorneys from jointly representing plaintiffs.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Defendants appeal from that part of an order that denied their cross motion seeking to disqualify plaintiffs' attorneys from jointly representing plaintiffs. Even assuming, arguendo, that defendants have standing to bring the motion (*see Lake v Kaleida Health*, 60 AD3d 1469; *Maxon v Woods Oviatt Gilman LLP*, 45 AD3d 1376), we conclude that defendants are not aggrieved by Supreme Court's denial of their cross motion, and the appeal therefore must be dismissed (*see CPLR 5511*).

Entered: February 11, 2010

Patricia L. Morgan  
Clerk of the Court