SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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DORIS L. SASSOWER and CAREY A. SASSOWER,:

Plaintiff, :

-against- :

Index No. 3607-1979

ERNEST L. SIGNORELLI, JOHN P. FINNERTY, :
WARDEN REGULA, ANTHONY MASTROIANNI,
and THE NEW YORK LAW JOURNAL PUBLISHING :
COMPANY,

:

Defendants.

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MEMORANDUM OF DEFENDANT SURROGATE SIGNORELLI IN OPPOSITION TO PLAINTIFFS' MOTION AND IN SUPPORT OF CROSS-MOTION TO DISMISS

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MOVANT'S EXHIBIT #2

SUPREME COURT OF THE STATE OF NEW YORK
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Preliminary Statement

Defendant is a Justice of the Unified Court System of New York State and Surrogate for Suffolk County. Plaintiffs Doris L. Sassower (hereinafter sometimes "plaintiff") and Carey A. Sassower (together, hereinafter "Sassower plaintiffs")* sue Surrogate Signorelli for damages alleged to arise from events which admittedly derive from the efforts of the Surrogate's Court of Suffolk County to obtain the compliance of George Sassower with orders and legal obligations pertaining to his executorship of an estate pending in that Court.

Judicial immunity bars this frivolous and harassing action against Surrogate Signorelli, which seeks, despite comment to the contrary, to have this Court review his judicial conduct,

* The association of Doris L. Sassower and George Sassower (hereinafter "the Sassowers"), both attorneys, generally, and with regard to the many actions and proceedings involving the various defendants herein or arising from the same series of events, appears, from the papers in this case and in many others, to be a close professional one. See note, post, page 20.

principally, publication of a decision and order in the Law Journal.

Plaintiff Sassowers have moved to strike all defenses in Justice Signorelli's answer and for summary judgment. Justice Signorelli opposes said motion and cross-moves for summary judgment dismissing the complaint in all respects pursuant to CPLR §§ 3211(a)(1), (2), (5) and (7) for judicial immunity, failure to state a claim, collateral estoppel, statute of limitations, and related reasons, with costs awarded against plaintiffs.

Background

The backdrop for this case is a history of evasion, delay, and proliferation of litigation by a once and former Executor which has frustrated the prompt and orderly accounting of an estate for years. Plaintiff Doris Sassower appeared as the attorney of the Executor but sought to withdraw as such later. See note, post, page 17. She was involved with the estate before withdrawal and had some involvement with the Court thereafter; she is either a law partner of that Executor or very closely associated professionally. See note, post, page 20.

The Surrogate's Court has attempted to overcome the Executor's frustrations of its function by use of its power to order, hold in contempt, and issue warrants of arrest and committment. Lawyers' conduct has been referred for disciplinary review. Judges of the Surrogate's Court, county officials carrying out its orders, and Appellate Divisions handling appeals and discipline have been barraged and harassed with state and federal litigation in which the Sassowers challenge nearly every step taken by the courts in performance of judicial functions,

and also repeatedly demand damages for judges' involvement in such steps. This action is part of that barrage, with Doris Sassower, as the principal plaintiff.*

Eugene Paul Kelly died in 1972. His Will nominated George Sassower, Esq., as his Executor and Trustee and Doris L. Sassower as substitute Executor and substitute Trustee. George Sassower, of Sassower and Sassower, Esqs., filed a petition to probate the Will in 1973 and it was admitted to probate in 1974. Letters testamentary were issued to George Sassower as Executor. Doris L. Sassower appeared as attorney for the Executor, her husband.

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* Extensive portions of the pleadings and affidavits in support of plaintiffs' motion concern George Sassower, are irrelevant to this case, and are involved in other litigation and proceedings, including cases now pending before the Appellate Division, Second Department, and disciplinary proceedings. Included within Doris Sassower's Affidavit of July 20, 1982 (DS Aff. [7-20-82]) are purported excerpts from hearings in the disciplinary proceedings. Subsequently, in a later affidavit, George Sassower has included a document which is intended to waive the secrecy of only so much of the testimony as he chooses to release, the testimony of Surrogate Signorelli. Upon reflection, the invitation to seek these documents or to move the Appellate Division for disclosure of all records in order to put these excerpts in context is declined. The quoted testimony does not at all support the Sassowers' inflammatory interpretations, which are in any case irrelevant. If there were any relevance, it is plaintiffs' burden to produce the actual transcripts, not inadmissible second-hand transcripts. At any rate, it is grossly inappropriate to expect defendants to join in plaintiffs' efforts to have this Court review George Sassower's pending disciplinary proceedings. The most egregious (and incomprehensible) of these efforts is George Sassower's demand in his affidavit, GS Aff. (6-20-82), and, again in DS Aff. (8-2-82), in opposition to cross-motion for adjournment, that Surrogate Signorelli respond in this Court to accusations which George Sassower appears to have thrown up in his own disciplinary proceedings.

Doris Sassower also makes reference to her disciplinary proceedings, but only to assert that she has been "acquitted." DS Aff. (7-20-82), p. 5. In the absence of her introduction of the appropriate decision and supporting records, this self-serving conclusory assertion is meaningless, since such a disciplinary decision might result from findings that she had done nothing seriously wrong or had done something improper but no discipline was needed. It says nothing relevant about the Surrogate's conduct.

In November, 1974, a petition to compel George Sassower to account started a contested accounting proceeding. Thereafter, it was difficult to serve the Executor and he defaulted on the return date of the citation. In March, 1975, Surrogate Pierson R. Hildreth ordered the Executor to account, but he failed to do so. In October, 1975, the Surrogate issued an order to show cause why George Sassower should not be removed as Executor and punished for contempt of court for failure to obey the order to account.

Sassower obtained adjournments, and, by the time the application was submitted in January, 1976, the Surrogate was Ernest L. Signorelli.

In March, 1976, Sassower was removed as fiduciary, held in contempt and given thirty days to file an accounting to purge himself. He filed an apparently partial account within the prescribed time and petitioned the court for its judicial settlement. Thus, in addition to its general jurisdiction over the estate and the specific petition in 1974 to compel an accounting, the court also had before it a petition for settlement of an accounting in which George Sassower was the petitioner. The Surrogate, in his decision and order of February 24, 1978, published in NYLJ (3-3-78) (hereinafter "2-24-78 decision") and reproduced in the Larsen 7-29-82 Affidavit in support of cross-motion for stay or adjournment in this case, Exh. B (Sassower v. Finnerty, AD2d, Resp. Brief and Supp. App.)* at pp.

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* Hereinafter referred to as "S.v.F (Resp. App. [or Br.]) p. ___." Exh. A to the Larsen Affidavit, the Appellant's (George Sassower) Brief and Appendix in the same cases, is hereinafter referred to as "S.v.F (App. App. [or Br.]) p. ___."

14-15, 57-58, noted without evaluation various adjournments to September 7, 1976, when jurisdiction was completed and the matter scheduled for a September 21, 1976 conference.*

The conferences were adjourned five times, 2-24-78 decision,** and Doris Sassower, then unquestionably the attorney for the Executor (and also a potential substitute Executor), failed to show up at any of these conferences despite court direction to be present. Ibid. At the last conference of the series, on March 2, 1977, the guardian ad litem and counsel for a legatee filed objection to George Sassower's account, and, on March 25, 1977, the Surrogate ordered the Public Administrator appointed temporary administrator. Shortly thereafter, George Sassower was ordered to turn over all books, papers and property of the estate to the Public Administrator. Ibid.

As described in the 2-24-78 decision, there then followed a long series of judicial efforts to enforce the outstanding orders pertaining to George Sassower and to bring the accounting to trial, which was delayed by non-compliance with the turnover order. There were also motions, appeals and other litigation by George Sassower resisting the Surrogate's efforts. On January 25, 1978, the trial date, more than eight months after the turnover order deadline, the question of his compliance

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* According to plaintiffs, before the return date of his petition, George Sassower developed Guillain Barre Syndrome. DS Aff. (7-20-82), p. 38. Apparently, he made it to court by July 6, 1976. Ibid., p. 50. Plaintiffs' extended examination of this early period is irrelevant.

** The reasons for adjournment are not given, nor is it indicated that George Sassower failed to attend nor his conduct with respect to said conferences mentioned.

was still unsettled. He was directed to appear that next morning to continue the trial and to resolve the question of his conduct in response to the turnover order. Ibid. He did not appear, instead arguing an appeal in the Appellate Division for which his wife is reported as the principal counsel. See note [**], post, p. 19. While plaintiff insists that the Surrogate knew of this commitment* and that there is some rule that lower courts must accede to appellate court obligations, DS Aff. (7-20-82) pp. 56-57, there is no indication George Sassower made any effort to have both matters covered.

Although plaintiff's account, DS Aff. (7-20-82) pp. 57-60, and the Surrogate's, 2-24-78 decision, differ slightly as to details, it is undisputed that in the hours before George Sassower was due in the Surrogate's Court, plaintiff called someone** to convey to the court that George Sassower would not appear because of an appeal. The difference in detail is that plaintiff, excerpting court transcripts out of context,*** asserts she was not asked to identify the case or court, while the Surrogate stated she had refused to identify either.

In his 2-24-78 decision, the Surrogate, referring to George Sassower as "petitioner" since his petition for judicial settlement was still outstanding, described the frustrations of the judicial task in the Kelly estate, announced that he would

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* At this late date, plaintiff asserts without any explanation that the Surrogate "should have reasonably assumed" that both Sassowers had to be in the Appellate Division, DS Aff. (7-20-82), p. 58.

** Either the court (i.e., court personnel) or an attorney in the proceeding.

*** See Cipollono Affidavit, Trial Transcript (1-26-78), pp. 265-8.

refer the most recent contempt application and the resolution of the estate to the Acting Surrogate, and also directed that a copy of the decision be forwarded to the Presiding Justice of the Appellate Division, Second Department "for such disciplinary action as he may deem appropriate with regard to the conduct of George Sassower and Doris Sassower." Ibid.

The 2-24-78 decision, duly delivered to the clerk, was thereafter published in the New York Law Journal, an official court publication. Judiciary Law §§ 91(2), 430 et seq., Hanft v. Heller, 64 Misc 2d 947 (Sup Ct NY Co. 1970).

The estate was transferred to Acting Surrogate Harry E. Seidell who, on March 8, 1978, adjudged George Sassower guilty of contempt. S.v.F. (Resp. App.) pp. 11-13. A Warrant of Commitment for thirty days ws issued the same day by the same judge. Ibid., p. 10.

It appears that, on Saturday, June 10, 1978, George Sassower was finally taken into custody and placed in the Suffolk County Jail. That evening, plaintiff (Writ of Habeas Corpus* in hand but unrevealed) and her daughter allegedly came to the jail. Evidently, they arrived at the end of visiting hours, because some undescribed purported "delaying excuses" of jail personnel put them past visiting hours. Still inexplicably not presenting the Writ, plaintiff demanded to see her client, but the request was allegedly denied by jail personnel on again undescribed "false excuses". Finally, she presented the Writ** and there was

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* The Writ was signed by a Westchester Justice.

** Apparently at about 9:45 p.m. Larsen 6-16-78 Return to Writ, S.v.F. (Resp. App.), p. 8.

a further period of unspecified duration during which plaintiffs claim they were in some sense "incarcerated". DS Aff. (7-20-892) pp. 31-32. What this assertion means is impossible to tell, since plaintiffs' pleadings and affidavits and despite the fact that plaintiffs have moved for summary judgment, are utterly vague and conclusory, despite their presumed knowledge of whate happened to them. Curiously missing is any allegation denying that the Writ was honored or that, at the end of plaintiffs' wait, George Sassower was released.*

Against this background, plaintiffs sued the Surrogate, as well as Suffolk County officials and the Law Journal (on to the decision), about the June 10, 1978 events (three "Cause[s] of Action"), alleged harassment by persons who supoenaed plaintiff regarding the estate and who, seeking to reach George Sassower in connection with the estate, called her (one "Cause of Action"), and publication of the 2-24-78 decision (two "Cause[s] of Action").

Introduction

This action is one of many brought by the Sassowers arising from similar and related events, and, indeed, claims strikingly similar to the assertions and claims made herein have been raised before by George Sassower and rejected.

George Sassower's cases are permeated by attempts to pierce judicial immunity with vauge, conclusory and legally insufficient allegations, such as are made here, of judicial conduct arising from the efforts of the Surrogate's Court to conclude the Kelly estate and protect the interests of

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* He was. Larsen 6-16-78 Return to Writ, S.v.F. (Resp. App.), p. 9; see also S.v.F. (Resp. Br.), p.3.

beneficiaries.* See, e.g., the three repetitive federal cases rejected by the District Court and the Second Circuit, which courts explicitly found judicial immunity applicable. S.v.F. (Resp. App.), pp. 30-63, 95, 96.

Indeed, the claims asserted here by plaintiff Sassowers have specifically been raised by George Sassower as his claims in at least one other state tort action which was dismissed against the Surrogate. S.v.F. (App. App.) p. A47. Appeal from that dismissal is now pending in the Appellate Division, Second Department.** As to all these claims, collateral estoppel,

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* It is evident from the affidavits in support of plaintiffs' motion herein that the Sassowers seek to relitigate even issues concerning only George Sassower in which the plaintiffs played no part.

** He asserted that, on June 10, 1978, his family and counsel were prevented from visiting him, Complaint, para. 2 (general conspiracy allegation), 12, 14, 66 at S.v.F. (App. App.), pp. A23, A25, A26, A37; S.v.F. (App. Br.), pp. 5, 7, that the Writ of Habeas Corpus was not immediately complied with and his family "incarcerat[ed]." Complaint, para. 15, 66 at S.v.F. (App. App.) pp. A26, A37-A38; S.v.F. (App. Br.) pp. 5, 7. He also alleged that his family was being harassed. Complaint, para. 65-66 at S.v.F. (App. App.) pp. A37-A38; S.v.F. (App. Br.) pp. 7, 14. Finally, he challenged the Law Journal publication of the 2-24-78 decision, as to him and his wife, specifically claiming a violation of Judiciary Law § 90(10), Complaint, para. 46-50 at S.v.F. (App. App.) pp. A32-A33, S.v.F. (App. Br.) pp. 2, 6, 12-22, 13, and that judicial immunity was absent because of alleged lack of jurisdiction, generally, S.v.F. (App. Br.) pp. 2, 14 (also raised as to all claims, ibid., p. 15), lack of privilege in publication in the Law Journal, ibid., pp. 12, 15, and, specifically, the Surrogate's recusal, Complaint, para. 52, 54-57, 58 at S.v.F. (App. App.) pp. A34-A35; S.v.F. (App. Br.) p. 14, alleged non-"decision" nature of the 2-24-78 decision in the absence of a pending application requiring a ruling, Complaint, para. 59 at S.v.F. (App. App.) pp. A36; S.v.F. (App. Br.) pp. 2, 12, as well as defamation of Doris Sassower when she was "neither a party or [sic] an attorney in said matter and had not been so for some considerable period of time . . . ." Complaint, para. 66 at S.v.F. (App. App.) p. A37; S.v.F. (App. Br.) p. 7.

judicial economy, and like common sense doctrines of fair judicial management dictate that these claims not be reconsidered here.*

The lack of merit of plaintiffs' claims against the Surrogate is evident from their complaint and their own motion papers. Plaintiffs fail utterly to meet their burden on a motion for summary judgment in their favor and, instead, provide ample basis for summary judgment in the Surrogate's favor.

* Likewise, the venue of this action in Westchester is unreasonable and impractical since all relevant events (if any) occurred in Suffolk County, all the named defendant officials are to be found there (and have extensive duties to attend to there), as are, probably, any of the unnamed persons alluded to in the complaint.

POINT I

THIS ACTION FOR DAMAGES AGAINST SURROGATE SIGNORELLI IS BARRED BY THE DOCTRINE OF JUDICIAL IMMUNITY.

It is doubtful whether any "Cause of Action"* alleged by plaintiffs actually adequately states a cause of action against any defendant herein.** To the extent that the allegations in any "Cause of Action" even suggest connection with defendant Signorelli,*** any putative claim for damages which plaintiff seeks to assert against him is barred by the doctrine of judicial immunity.

A judge is exempt from liability for all acts done in the exercise of his judicial function, even when such acts are in excess of his jurisdiction and are alleged to have been done maliciously, corruptly and to the severe damage of the plaintiff. Stump v. Sparkman, 435 U.S. 349 (1978); Pierson v. Ray, 386 U.S. 547 (1966); Bradley v. Fisher, 13 Wall (80 U.S.) 335, 351 (1871); Murray v. Brancato, 290 N.Y. 52, 55 (1943); Yates v. Lansing, 5

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* All the allegations purport to raise state law claims only. The complaint, "Wherefore" clause, p. 12, identifies the first four "Cause[s] of Action" explicitly as "non-federal." The remaining two "Cause[s] of Action," not so identified but also not identified as federal, neither assert nor mention any federal rights, law, or basis of a possible claim. Plaintiffs' assertion that this is an action for damages under federal law, DS Aff. (7-20-82), p. 2, is wrong and the citation at id. to Zarcone v. Perry, 78 A.D. 2d 70 (2d Dept. 1980), aff'd. in part, 55 N.Y. 2d 782 (1981) does not support deeming pleaded a non-pleaded cause of action. Indeed, any possible federal claim now would be barred by both judicial immunity and applicable Statutes of Limitations.

** See Point II, post.

*** See Point II, post.

Johns. 282, 291-298 (Albany, 1810, per Ch. J. Kent); Word v. City of Mount Vernon, 65 A.D. 2d 622 (2d Dept. 1978); Virtu Boutique, Inc. v. Job's Lane Candle Shop, Inc., 51 A.D. 2d 813 (2d Dept. 1978); Scott v. City of Niagara Falls, 95 Misc. 2d 353, 354 (Sup. Ct, Niagara Co. 1978).

This ancient doctrine of immunity is not a private privilege; it is a profound protection of the public interest in a judiciary that can function with independence and without fear of personal consequences. Pierson v. Ray, supra, at 554. As a result, the immunity is necessarily broad. Bradley v. Fisher, supra, at 351; Murray v. Brancato, supra. In Stump v. Sparkman, supra, at 356-357, the Supreme Court explained:

> A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority, rather he will be subject to liability only when he has acted in the "clear absence of all jurisdiction" [Bradley v. Fisher, supra], 13 Wall., at 351. [footnote omitted].

Where the issue is the immunity of a judge, the scope of his jurisdiction "must be construed broadly . . ." Ibid., at 356; Dennis v. Sparks, 449 U.S. 24, 29 (1980). Even an action "in excess of or beyond jurisdiction," Salomon v. Mahoney, 271 App. Div. 478, 481 (1st Dept. 1946) (defamatory remarks about attorney) (in quotation from Lange v. Benedict, 73 N.Y. 12, 37), "failure to comply with elementary principles of procedural due process," or an "exercise of authority flawed by the commission of grave procedural errors," does not deprive a judge of absolute immunity for judicial acts. Stump v. Sparkman, supra, at 359.

Defendant Signorelli is a Surrogate with broad and "general jurisdiction in law and equity to administer justice in all matters relating to the affairs of decedants," SCPA § 201(3), see Const. Art. 6 § 12(d) and (e) and SCPA, Art. 2 generally, including judicial powers to make and enforce orders and to issue decisions. He is the Surrogate for Suffolk County, and there are now two Acting Surrogates to help carry the caseload.

There is no dispute that the Kelly estate was a matter in the Surrogate's Court and that, up to the 2-24-78 decision, it was pending before Signorelli. The only involvement he may have had with any Sassower derives from that estate. Under such circumstances, there is a strong presumption, on the basis of plaintiffs' own pleadings and the public record already before this Court, that Surrogate Signorelli is immune from suit. Indeed, to the extent the allegations even suggest his acts at all, they unquestionably imply judicial acts (publishing a decision, seeking to enforce orders of the Court and secure attendance by a petitioner before him, and even the highly speculative alleged calling of an Appellate Division Justice as to the adequacy of a writ of Habeas Corpus regarding a person ordered to serve time for contempt of Surrogate's Court).

The Surrogate is immune from suit for damages for all acts done in the exercise of his judicial function regardless of whether he acted in error, corruptly or maliciously.*

* Surrogate Signorelli denies any such allegations, but it is precisely the purpose of the doctrine to prevent any judge from having to defend judicial acts under the threat of damages and from being "subjected to . . . vexations litigation," Bradley v. Fisher, supra, at 354, as here, because plaintiffs assert dire motives.

Plaintiffs, recognizing their substantial burden* to demonstrate that judicial immunity is unavailable, assert that Surrogate Signorelli acted outside his jurisdiction and his acts were non-judicial. Their effort is hampered at the outset by the implication of their own assertions that any such alleged acts of Surrogate Signorelli were directly connected to the resolution of the estate and were exercises of judicial authority.

Furthermore, acts which have not been alleged with some specificity cannot be evaluated as outside the scope of immunity. They are simply inadequate to support any cause of action. Plaintiffs may not, by mere implication or innuendo, see Solomon v. Mahoney, supra, at 479, invent non-judicial acts or deprive acts of immunity.

The only act of the Surrogate alleged with any specificity relates to the publication of 2-24-78 decision in the New York Law Journal. See Point II, post. Judicial immunity may not be defeated by vague and conclusory suggestions of phantom acts. The publication of the 2-24-78 decision is thus the principal subject for immunity analysis.

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* The citation at DS Aff. (7-20-82) p. 9 to Harlow v. Fitzgerald, 50 USLW 4815 (1982) suggests that Surrogate Signorelli has the burden of establishing and justifying his access to immunity. The decision does not stand for that proposition, and actual places more of the burden in official immunity cases on plaintiffs prior to trial. More importantly, the Supreme Court continues to recognize the broad and absolute immunity of judges, ibid., at 4812, as do the courts of New York, and that immunity is different in application than the milder official immunity. On this case, plaintiffs have established themselves the basis for application of judicial immunity.

There is no doubt that a Surrogate has subject matter jurisdiction over estates, accountings in estates, and contempt and other petitions and proceedings relating to estates and accountings. Since judicial immunity only fails where a judge acts in "clear absence of all jurisdiction over the subject matter," Bradley v. Fisher, supra at 351 (emphasis added), a Surrogate's handling of such proceedings, including efforts to insure party (and attorney) attendance and compliance with directives and the issuance of opinions and orders, is clothed with immunity.

Plaintiff argues, however, that Surrogate Signorelli was not immune because of (a) his transferral of all pending proceedings in the estate to the Acting Surrogate, 2-24-78 decision, and (b) plaintiff's 1977 withdrawal as attorney of record for the Executor. These arguments rest on an erroneous understanding of judicial functions and of the judicial immunity doctrine.

1. Transferral to Acting Surrogate.

Plaintiff's argument here seems to be that, as soon as Surrogate Signorelli composed and filed the 2-24-78 decision and order (tacitly acknowledged as immune acts), all matters -- and all jurisdiction -- in the Kelly estate were transferred to the Acting Surrogate and Signorelli was without jurisdiction to cause or allow the 2-24-78 decision to be published thereafter. That absurd proposition is inconsistent with the decisions, which hold that publication of a decision, opinion or order in an official publication is a judicial act intimately connected with the

composing of the decision itself. Murray v. Brancato, supra, at 57; Bradford v. Pette, 204 Misc. 308, 322 (Sup. Ct. Sup. T. Queens Co. 1953); Hanft v. Heller, 64 M. 2d 947, 950 (Sup. Ct. Sp. T. N.Y. Co. 1970). She would deny any recusing judge the "jurisdiction" to publish a decision explaining the recusal or even the order of recusal.

Such backwards reasoning would deprive a judge of "jurisdiction" to cause to be published any decision or order finally disposing of a case, as by dismissal, including where the Court determines that, for any reason, the Court lacks jurisdiction or declines to exercise it. The mere passage of days between decision and publication does not alter a judge's immunity in connection with the publication, even though, at the later date, he has no matter sub judice. See Garfield v. Palmieri, 193 F. Supp. 137, 140, 143 (SDNY 1961) (6 months).*

Thus, there is no absence of "jurisdiction" as to the publication.** Spires v. Bottorff, 317 F. 2d 273 (7th Cir. 1963), relied on by plaintiff, is entirely inapposite. An Indiana Circuit Court Judge, after disqualifying himself to act in a coram nobis proceeding, "subsequently obtrud[ed] himself

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* In Garfield v. Palmieri, supra, a federal judge was sued for publication in an unofficial reporter. The federal court refused to apply New York law (Murray v. Brancato, supra), but it appears that, had the reporter been official, the federal court result would have been entirely consistent with the state law.

** The fourth "Cause of Action" seems to refer to 1977, prior to the transfer of the estate matters. As to the first three "Cause[s] of Action," relating to events on June 10, 1978, they are not connected with the Surrogate or any act regarding plaintiffs. See Point II, post. A phone call to a judge in the Surrogate's Court, if it occurred that Saturday evening, or from such a judge to an Appellate Division justice, concerning a prisoner in County Jail, pursuant to an order out of that court, would not require the same jurisdiction as would a hearing or issuance of a warrant in the underlying estate.

into the proceeding [before another judge], interfering with the hearing proper, knowingly making a false affidavit and intimidating the public defender . . . . [T]he ground [of the Spires decision] was that the defendant judge was not, under the allegations, performing judicial function so as to be immune." Brown v. Dunne, 409 F. 2d 341, 343 (7 Cir. 1979). Plaintiffs present no comparable allegations whatsoever.

2. Withdrawal as Executor's Attorney.

Plaintiff makes much of her withdrawal* as attorney of record to George Sassower, Executor on May 12, 1977, asserting that thereafter Surrogate Signorelli was totally without personal jurisdiction of any sort over her and that, in the absence of such jurisdiction, any act by him regarding her was not covered by judicial immunity.

The Restatement (Second) on Torts § 585 comment and specifically recognizes that personal jurisdiction is irrelevant to the immunity regarding judicial decisions:

> . . . a judge is protected from liability for any statement of facts or comment that has any connection with a matter before him, whether it concerns the conduct of the parties, witnesses or counsel who are participating in the trial or of a person not so participating. He is also protected from liability for anything said by him in the course of his instructions to the jury and for any memorandum or entry made in his docket, and in any order, ruling or decision. It is immaterial whether the judicial proceedings are ex parte or inter partes or whether they are preliminary, interlocutory or final in character. [Emphasis supplied].

See, Brech v. Seacat, 170 N.W. 2d 348 (S. Ct. S.D. 1969) (absolute immunity covers judge's transmittal of letter allegedly defaming convict's wife to parole officials after sentencing of

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* A Consent to Change Attorneys dated 10-20-76 was filed in Surrogate's Court on 5-12-77, designating George Sassower to substitute for Doris Sassower as attorney for George Sassower as Executor.

convict).

Personal jurisdiction is not an accurate concept to describe the relationship of attorneys (officers of the court) to the court. Here, "jurisdiction" did not entirely disappear. Additionally, personal jurisdiction is a questionable prerequisite for immunity, and those courts that have so held, have done so narrowly and in situations having no bearing here, usually where basic subject matter jurisdiction rested on personal jurisdiction.

Plaintiff's withdrawal could not affect her status with regard to the estate prior to May 12, 1977 and certainly did not remove any basis for jurisdiction over her concerning that period. In addition to her designation under the Will as substitute executor (for which the court could require her familiarity with the estate in case it should decide to have her qualify), whenever Doris Sassower communicated with or made representations, directly or indirectly, to the Surrogate's Court with regard to the estate, as to those communications and representations she was, as an attorney, sufficiently subject to the court's jurisdiction for it to comment thereon in a decision and take other appropriate action.

A careful reading of Surrogate Signorelli's decision* shows that the times she failed to appear for conferences,

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* . . . the matter was . . . scheduled for conference for September 21, 1976. The matter was adjourned on five separate occasions to March 2, 1977.

* * *

Incidentally, Doris Sassower, the wife of the petitioner herein, had at the inception of this estate filed notice of appearance, appearing as attorney for the executor. She was expressly directed by the court to be present for the scheduled court conferences, but has defaulted in appearance for any of the said dates.

between September 21, 1976 and March 2, 1977 preceded her withdrawal. Doris Sassower's attempt to analyze in detail events concerning her husband from January 1, 1976 to July 6, 1976, DS Aff. (7-20-82) pp. 38-53 is thus doubly irrelevant.* The Surrogate's "jurisdiction," at a later date, to write of the actions of an attorney appearing before him did not suddenly cease with that attorney's withdrawal. Restatement, supra.

Doris Sassower also makes allegations concerning Surrogate Signorelli's report in his decision of "a telephone communication . . . received by the court" from her (apparently in January, 1978) which reported she had stated that:

> [George] Sassower could not appear because he was in the Appellate Division on another matter, but refused to identify the case or the particular department of the Appellate Division.

She insists the report is in error,** but in doing so she admits that she had made several communications at the time regarding the case, although to the attorney for the Public Administrator. DS Aff. (7-20-82) p. 58. Thus, Doris Sassower, an attorney, made representations and statements to the court, whether directly or

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* Since plaintiff does not discuss or dispute the Surrogate's remarks about the conferences and does not offer any conflicting facts, her broad, conclusory allegations, see Complaint, paragraph 39, do not refute the Surrogate's remarks, and their truth and accuracy appear admitted. Even if she were to dispute them, however, she would be asserting an error in a judicial decision, precisely the kind of assertion barred by judicial immunity.

** See Cippollino Affidavit, Trial Transcript (1-26-78) pp. 265-268. Judicial immunity is designed to avoid judges being sued for damages for errors or omissions, even if they might be malicious. Any error, thus, is not at issue here. Curiously, however, the reported decision of the Appellate Division matter that, plaintiff insists, demanded the presence of both George Sassower and Doris Sassower, DS Aff. (7-20-82) p. 58 indicates that she was the principal attorney and he was only "of counsel." Baecher v. Baecher, 403 N.Y.S. 2d 82 (2d Dept. 1978). She does not explain why she could not handle the appeal arguments so that George Sassower could meet his Surrogate's Court obligation

indirectly through another attorney, and, certainly as to those, the Surrogate had sufficient "jurisdiction" to refer to them in his decision, even though she may have technically withdrawn previously, and even if she had never appeared. Furthermore, she either was a partner of George Sassower in fact or the two functioned so closely together that a kind of de facto partnership existed* so that any withdrawal by Doris Sassower was not comparable in effect to the withdrawal and substitution of one attorney by another wholly unassociated attorney.

More generally, plaintiff's insistence on personal jurisdiction, even in more meaningful contexts, is misplaced. The leading cases consider only "subject matter jurisdiction."

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* The close professional relationship has been shown in the record of this case, the Kelly estate, and the public record of which this Court may take judicial notice. Although the plaintiffs' papers herein show Doris Sassower as counsel, George Sassower alone appeared on the original return date of plaintiffs' motion. The confused reference in DS Aff. (7-20-82) p. 60 to affiant as "my wife" suggests that George Sassower may have been an another of the affidavit. The Estate was originally probated by Sassower & Sassower. Doris Sassower represented George Sassower from the commencement of the accounting procedure. Doris Sassower submitted affidavits to the Surrogate's Court on George Sassower's need for adjournments and, in 1978, called either the court or attorneys appearing before the court about George Sassower's non-appearance. Even after plaintiff's withdrawal, George Sassower corresponded with the court on Sassower & Sassower letterheads on which the firm name and Doris Sassower's were crossed out, but the address and phone number remained unchanged. The Sassowers have shared a firm and office space, and one could reasonably be called if the other was unavailable. For example, the 1979-1980 Westchester phone book (white pages) at p. 678, lists Sassower & Sassower and George Sassower at the same New Rochelle address and telephone number and Doris L. Sassower at the same addrdess but a different phone number. In numerous reported cases, a party has been represented by Doris L. Sassower, with George Sassower "of counsel," e.g., Baecher v. Baecher, 417 N.Y.S. 2d 212 (2d Dept. 1979); Barone v. Barone, 450 N.Y.S. 2d 401 (2d Dept. 1982), or by both Sassowers, e.g., 300 West Realty Co. v. City of New York, 45 N.Y. 2d 863, 410 N.Y.S. 2d 579 (1978), or by Sassower & Sassower. E.g., 300 West Realty Co. v. Nat'l Security Fire and Casualty Co., 401 N.Y.S. 2d 749 (2d Dept. 1978) (George Sassower, New Rochelle, of counsel).

In Stump v. Sparkman, supra, the judge's actions can be said to have had tragic consequences for a minor, who was in no way notified of the petition or represented before the Court. Nevertheless, the Court found subject matter jurisdiction and immunity. The Ninth Circuit, recognizing that its view may differ from the Supreme Court's, has engrafted a personal jurisdiction requirement onto judicial immunity in a deprogramming case where a judge was accused of knowingly issuing guardianship papers over a son not even in the state. Rankin v. Howard, 633 F. 2d 844 (9th Cir. 1980), cert. den'd, sub nom Zelker v. Rankin, 451 U.S. 939 (1981). That aspect of the case, however, may be read more narrowly as applying to situations where statutes or case law expressly deprive the court of subject matter jurisdiction because of absence of personal jurisdiction. See, Ibid. (". . . the requirements of subject matter and personal jurisdiction are conjunctional." [Footnote omitted]); O'Neil v. City of Lake Oswego, 642 F. 2d 367, 369 (9th Cir. 1981).

Rankin was thus applied in Schorle v. City of Greenhills, 524 F. Supp. 821, 828 (S.D. Ohio, 1981), where a statute, in the absence of a precise procedural step (defendant's written waiver of jury trial and right to counsel), deprived a Mayor's court of jurisdiction to try the charge.

At any rate, Rankin, even if rightly decided, is not controlling or applicable here. Far more relevant is a decision such as Cairo v. Skow, 510 F. Supp. 201 (E.D. Wis. 1981), in which a former attorney to an estate sued a judge with jurisdiction over an estate for acting, without personal jurisdiction, to intimidate, harass, malign and extort money from the attorney. The court, noting the judge's jurisdiction over the estate and

his broad powers, ibid, 204-5, held that he was "not acting 'in the clear absence of all jurisdiction.'" Ibid., 205.

c. Judiciary Law § 90(10).

Plaintiff argues that judicial immunity here falls before Judiciary Law § 90(10) and cites therefore Matter of Haas, 33 A.D. 2d 1 (4th Dept. 1969). This argument does not survive scrutiny. Matter of Haas, supra, at 10, points out, very much in passing, "the matter of disciplining attorneys for professional misconduct is vested in the respective Appellate Divisions (Judiciary Law, § 90)." Otherwise, it does not address the section or its parts. It is clear on the face of Signorelli's decision that he was not trying to usurp this Appellate Division function, for he made clear that he was referring the matter of the Sassowers' conduct to the Appellate Division, even as Haas suggests. Ibid. (His failure to include that remark would, no doubt, have led to a charge by the Sassowers that he was intending to usurp the Appellate Division role).*

Section 90(10) does not explicitly or implicitly abolish a judge's jurisdiction to describe in a decision difficult conduct of attorneys involved in a case before him** or to indicate that he will refer the matters to the appropriate authorities. Section 90(10), within Article 4 of the Judiciary Law ("Appellate Division"), establishes a rule for the Appellate

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* The allegation that other lawyers reading Signorelli's decision will think plaintiff has been disciplined is patently unbelievable, as every lawyer is presumed to know the procedures necessary for discipline.

** If it did, remarks concerning undue delays, unjustified argument to juries, or any other possibly unprofessional conduct, e.g., Kelly v. Sassower, A.D. 1, N.Y.L.J. (9/18/80), at S.v.F. (Resp. App.) p. 121, would never appear in decisions and opinions, much less in unsealed transcripts.

Division (and the disciplinary bodies it creates) in its conduct of a disciplinary proceeding once commenced. On receipt by it of a complaint (or commencement otherwise by it) of an "inquiry, investigation or proceeding," "all papers, records and documents . . . upon [the] complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney . . ., shall be sealed and be deemed private and confidential." Ibid.

It is thus the disciplinary proceeding files in the Appellate Division which are sealed, and this Department evidently concurs in that interpretation. Second Department Rule 691.4(j) provides that "all proceedings conducted by a grievance committee shall be sealed and be deemed private and confidential." To interpret the statute otherwise would lead to the absurd result that papers from on-going litigation, copies of which were also submitted as, or with, a grievance would suddenly become "private and confidential" in all courts.

Furthermore, in the absence of any, much less the clearest, statutory interpretation denying Signorelli jurisdiction to write his decision for publication, immunity is not lost. See Beard v. Udall, 648 F. 2d 1264, 1269 (9th Cir. 1981). Matter of Haas, supra, is not to the contrary. It did not discuss Judiciary Law § 90(10) and was not a damages action. It was an Article 78 proceeding for relief in the nature of a writ of prohibition to prevent a judge from further proceedings and also to expunge an opinion. An Article 78 proceeding can consider whether the judge "proceeded, is proceeding or is about to proceed without or in excess of jurisdiction." Ibid., p. 8,

quoting CPLR 7803(2). Mere "excess of jurisdiction" is insufficient to destroy immunity.

Almost all cases where prohibition has issued against a judge, whether deemed "in excess of" or "without" jurisdiction, are not cases in which "jurisdiction," as used differently in the context of judicial immunity, is so lacking that immunity in a damages case is lost. Cf. Harty v. State, 29 A.D. 2d 243, 244 (3d Dept. 1968), a false imprisonment case where the court noted that loss of jurisdiction to impose judgment was not synonymous with absence of jurisdiction to make an order, albeit erroneous, a prerequisite to state damages liability.

D. Juidical Act

Finally, plaintiff argues that none of the Surrogate's challenged acts were judicial. This argument reduces to an assertion that the 2-24-78 decision decided nothing and was not the product of an adversary motion. The decision explained the transfer it also ordered. It surely decided as much as the petition in Stump v. Sparkman, supra and resulted from a setting more adversary than that presented in Stump. The requirement of a contested motion does not exist. See Restatement, supra.

Plaintiffs citations about non-judicial acts and non-decisions* are irrelevant. Judges are not suable whenever they issue sua sponte or non-adversarial orders.

Thus, judicial immunity is a bar to this action in all its aspects.

* See DS Aff. (7-20-82) p. 11. This case does not involve rulemaking by a high court in its legislative capacity, Supreme Court of Va. v. Consumers' Union, 446 U.S. 719, 731 (1980) (also, not a damages action); a pre-petition agreement to predetermine the outcome of a subsequent judicial proceeding, Rankin v. Howard, supra; Beard v. Udall, supra, at 1270; complete assumption by a judge of the role of prosecutor both before and during the prosecution, Lopez v. Vanderwater, 620 F. 2d 1229, 1235 (7th Cir. 1980); use of judicial office "as an offensive weapon to vindicate personal objectives" where it is certain that "no party has invoked the judicial machinery for any purpose at all," Harper v. Merckle, 638 F. 2d 848, 859 (5th Cir. [B], 1981) (cautioning that its holding was "exceedingly narrow" and "tailored to this, the rarest of factual settings. [Footnote omitted]." The setting of the controversy was entirely "social" and "not judicial." Ibid.); and repeated communications to the press (not official publications) and city officials. Harris v. Harvey, 605 F. 2d 330, 336 (7th Cir. 1979); see also Murray v. Brancato, supra. These cases recognize as judicial acts entitled to immunity a broad array of acts such as holding hearings, see Harris v. Harvey, supra, at 336, issuing and entering orders and rulings, conferring with other judges, Beard v. Udall, supra, at 270 n. 7, and arraigning, convicting and sentencing. Lopez v. Vanderwater, supra, at 1235; O'Neil v. City of Lake Oswego, supra, at 369.

The pre-petition connivance test of Rankin v. Howard, supra, seems to be inconsistent with the leading decisions. See Harper v. Merckle, supra, at 856 n. 9. Both Stump v. Sparkman, supra, and Dennis v. Sparks, supra, arose from such connivance, and the Rankin approach would eviscerate the immunity given the judges in those cases, particularly where the connivance would be of no consequence without the judicial acts.

POINT II

THE COMPLAINT FAILS TO STATE ANY CAUSE OF ACTION AGAINST SURROGATE SIGNORELLI.

This case is barred by the doctrine of judicial immunity. Point I, ante. There are numerous additional grounds for dismissal as against Surrogate Signorelli. In reviewing these, it should be noted that, despite the length of plaintiffs' affidavits in support of their motion and the inclusion of extensive irrelevant material,* no substantive factual assertion is added to the original complaint. Under such circumstances the tests for adequacy of the pleadings under CPLR § 3211 (and for particularity, CPLR § 3013) and for establishment of a cause of action or defense sufficient to warrant judgment as a matter of law under CPLR § 3212 are logically fused. Defendant Surrogate submits that, under either Section, see CPLR § 3211, 7B McKinney's Consol. Laws, Practice Commentaries of David L. Siegel, § C 3211:3, p. 11 (1970), plaintiffs have not met the test and the Complaint should be dismissed as to him.

A. Alleged Events of June 10, 1978

The first three** alleged "Cause[s] of Action" all revolve around a purported visit plaintiffs made to the Suffolk

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* The DS Aff. (7-20-82) is a confusing mixture of affidavit based supposedly on Doris Sassower's personal knowledge and a fragementary brief. This format cannot possibly serve "judicial economy" as claimed at ibid., p. 2 n. 1. While there may be simple affidavits that conveniently note a citation or two, brief-affidavits are not encouraged by decisions such as David v. David, 74 A.D. 2d 542, 543 (1st Dept. 1980) which did not involve such a document, but, rather, the reasonable cross-reference to opposing "papers" in a separate cross-motion.

** The first and third make allegations apparently referring to both plaintiffs. The second, as well as all remaining alleged causes of action, involves at most only plaintiff Doris L. Sassower, but not her daughter Carey Sassower.

County Jail on June 10, 1978. The only defendants who are explicitly named anywhere in the first eleven paragraphs of the Complaint which purport to allege three causes of action are JOHN P. FINNERTY, who was the Sherrif, and WARDEN REGULA of the County Jail. The paragraphs which concern allegations regarding purported actions affecting plaintiffs (paragraphs 3, 6, 8-11*) do not allege actions by these two named defendants, but, rather, by their "servants, agents, and/or employees."

The closest that these eleven paragraphs come to any mention of any other defendant is the bald, conclusory allegation that FINNERTY and REGULA "were acting in concert with each other and in concert with the other defendants . . ." Complaint paragraphs 3, 6, and 9. Plaintiffs' motion for summary judgment may not and does not cure the total lack of factual allegation in the first three "Cause[s] of Action." A close examination of the supporting affidavit shows no additions with respect to the events which allegedly occurred on the evening of Saturday, June 10, 1978. The affidavit starts with the Sassowers' version of Surrogate Signorelli's 1977 contempt proceedings against George Sassower, DS Aff. (7-20-82), pp. 25-27, and of the 1978 contempt proceedings against him** which led to his June 10, 1978 incarceration. Ibid., pp. 27-30. These pages (pp. 25-30) do not involve plaintiffs or their claims and are thus irrelevant. The remaining pages, ibid., pp. 31-36, have nothing relevant or

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* Paragraph 11 of the Complaint does not specify any alleged actors.

** Plaintiffs have conveniently neglected to mention that these proceedings were before Acting Surrogate Seidell, who signed the warrant for arrest of George Sassower, and not before Surrogate Signorelli.

significant to add about the Surrogate and show neither that he knew of plaintiffs' presence on Long Island nor that he acted in any way whatsoever with respect to plaintiffs on June 10, 1978.*

The reference to "[t]he conduct of the Signorelli entourage against my husband," ibid., p. 32, is irrelevant to plaintiffs' claims, meaningless, improper and, by plaintiff's own admission, left "for another and appropriate forum," whatever that may mean. Ibid. Doris Sassower's "understanding that the Mr. Larsen communicated with Ernest F. Signorelli . . ., who in turn communicated . . . with Presiding Justice Milton Mollen, of the Appellate Division, Second Judicial Department," Ibid., p. 35, is asserted without any basis whatsoever given for that "understanding," has no more value than a guess, rumor or suspicion, and has no relevance or legal significance. Furthermore, according to a second equally unsubstantiated "understanding" the purported purpose of the hypothesized communications ("an attempt to ex parte rescind my husband's release, until at least, Monday, June 12, 1978." Ibid.) had nothing to do with plaintiffs herein; culminated in a supposed

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* Indeed, the affidavit neither cures the pleading defects of the complaint (conclusory factual allegations without notice as to the transactions, occurrences and material elements of any cause of action, CPLR § 3013) nor supports the existence of any claim. Plaintiffs' "First Cause of Action" reduces to arriving at the end of visiting hours. DS Aff. (7-20-82) p. 31. The second is, at most, failure to be allowed to see her "client" immediately. Ibid., p. 32. The third does not describe where plaintiffs were and lacks any allegation of the use of force or coercion by anyone (surely an essential element) resulting in their being in whatever setting they were in. Ibid. Since they were in a prison after visiting hours, they may have waited of their own volition in a hall or reception area within the prison area. Curiously missing from the purported facts of the affidavit are matters such as the times the events took place, whether the writ of Habeas Corpur was accepted and whether George Sassower was ever released and plaintiffs ever left the jail. Neither rights infringed nor damages incurred are alleged or shown.

communication by Presiding Justice Milton Mollen (a judge in a superior court for whose actions the Surrogate cannot be held responsible) "with the Judge who signed the Writ of Habeas Corpus," ibid., an apparently perfectly proper communication; and did not result in any stay of the effect of the writ of habeas corpus, the purported purpose of the surmised communications being described only to have been an "attempt." Ibid.*

Unfounded, meritless and irrelevant suspicions can never be the basis for summary judgment for plaintiff and are not sufficient to show a cause of action -- such empty statements should not be the basis for disruption of the functioning judiciary or justification for threats of "compelled testimony," ibid., of Surrogates, Appellate Division Justices or any other judge who may have become or will become involved in any fashion in a course of events. Thither lies chaos.

The fact of the matter is that, at the time, Acting Surrogate Seidell was the judge attempting to bring the Kelly Estate to its long-delayed resolution, and it was his determination of contempt and his warrant upon which George Sassower was arrested upon June 10, 1978. No claim against Surrogate Signorelli is stated.

The first three "Cause"[s] of Action," all of doubtful merit as to any defendant, cannot stand as against Surrogate Signorelli.

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* It appears from other proceedings that Larsen called the Westchester Justice himself to verify the validity of the Writ. S.v.F. (Resp. App.) p. 9; ibid. (Resp. Br.) p. 3.

B. Alleged Harassment

The fourth "Cause of Action" is prefaced by seven paragraphs of allegations concerning Surrogate Signorelli and George Sassower in 1977, Complaint, paragraphs 13-19, which are irrelevant* to these plaintiffs' purported case. Plaintiff (presumably Doris Sassower) then goes on to make the conclusory, incomprehensible and incredible allegation, ibid., paragraphs 20, that, "[o]n information and belief, . . . ERNEST L. SIGNORELLI, JOHN P. FINNERTY, and ANTHONY MASTROIANNI, their servants, agents, and/or employees commenced to harass this plaintiff, as hostage [sic], in an effort to cause her husband, GEORGE SASSOWER, to relent." The two following paragraphs are conclusory (the "reason" for the alleged harassment was because she was George Sassower's wife and could affect his conduct, ibid., paragraph 21) and pleaded without the requisite specificity (see, ibid., paragraph 22).

As far as Surrogate Signorelli is concerned, there is no specific allegation that he (or even anyone at his direction) engaged in any specific act, much less any improper one. The notice requirements of CPLR § 3013 were not met.

Plaintiffs' cursory (one paragraph) consideration of this "Cause of Action" on their own motion, DS Aff. (7-20-82) p. 36, shows not only the frivolousness of the purported claim but also that it is not connected to defendant Signorelli. Once

* These do give a taste, however, of the multitudinous litigation that the Sassowers have brought against judges and others relating to these events, though without any indication of the outcome of such litigation.

again, Doris Sassower, who would be presumed to know* the details of her supposed treatment she considered harassment, gives no facts. The closest she gets to facts is to complain of subpoenas apparently from Anthony Mastroinanni or his lawyer. Ibid. No connection of Surrogate Signorelli is made to any specific alleged act.**

The fourth "Cause of Action," as far as can be determined from the papers, is also time-barred by the one-year statute of limitations. CPLR § 215.

C. Publication of the 2-24-78 Decision

The last two "Cause[s] of Action" concern the publication of the 2-24-78 decision and order of Surrogate Signorelli, a judicial and immune act. Point I, ante.

Judiciary Law § 90(10) is not applicable. Ibid. (Technically, also, only the copy of the decision, once sent to the Appellate Division as per the decision, could become a "complaint" subject to the sealing provision. The original decision was made part of the public file of the estate). Even if it were applicable, § 90(10) does not provide for damages for publication or a failure to seal records.

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* That paragraph 20 of the complaint is pleaded on "information and belief" is puzzling.

** The substance of this "Cause of Action" seems to be that persons involved in the estate litigation attempted to contact George Sassower, who was hard to get hold of, through Doris Sassower, wife and partner or colleague who shares his offices, and to urge her to convey messages to him. Nothing is actionable therein. No damages, much less special ones, are pleaded or shown.

The decision is not defamatory (although plaintiff disagrees with one factual statement and the vague characterization of her conduct as "extraordinary"). No special damages are pleaded or shown. The unsubstantiated speculations as to reactions by fellow lawyers -- who are presumed to know the disciplinary process -- are highly improbable.*

CONCLUSION

Plaintiffs have failed to show entitlement to summary judgment in their favor. On the contrary, the claims asserted are without merit and barred by judicial immunity. Whether acting on plaintiffs' motion or defendant Signorelli's cross-motion,

PLAINTIFFS' MOTION SHOULD BE DENIED AND SUMMARY JUDGMENT DISMISSING ON THE ENTIRE COMPLAINT AS AGAINST SURROGATE SIGNORELLI GRANTED.

Respectfully submitted,

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* If summary judgment for defendant Signorelli is denied and his defenses or any of them are stricken, leave to amend the answer would be appropriate, to clarify defenses, and to allow for explicit inclusion of allegations, if relevant to surviving claims, of "good faith" in all actual acts and "good faith belief" in the accuracy of the statements in the 2-24-78 decision and order, which are both implicit in Surrogate Signorelli's answer, in his decision, and in his office.