SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----------x

GEORGE SASSOWER and DORIS L. SASSOWER,

Plaintiffs,

-against-

ERNEST L. SIGNORELLI,

Defendant.

Index No.
14373-1982

----------x

S I R:

PLEASE TAKE NOTICE, that upon the annexed affidavit of GEORGE SASSOWER, Esq., duly sworn to on the 25th day of October, 1982, and upon all the pleadings and proceedings had heretofore herein, the undersigned will cross-move this Court at a Special Term Part I of the Supreme Court of the State of New York, County of Westchester, held at the Courthouse thereof, 111 Grove Street, White Plains, New York, 10601, on the 29th day of October, 1982 at 9:30 o'clock in the forenoon of that day or as soon thereafter as Counsel may be heard for an Order disqualifying ROBERT ABRAMS, Esq., as defendant's

attorney, together with any other, further, and/or different relief as to this Court may seem just and proper in the premises.

PLEASE TAKE FURTHER NOTICE, that reply and opposing papers are to be served at least one day before the return date of this cross-motion with an additional three days if such service is by mail.

Dated: October 25, 1982

Yours, etc.,

GEORGE SASSOWER, Esq.
DORIS L. SASSOWER, Esq.
Attorneys for plaintiffs
283 Soundview Avenue,
White Plains, N.Y. 10606
914-328-0440

To: Robert Abrams, Esq.
Attorney for defendant

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

GEORGE SASSOWER and DORIS L. SASSOWER,

Plaintiffs,

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Defendant.

Index No. 14373-1982

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

GEORGE SASSOWER, first being duly sworn, deposes, and says:

This affidavit is (1) in opposition to defendant's motion dated October 15, 1982 and returnable October 29, 1982, received on October 19, 1982 at about 6 p.m. in a wrapper bearing the legend "Received in Damaged Condition, Morgan-GMF, New York, N.Y. 10001 --Received in Damaged Condition, Rewrapped-Morgan G.M.F. N.Y. 10001", and (2) in support of plaintiffs' cross-motion to disqualify Robert Abrams, Esq. as defendant's attorney.

A1. Defendant's Notice of Motion requests:

> "an order, pursuant to CPLR 3211(a), dismissing the complaint herein on the grounds that it is barred by res judicata, collateral estoppel and statute of limitation [CPLR 3211(a)(5)]; there are other actions pending between the same parties for the same claims asserted herein in courts of the state or the United States [CPLR 3211(a)(4)]; and the complaint fails to state a cause of action upon which relief could be granted against defendant [CPLR 3211(a)(7)]".

It is all or nothing on defendant's omnibus CPLR 3211 motion!

Defendant's dismissal motion must be entirely denied in the event this Court finds that plaintiffs' complaint sets forth even one cognizable cause of action (Advance Music v. American Tobacco Co., 296 N.Y. 79, 84; Wright v. County of Nassau, 81 A.D.2d 864, 865, 438 N.Y.S.2d 875, 876 [2d Dept.]; Long Island v. Town of No. Hempstead, 80 A.D.2d 826, 827, 436 N.Y.S.2d 351, 353 [2d Dept.]; Kaplan v. Simone, 77 A.D.2d 863, 864, 430 N.Y.S.2d 675, 676 [2d Dept.]; Quinn v. Cannibus, 72 A.D.2d 765, 766, 421 N.Y.S.2d 386, 387 [2d Dept.]; Matter of Fritz v. Board of Education, 70 A.D.2d 593, 594, 416 N.Y.S.2d 74, 76 [2d Dept.]; de St. Aubin v. Briggane, 51 A.D.2d 1054, 1055, 381 N.Y.S.2d 533, 534

[2d Dept.]; Griefer v. Newman, 22 A.D.2d 696, 253 N.Y.S.2d 791, 792; Shoehrer v. Sattler, 18 A.D.2d 683, 684, 236 N.Y.S.2d 16, 17 [2d Dept.]; Altman v. Altman, 15 A.D.2d 546, 223 N.Y.S.2d 719, 720 [2d Dept.]; Halio v. Lurie, 15 A.D.2d 62, 67, 222 N.Y.S.2d 759, 764 [2d Dept.]; Harlem v. Hall, 106 Misc.2d 627, 631, 434 N.Y.S.2d 618, 621 [Sup. Dutchess]).

2a. Even then, the issue is not whether causes of action are stated, but whether plaintiffs have at least one cause of action against defendant, however inartfully pleaded (Rich v. Lefkovits, 56 N.Y.2d 276, 452 N.Y.S.2d 1; Rovello v. Orofino, 40 N.Y.2d 633, 389 N.Y.S.2d 314; Brown v. Brown, 87 A.D.2d 680, 680-681, 449 N.Y.S.2d 63, 64 [3d Dept.]; Weinstein-Korn-Miller, ¶3211.36, Dec. 1981 Supp. p. 23 -25).

Stating this legal proposition should not be construed as a concession by plaintiffs that legally cognizable causes of action are not set forth in plaintiffs' complaint.

b. Nor should the factual matter contained in this affidavit be construed as consent to CPLR 3211(c) treatment at this juncture. Were this Court to opt to grant such CPLR 3211(c) treatment (not even requested by defendant), then upon due notice, plaintiffs could set forth a great deal of additional evidence in opposition thereto.

3. The only action pending against defendant by plaintiff Doris L. Sassower is one commenced in 1979 (Ass't Atty. Gen. affidavit ¶13; Exhibit "H"). Pending in this 1979 action, sub judice, before Hon. MATTHEW F. COPPOLA, is the motion for summary judgment and other relief by DORIS L. SASSOWER and CAREY A. SASSOWER (Exhibit "H").

Obviously from this one pending and viable 1979 action there cannot be any valid assertion of res judicata or collateral estoppel, since such assertion must be founded on a prior judgment -- and there is none.

The 1979 action involves defendant's conduct which gave rise to causes of action prior thereto, and does not include causes arising subsequent thereto.

4. The first cause of action in this matter is one for malicious prosecution by DORIS L. SASSOWER arising subsequent to the institution of the 1979 action, not included therein, and reads as follows:

> "1. At all times hereinafter mentioned, plaintiffs were and still are attorneys duly licensed and admitted to practice law in the courts of the State of New York.
>
> 2. At all times hereinafter mentioned the defendant, ERNEST L. SIGNORELLI, was and still is, Surrogate of Surrogate's Court, County of Suffolk, State of New York.
>
> 3. On or about February 24, 1982, the defendant knowing that all complaints of alleged professional misconduct are, by law, to be treated as private and confidential, nevertheless, maliciously caused such complaint to be publicly and extensively published, and by this and other means instigated, initiated, and compelled a disciplinary proceeding to be prosecuted against this plaintiff, without probable cause to believe that plaintiff was guilty of the professional misconduct described in defendant's published complaint.
>
> 4. As a result of the foregoing, a disciplinary proceeding was commenced against plaintiff ultimately resulting in her complete vindication and defendant's charges of ethical impropriety were found to be unfounded, knowingly false, fabricated, and contrived.

> 5. As a result thereof, plaintiff has sustained general and special damages, including severe and serious emotional distress, loss of opportunity in her profession, loss of personal and professional reputation, and substantial loss of income.

The Attorney General's Office has personal knowledge of DORIS L. SASSOWER's total and complete vindication (since it was the attorney for a party therein), which took place within one year from the commencement of this action.

DORIS L. SASSOWER was not only vindicated, but the Appellate Division, First Department granted her leave to apply for sanctions against her prosecutor (the Attorney General's client) for this meritless prosecution.

Obviously, DORIS L. SASSOWER could not, in 1979, commence an action for malicious prosecution when the vindication took place in 1981. The cause of action for malicious prosecution only arises upon vindication (Whitmore v. City, 80 A.D.2d 638, 436 N.Y.S.2d 323, 324 [2d Dept.]; Peresluha v. New York, 60 A.D.2d 226, 230, 400 N.Y.S.2d 818, 819 [1st Dept.]; Giglio v. Delesparo, 46 A.D.2d 928, 361 N.Y.S.2d 721, 723 [3d Dept.]; Hines v. City, 79 A.D.2d 218, 225, 436 N.Y.S.2d 512, 518 [4th

Dept.]; Boose v.Rochester, 71 A.D.2d 59, 65, 421 N.Y.S.2d 740, 746 [4th Dept.]; Viva v. New York, 104 Misc.2d 958, 961, 429 N.Y.S.2d 346, 348 [Sup. N.Y. per Greenfield, J.]; 36 NY Jur., Malicious Prosecution, § 3, p. 257-258).

Had DORIS L. SASSOWER commenced a malicious prosecution action in 1979 -- prior to vindication -- it would have been dismissed (Embassy Sewing v. Leumi Financial, 39 A.D.2d 940, 333 N.Y.S.2d 106, 108 [2d Dept.]; Flaks v. Bank, 66 A.D.2d 363, 366, 413 N.Y.S.2d 1, 3 [1st Dept.]; Lewis v. Deposit, 40 A.D.2d 730, 336 N.Y.S.2d 672, 674 [3d Dept.], aff'd 33 N.Y.2d 532, 347 N.Y.S.2d 434; 36 NY Jur., supra, § 19, p. 274-276).

Consequently, defendant's alleged defense under CPLR 3211(a)(5) [res judicata, collateral estoppel, and statute of limitations], is wholly and completely specious, without a scintilla of factual or legal support.

5. As heretofore stated and shown, the 1979 action was commenced for different causes of action that arose prior to that time. This action was commenced for causes of action which arose subsequent thereto. In any event CPLR 3211(a)(4) does not mandate dismissal, but only serves as authority to "make such order as justice requires".

Since the other several parties to the 1979 action (Exhibit "H") were not given notice, any discussion of the appropriateness of a motion to consolidate, is out of order (CPLR §602).

6. The substantive question presented to DORIS L. SASSOWER's first cause of action is whether defendant's extensive publication of his disciplinary complaint against this plaintiff gives rise to a an actionable cause of action (Williams v. Williams, 23 N.Y.2d 592, 298 N.Y.S.2d 473).

a. Only the Appellate Division can impose disciplinary sanctions against an attorney (Erie v. Western, 304 N.Y. 342, 346, cert. den. 344 U.S. 892, 73 S.Ct. 211, 97 L.Ed. 690).

b. By statute, only the justices of the appropriate appellate division have the authority to divulge disciplinary complaints and proceedings prior to or without a conviction, upon such notice, vel non, that the presiding or acting presiding justice of that court may direct (Judiciary Law §90[10]). No other judge or court has that power or authority.

c. Weiner v. Weintraub (22 N.Y.2d 330, 332, 292 N.Y.S.2d 667, 669) holds that the mailing of a mere letter to the Grievance Committee does not give rise to a cause of action for damages, but the opinion goes on to state (332, 669):

> Assuredly, it is in the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of lawyers to impart that knowledge to a Grievance Committee or some other body designated for investigation. If a complainant were to be subject to a(n) ... action by the accused attorney, the effect in many instances might well be to deter the filing of legitimate charges. We may assume that on occasion false and malicious complaints will be made. But, whatever the particular hardship on a particular attorney ... requires that there be a forum in which clients or other persons unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined. A lawyer against whom an unwarranted complaint has been lodged will surely not suffer injury to his reputation among the members of the Grievance Committee since it is their function to determine whether or not the charges are supportable. Any other risk of prejudice is eliminated by the provision of the Judiciary

> Law (§90 [10]] which declares that "all papers ... upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of any attorney ... shall ... be deemed private and confidential."

Any possible doubt as to the limits of this immunity, and its inapplicability at bar, were resolved in Toker v. Pollak (44 N.Y.2d 211, 405 N.Y.S.2d 1), where the court stated (220-221, 6):

> "Stern contends, however, that his communications to the District Attorney should be afforded absolute immunity because they were given on pain of a threatened subpoena to appear before the Grand Jury. He argues that since he would have been afforded absolute immunity had he testified before the Grand Jury, his affidavit submitted in lieu thereof, as well as his oral statements to the District Attorney, should similarly be afforded absolute immunity. We disagree.
>
> Testimony before a Grand Jury is afforded absolute immunity because, by statute ... Grand Jury proceedings are secret. Disclosure of the nature and substance of testimony elicited before this body is prohibited. No such statutory directive requiring confidentiality exists with respect to communications made to a District Attorney."

Not only did defendant cause this complaint to be sent to many persons, but he had it published in the New York Law Journal.

Liability based on disclosure of disciplinary complaints is historic (Cowley v. Pulsifer, 137 Mass 392, 50 Am Rep 316, per O.W. Holmes, J.). The immunity based on confidentiality, is lost by overpublishing.

7. Various statements, blithely made by defendant's attorney, should not be accepted at face value as truthful nor should this court indulge in any assumptions in this most unusual case.

a. Defendant's defamatory diatribe against plaintiffs was neither a decision or order, in fact or by law. It decided nothing, and was not intended to decide any issues before the defendant.

Matter of Haas (33 A.D.2d 1, 304 N.Y.S.2d 930 [4th Dept.], app. dis. 26 N.Y.2d 646, 307 N.Y.S.2d 671) is dispositive of this issue. In that case another Surrogate went on a similar irresponsible rampage and a Writ of Prohibition was entered, justified only on the grounds that the Surrogate did not have jurisdiction to issue same.

b. It should not be assumed that defendant had any motion or proceeding pending before him at the time -- he did not. In this respect this matter is more egregious than the Haas situation. Signorelli's rampage was defendant's response to a message given him by his attorney [an Assistant Attorney General] from a federal judge that he either change his ways or recuse himself. To induce the federal court not to take any action on my application against him, defendant assured the federal court [through an Assistant Attorney General], that the proceedings had been completed, and there was no need for federal intervention.

This personal diatribe did not discuss or dispose of any issues before defendant [he previously had denied my applications for recusal].

c. It should not be assumed that defendant had jurisdiction over DORIS L. SASSOWER, Esq. -- he did not. She was neither an attorney nor a party in the proceedings at the time.

Subject matter and personal jurisdiction are "conjunctual", and both are necessary for the doctrine of judicial immunity to apply (Rankin v. Howard, 633 F.2d 844, 848 [9th Cir.], cert. den. 451 U.S. 939, 101 S.Ct. 2020, 68 L.Ed.2d 326; Schorle v. City, 524 F. Supp. 821, 828 [Ohio]).

Similar, but less egregious, conduct by a judicial member has been held actionable (Lopez v. Vanderwater, 620 F.2d 1229 [7th Cir.], cert. dis. 449 U.S. 1028, 101 S.Ct. 601, 66 L.Ed.2d 491; Harper v. Merckle, 638 F.2d 848 [5th Cir.]; Beard v. Udall, 648 F.2d 1264; Rankin v. Howard, supra).

d. It should not be assumed that this published diatribe had any semblance to due process -- it did not. It was issued and published, Pearl Harbor style, without warning or notice.

e. It should not be assumed that this published diatribe had any semblance of truth -- it did not.

Consistently, defendant has refused to meet the repeated challenge to swear to the truthfulness of his published statement. Defendant's published sua sponte diatribe, as analyzed in an affidavit with the Appellate Division, a copy of which defendant's attorney has in his possession, has proven, almost exclusively from defendant's own testimony and documents of his court, thoroughly false and misleading.

The Table of Contents of this analysis reveals the reason for defendant's refusal to swear to the truthfulness of his published statement, for it reads partially as follows:

" The Lies Published by Surrogate Signorelli

Signorelli Published Lie #22	162
Signorelli Published Lie #23	167
Signorelli Published Lie #24	173
Signorelli Published Lie #25	206
Signorelli Published Lie #26	208
Signorelli Published Lie #27	210
Signorelli Published Lie #28	212
Signorelli Published Lie #29	213
Signorelli Published Lie #30	213"

8. Examination of the specific sua sponte charges made by defendant against DORIS L. SASSOWER (Exhibit "B"), over whom he had no jurisdiction at the time, reveals both malice and lack of probable cause as a matter of law.

"Columnist" Signorelli specified my wife's alleged misconduct as part of his catalogue of alleged legal sins committed by me. Those accusations were shown to have been fabricated, misleading, and fictitious. Defendant thereby placed her in a false light.

9. A partial chronology of events reveals a valid cause of action herein:

January 1, 1976.

Ernest L. Signorelli replaces Surrogate Pierson R. Hildreth, as Surrogate of Suffolk County. Pending in that court is the Estate of Eugene Paul Kelly, wherein I am the executor.

June 8, 1976

The return date for the Citations issued by the Court at my instance in the Estate of Eugene Paul Kelly.

In May of 1976 (a few weeks before the return date of the citation), I was stricken and hospitalized my Guillain-Barre Syndrome, which completely paralyzed my hands and legs. This malady thereafter became well known as the unintended result of the Swine-flu vaccinations.

As a result of this unexpected paralysis, my wife caused to be sent to Surrogate's Court by Certified Mail (#606838) on June 2, 1976, her affirmation of that date, which read as follows:

> " This affirmation is in support of an application [to] adjourn and fix a new date for the return of the 'Citation' in the above matter, presently set for the 8th day of June, 1976.
>
> That except for THOMAS KELLY, everyone necessary to be cited has been timely served.
>
> That said THOMAS KELLY survived the deceased, EUGENE PAUL KELLY, but died subsequently (date presently unknown), and as far as affirmant can ascertain there is no estate which has been filed or administered.

That it seems that THOMAS KELLY was the recipient of funds from the Department of Social Services of the City of New York and since they probably would be entitled to the funds of THOMAS KELLY, it is that Department with whom arrangements will have to be made in this regard.

Furthermore, the executor, GEORGE SASSOWER, Esq.was taken ill with what has been diagnosed as a Guillain-Barre syndrome, which caused a paralysis of Mr. Sassower's hands and legs and his hospitalization.

That although recovery is indicated, the length of time is at present uncertain, but affirmant believes that within two months Mr. Sassower should have sufficiently recovered to substantially engage in his usual working activities.

WHEREFORE, affirmant prays that this matter be adjourned for two months in order to complete jurisdiction."

The Report of Judge Aloysius J. Melia (appointed by the Appellate Division), dated August 27, 1981, states (p. 16):

" Mr. Kuzmier [Deputy Chief Chief Clerk of the Suffolk County Surrogate's Court] testified that he was in Court, and called the calendar, on June 8, 1976. There was no appearance by anyone.

The calendar reads, in relevant part, as follows:

'Eugene Paul Kelly. No appearance. The Court, on its own motion, will adjourn this matter to June 22, 1976, for all purposes. The Clerk is directed to send appropriate letter of admonition to the attorney for petitioner and petitioner.' (Ex. 23a)

On June 9, 1976, Mr. Kuzmier sent a letter to the respondent [Doris L. Sassower] which she admittedly received.

It reads in part as follows:

'Dear Madam:

On June 8, 1976 no personal appearance was made nor any communication directed to the Court [was received].

The Court on it's own motion adjourned the matter until June 22 at 9:30 A.M. and has directed that you and the petitioner be present in Court on that date.' (Ex. 24a.)"

It was reluctantly admitted by Surrogate Signorelli that on the call of the calendar on June 8, 1976, his Court had in its possession a copy of my wife's affirmation of June 2, 1976.

"Q. I show you the affirmation of Doris L. Sassower dated June 2, 1976, Exhibit Y, which was sent to your court by certified mail, and ask you if you saw or were made aware of its contents on or prior to June 8, 1976?

...

Q. Do you have any notes in your file to show that this affidavit was received by the Court?

A. ... I have here a communication, which is apparently sent to Doris Sassower and which is dated June 10, 1976 and apparently was sent by the Clerk of my accounting department, Joseph Wolin. ... Its subject is the estate of Eugene Paul Kelly. 'I return herewith ... . The affirmation is returned as it was not on notice to Schacter, Abuza & Goldfarb who have appeared in this matter.'

...

THE REFEREE: ... What's the date of that?
THE WITNESS: June 10th, 1976.

THE REFEREE: That indicates that, does that indicate to you, Judge, that that affidavit of Mrs. Sassower was received prior to June 10th?
THE WITNESS: Judge, I would assume so, but I really am not sure. I really am not sure.

Q. Well, after the non-appearance on June 8th, did the Court cause to be sent out this letter of June 9, 1976? (Document handed to the witness.)
A. I would assume that if this letter went out and from reading the Clerk's minutes of the notation that I undoubtedly indicated to the Clerk that such a letter should be sent out.

Q. Well, does this letter look like a copy of a true letter emanating from Surrogate's Court, Suffolk County?
A. Does it appear to be?

Q. That's right.
A. A copy of a letter that we would normally send out?

Q. Right.
A. Yes, it does.
MR. SASSOWER: I offer this letter in evidence.
THE REFEREE: Any objection, Mr. Grayson?
MR. GRAYSON: No objection.
THE REFEREE: Received, AN in evidence.
(Letter dated 6/9/76 marked Respondent's Exhibit AN in evidence.)
...

Q. I refer you to Exhibit AN in evidence where it states that on June 8th no personal appearance was made, nor any communication directed to the Court. Did you notice that? (Document handed to the witness.)
A. That's right. That's what the letter dated -- Kuzmier says, addressed to Doris Sassower.

Q. But that is obviously in error because they obviously had in their hand the affidavit or affirmation of Doris Sassower dated June 2, 1976?
A. Well, apparently --

Q. Yes or no.
A. It was returned, apparently.

Q. It was returned June 10th?
A. By Mr. Wolin.

Q. On June 10th?
A. That's right.

Q. On June 9th he had it in his possession?
A. I don't know that. I don't know that. I would assume that he did. But I don't know that.
THE REFEREE: The memo seems to suggest.
THE WITNESS: Yes, I would assume that. But I personally don't know that." (Oct. 22, 1981, SM 85-97).

Missing also were the minutes of June 8, 1976. This vital record, Surrogate Signorelli testified existed. He and his subordinates repeatedly promised the tribunal and the Grievance Committee he would produce it. He never did!

The following is his testimony in this respect:

"Q. Sir, what was the purpose of appearing in Surrogate's Court on June 8, 1976?
A. June 8, '76? Is there a transcript of that date?
MR. GRAYSON: I do not have a transcript of that date.
...

Q. Were there any minutes taken of the calendar call, stenographic?
A. There is a Court Reporter present.
...

Q. ... Was she taking stenographic minutes?
A. I assume that, I think it was a 'he'. I assume that he would record the proceedings, yes.
...

Q. Could you make those minutes available to us insofar as they regard the Kelly estate?
A. All right. What dates do you want?

Q. June 8th and June 22nd.
MR. GRAYSON: Is that agreeable with you, Mr. Grayson.
MR. GRAYSON: Sure. No problem." (Oct. 22, 1981, SM 81-82)

June 22, 1976

Five days before the adjourned return date, I, by Certified Mail (#231355), sent my own affirmation to Surrogate's Court (with an affidavit of service), describing my paralysis, and with it, returned my wife's affirmation of June 2, 1976. My affirmation reads as follows:

> This affirmation is in support of an application to adjourn the above matter scheduled for June 22, 1976, at 9:30 a.m. until a date subsequent to July 15, 1976.

As appears in the annexed affirmation of DORIS L. SASSOWER, Esq., dated June 2, 1976, I was taken ill with a polyneurosis which caused paralysis of my hands and legs.

That although my physicians have advised me that I am making fine progress, my motor nerves controlling my legs and hips are completely non-functional. Consequently, notwithstanding physical therapy and exercise, my muscles in that area are 'wasting away' and until those nerves rejuvenate, I am becoming more immobile as time progresses.

Additionally, the involvement of my sensory nerves causes me great pain particularly after I overexert myself.

Under these circumstances, I will not be physically able to attend this Court on the aforementioned date unless these nerves suddenly become functional.

I do believe that after a scheduled testing and examination on July 2, 1976, I will be in a better position to advise this Court more accurately as to my prognosis, but at the present time from all that I have read, seen, and been told, I believe and hope that by the middle of July, I should be well enough to attend this Court.

Insofar as the scheduled appearance on June 8, 1976, the annexed affirmation was mailed to this Court on June 2, 1976 and on June 7th, 1976, the office of Schacter, Abuza, & Goldfarb, Esqs., were advised that such application for adjournment was made.

The said affirmation was returned by the Clerk of the Court on June 10, 1976, and I regret any inconvenience caused because it was not brought to the attention of the Court on June 8, 1976.

I hope that by the adjourned date that jurisdiction will be complete and after an Order is entered on this accounting, I expect to expedite the Final Accounting and bring this matter to a close.

WHEREFORE, affirmant prays that this matter be adjourned until after July 15, 1976."

2. The Report of Judge Melia of August 27, 1981 states (Report p. 17):

" ... a letter dated June 23, 1976 was sent by court personnel to the respondent [Doris L. Sassower. (Ex. 24b.)

...

The body of the letter reads:

'On June 9, 1976 you and the petitioner were directed to be in Court on the return date of June 22 in regard to the above matter.

On the calendar call of June 22 there were no appearances and the matter was adjourned to July 6, 1976 at 9:30 A.M.

You and the petitioner are directed to be present at that time and upon failure of both of you to appear the matter will be referred to the Appellate Division, and this Court will in addition take such action as may be deemed necessary in the premises.'"

There is no question but that on June 22, 1976, Surrogate's Court had my affirmation dated June 17, 1976, as well as my wife's affirmation of June 2, 1976.

This was conclusively shown by the testimony of Surrogate Signorelli and by the transcript, ante litem motam, on July 6, 1976.

> Q. I show you a copy of my affirmation of June 17, 1976 which has been marked here as Exhibit Z in evidence, which was also sent to your court by certified mail, and ask you if you saw this document or was aware of its contents prior to June 22, 1976?
> A. Incidentally, this affirmation indicates that Doris Sassower's affirmation was mailed to the court on June 2nd and returned by the Clerk on June 10th. So apparently that notice that I read to you is applicable."
> (Oct. 22, 1981, SM 95)

After receipt of my affirmation of June 17, 1976, my wife's office received inquiry about her ability to be present on the return date of June 22, 1976. As a result thereof, she caused to be mailed to the Surrogate's Court the following affirmation:

> " That by reason of other legal engagements on June 22, 1976, affirmant was not able to appear in the above matter.
>
> On such date your affirmant was scheduled to appear in Supreme Court: Westchester County on a Court ordered examination before trial in the action entitled Barone v. Barone; she also argued a motion in Special Term Part I of the same Court in Baecher v. Baecher; and was scheduled to try an action in Family Court: Westchester County in Glick v. Glick.

That affirmant did appear on all three of the aforementioned actions on such date.

That such information was conveyed to this Court by telephone prior to June 22, 1976."

Additionally, I had two conversations with the Law Assistant regarding my physical condition (admitted by the Law Assistant in the transcript of July 6, 1976 in the presence of Surrogate Signorelli). My wife also had one telephone conversation with a clerk in the Surrogate's Court, as a result of which she executed and mailed her affirmation of actual engagement.

Nevertheless, the two affirmations which set forth my illness were also destroyed or secreted by Surrogate Signorelli and/or his Court, and all evidence of such telephone conversations obliterated.

The person(s) who destroyed, secreted, and obliterated such evidence overlooked the fact that (1) the two affirmations setting forth my illness were sent by Certified Mail, (2) the letter from Surrogate's Court dated June 10, 1976, acknowledged the receipt of my wife's affirmation of June 2, 1976, and (3) that there was a transcribed session on July 6, 1976, which revealed that Surrogate's Court had these affirmations in hand and the Law Assistant admitted that he had spoken to me twice about my inability to appear.

Surrogate Signorelli's prepared chronology for his testimony at my hearings did not include the July 6, 1976 session in Surrogate's Court (Oct. 22, 1981, SM 100). When it became apparent to the Surrogate that the stenographic transcript of his own Court of that day revealed that exculpatory documents had been destroyed or were being suppressed, he was stunned and foolishly questioned its authenticity by saying "What's this, a certified transcript?" (SM 104).

The Surrogate found himself "hoisted by his own petard", since the following colloquy immediately ensued:

> "THE REFEREE: Mr. Grayson [the Grievance Committee's Attorney].
> MR. GRAYSON: Apparently that's the copy we received from your [Surrogate Signorelli's] office.
> THE WITNESS: You received it from my office?
> MR. GRAYSON: From the Surrogate's Court, apparently, before I became involved.
> THE WITNESS: I don't see it certified."

Since the Grievance Committee did not become involved in this matter until March of 1978 (and Mr. Grayson's involvement long after that date), we can fix the date of destruction of the Surrogate's Court copy of this transcript as being no earlier than twenty (20) months after the events of that day, or this and other transcripts and documents are being intentionally suppressed by Surrogate Signorelli and/or Surrogate's Court.

Significantly, Surrogate Signorelli also failed to produce the court transcript of June 22, 1976, and other transcripts and documents, although they were repeatedly requested by the Grievance Committee (at my insistence), and although Surrogate Signorelli personally made a commitment to the Referee on October 22, 1981 to produce such material.

The conclusion became inescapable! The attorneys for the Grievance Committee finally realized they had been duped by Surrogate Signorelli.

The transcript of the proceedings of July 6, 1976 in Surrogate's Court reveals the following colloquy between Judge Signorelli, Charles Z. Abuza, Esq., and Peter Sereduke, Esq. (a law assistant), and myself.

> "THE COURT: ...refer this matter to the Appellate Division, and I am going to do that. And, I direct the Court Reporter to complete the Minutes - the entire transcript - and send it to the Appellate Division.
>
> I don't know what it takes to get either you or your wife in court, but I intend to find out.
>
> MR. SASSOWER: This matter was on four or five weeks ago ... . At that time I became very seriously ill; I was hospitalized and I was put into intensive care. The fact is, this is the first time that I am supposedly working since my illness. The next time it was on, I was still ill.
>
> Now, as far as Mrs. Sassower is concerned, not only has she been doing her work, but she is taking care of my matters to the best of her ability; in fact, I fear for her health at this time.
>
> As far as the two prior appearances, your Honor, the Court was notified on both occasions, both as to the illness and the inability to appear. They were advised by phone calls; they were advised by affidavits. My adversary was advised. I advised Miss Dubois, and she knew of my illness and my inability to be here. And, under those circumstances, and considering that in 25 years of practicing law, I don't think I have taken off more than one day - one or two days for illness. I have tried cases when I had 105 temperature. I think, your Honor, that it is a little unfair, under the circumstances, for your Honor to take that position.

Now, I have tried to be brief. I can give you medical affidavits. I can give you hospital bills. I certainly did not choose illness, and it was a dreadful experience for me; and, in fact, I am still not recovered. And, if I do fully recover it will be sometime before that takes place.

THE COURT: Where is your wife this morning?

MR. SASSOWER: Your Honor, when I left this morning, I had intended to take the train out here, because I didn't trust myself with the car. The only way I could get here by train and be in court on time, was to take a train out of Westchester County at 12:30 a.m.; that was the only way to be here on time. So, I took a chance, and I probably endangered my own life as well as other people, and drove a car.

I don't know - I know she has to be in Supreme Court, New York - whether it was today or tomorrow, I don't know. But to be honest with you, your Honor, when I read the letter, I did not, and I don't think she interpreted that letter that way, that both of us had to be here." (pp. 2-6).

"MR. SASSOWER: ... I think, the letter should have referred to the fact, to be fair about it, that the Court had in its possession at the time an affidavit of illness. Now, this was not contumacious, you Honor, ... The last time this was on the Calendar - I spoke to Mr. Sereduke, the day before he had my affidavit in his hand, and he advised me that your Honor was not available; he couldn't discuss it with me. I believe I spoke to him twice that day -the day before, and I spoke to him the morning after. Now, I might be in error as to one telephone call, but I know I spoke to him once or twice the day before the return date. He had my affidavit, and I spoke to him the day after. ... " (pp. 7-8)

"THE COURT: With respect to the letter, sir, I am going to submit this matter to the Appellate Division. If you feel I am unfair, let the Appellate Division decide who is being unfair here. Mr. Court Reporter, I direct you to type up the transcript.
MR. SASSOWER: Your Honor, in all fairness, would you, as part of this Record, mark or deem marked the affidavits that I submitted to this Court on the two prior occasions?

THE COURT: Whatever the Appellate Division requires of this Court, in connection with this matter, will be forwarded to the Appellate Division." (p. 10)

"MR. ABUZA: The reason I was here [on June 22, 1976], despite receiving Mr. Sassower's affidavit, was because Mr. Sereduke told me to be here.
MR. SEREDUKE: That is correct.

MR. SASSOWER: Mr. Sereduke, you knew I wasn't going to be here at this time.
MR. SEREDUKE: You said you weren't going to come, and I told you that you were directed to come; that is what I told you.

MR. SASSOWER: Since I am on the Record, the day before this was on - and my recollection may be incorrect as well as yours - I spoke to you once or twice the day before.
MR. SEREDUKE: Twice by telephone.

MR. SASSOWER: And, you had my affidavit.
MR. SEREDUKE: Yes, I did.

MR. SASSOWER: You knew I wasn't going to be here because of my illness.
MR. SEREDUKE: You told me that.

MR. SASSOWER: You mentioned - I am not trying to interrogate you, I am trying to refresh my recollection - that you would take it up with the Surrogate.

MR. SEREDUKE: You were directed to be here on that date. And, what I did, I left it up to you and said, 'You have been so warned.'" (pp. 37-39).

July 6, 1976

This Report of Judge Melia continues as follows (p. 17-18):

" Mr. Kuzmier was also present in Court on July 6, 1976. Neither the respondent [Doris L. Sassower] nor her husband appeared.

The Report of Judge Melia of August 27, 1981 states (p. 19-20):

" Mr. Kuzmier testified that he has no knowledge of such a call. Further, he says that such a call in ordinary course, would be brought to the attention of the Court on the call of the calendar. This did not occur.

He states that he never saw the affirmation (Ex. 21, [Ex. AA in these proceedings]) before he testified here, although it was in the Court's file.

He testified that in 1976 ... [t]he practice was for such information to be given to himself or the then Chief Clerk. He finds no indication of such a call having been received.

Cross examination developed that none of the three calendars in evidence bear any notation on any case concerning a telephone call (Exhs. 23a, b, c.)".

It seemed clear, even to the attorneys for the Grievance Committee, that the Surrogate's Court sifted and stripped their files, destroying or suppressing our affirmations relative to my illness and the stenographic minutes of them, as well as other data, which might have been helpful to me and my wife.

The Grievance Committee was misled by Surrogate Signorelli.

The attorneys for the Grievance Committee were understandably shaken, shocked, and chagrined when they recognized that, notwithstanding certifications issued and representations made by Surrogate's Court, the information forwarded to them had been patently pruned.

To appreciate the venal character of Ernest L. Signorelli, some background must be recited:

Not only did Ernest L. Signorelli threaten to report me and my wife to the Appellate Division for not appearing at some unimportant pro forma conference while I was paralyzed and my wife was engaged in three other court appearances, but he repeatedly and deliberately scheduled Surrogate Court appearances when I was engaged in higher courts.

Defendant scheduled an examination before trial when I advised him that I had to be at the Court of Appeals; several times he scheduled appearances when he was informed that I had to be at the Appellate Division; and scheduled appearances knowing I was scheduled to be on trial in the Supreme Court.

This practice reached the point of spiteful capriciousness when my adversary wanted an adjournment and I was told there was three dates available for such adjournment requested by my adversary. (1) As to one date, I reported I was free and available; (2) as to the second date, I reported that I was scheduled to be legally engaged in another court, but the case would probably be settled beforehand, so that such date was possibly acceptable; (3) as to the third date, I reported that (a) I had to argue a matter in the Appellate Division, Second Department in the morning, then (b) I was scheduled to hold a short examination before trial in New York County, and (c) after that I had to proceed to Westchester County for an examination before trial in a case where my client was coming in from Florida.

The date Signorelli chose was, predictably, the third one.

Signorelli's published sua sponte attack against me and my wife states:

> " On January 25th, 1978, all parties appeared for trial. ... Prior to recessing for the day, the court directed [George] Sassower to return the following morning at 9:30 to continue the trial, and to resolve the further question of his contemptuous conduct.

The transcript of January 25th, 1978 of proceedings before Judge Signorelli reveals the following (SM 44):

> "THE COURT: ... Tomorrow morning you appear with your counsel, and we will proceed with regard to this point.
> MR. SASSOWER: May I just state this, Your Honor - do I understand --
>
> THE COURT: We are not suspending the hearing or trial.
> MR. SASSOWER: I understand that.
> (Mr. Wruck stood up to address himself to the court.)
> THE COURT: Please, Mr. Wruck, let me finish. I would be glad to hear you afterwards. Proceed.
> MR. SASSOWER: Initially, I am due in the Appellate Division tomorrow morning.
>
> THE COURT: You are before me now, and you are to appear. I am directing you to appear. After we complete what we are working on today -- tomorrow morning at 9:30 with your counsel."

The following day, I appeared in the Appellate Division of the Second Judicial Department and argued on behalf of the respondent in the case of Baecher v. Baecher, which I had handled from its inception in 1975 (except for the period when I was ill with the said Guillain-Barre paralysis or recovering therefrom).

As the transcript of Surrogate's Court shows, Surrogate Signorelli was informed of this engagement, but deliberately flouted it.

In more than thirty years at the bar, neither I nor my wife have ever had or witnessed an occasion, wherein a trial judge did not honor an appellate engagement, particularly in a non-jury proceeding. Yet, Surrogate Signorelli made it his regular practice, as heretofore shown, to schedule my appearances on whatever date I had verbalized a conflicting engagement.

Continuing, Surrogate Signorelli states:

> "Petitioner failed to appear in court the following day, and a telephone communication was received by the court from the petitioner's wife, an attorney and his former counsel in this estate. She stated that [George] Sassower could not appear because he was in the Appellate Division on another matter ..."

As heretofore quoted, Judge Signorelli was advised the previous morning that I had an engagement in the Appellate Division, and therefore he should have reasonably assumed that I (as well as he) was bound to honor the higher court's engagement.

Defendant's diatribe makes it appear as if he spoke to my wife directly, when in fact she never saw or spoke to the Surrogate nor did he ever see or speak to her. The conversation referred to was one between Mr. Berger and Mrs. Sassower by phone outside the presence or hearing of the Surrogate.

The transcript the next day reveals the following statement by Mr. Berger [attorney for the Public Administrator and former campaign manager for Ernest L. Signorelli] (SM 257-262):

> " About a quarter to twelve last night, she [Doris L. Sassower] again contacted me and indicated that her husband had contacted her - George Sassower - and he had told her he would not appear this day because he had an engagement in the Appellate Division. I am not aware whether she knew which Appellate Division Mr. Sassower had an engagement in, or what judges he would be before, or what case he was going to be on. We didn't discuss that; but she gave me this information ...

> Just about fifteen minutes ago, I attempted to reach her again - for the record, it is approximately eleven o'clock - but because of the telephone lines being out of order, I was unable to get through. However, the Public Administrator's office is still attempting to reach Mrs. Sassower, and I told them to let me know in the court room as soon as she is reached.
>
> THE COURT: When I arrived at the court house this morning, it had been indicated to me that Mr. Sassower would not appear, notwithstanding the fact that yesterday I directed him to be present in court this morning ... . I was told that he had told someone he had an engagement in the Appellate Division [the Court transcript reveals that my husband told it to Judge Signorelli himself in open court the previous day] ... I don't know why Mr. Sassower is not present in this court this morning. He has offered the court no legal excuse for his not being present.
>
> THE COURT: Gentlemen, I have been advised that Mr. Sassower is in the process of arguing an appeal in the Appellate Division of the Second Judicial Department in the case of Baecher v. Baecher, wherein his wife, Doris Sassower, appears as attorney of record."

Judge Signorelli states in his false published indictment of my wife:

> "She [Doris L. Sassower] 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. ... [I]t was finally determined that Mr. Sassower was arguing a case in the Second Department that morning, and the counsel of record in the case was petitioner's wife [Doris L. Sassower]."

The published statement by Judge Signorelli that she "refused to identify the case or the particular department of the Appellate Division" is just another blatant falsehood as revealed, ante litem motam, by the Surrogate Court transcript itself.

As shown hereinabove, my wife's conversations were with Mr. Berger only, not with the Surrogate, and Mr. Berger stated, ante litem motam, that my wife gave him the information he requested. At no time did he state that she "refused" to identify the case. On the contrary, he stated that he and my wife "didn't discuss that".

Legally significant is the fact that the published statement itself identifies my wife as "former" counsel, and consequently acknowledged his lack of personal jurisdiction over her at the time.

The record of the the Appellate Division (58 A.D.2d 821, 396 N.Y.S.2d 447, leave den. 43 N.Y.2d 645, 402 N.Y.S.2d 1026; 61 A.D.2d 1021, 403 N.Y.S.2d 82; 70 A.D.2d 871, 417 N.Y.S.2d 212; 78 A.D.2d 894, 433 N.Y.S.2d 220; 80 A.D.2d 629, 436 N.Y.S.2d 325) and other various courts will reveal that I handled almost every

aspect of the Baecher v. Baecher matters, including the trials before Mr. Justice John C. Marbach, Mr. Justice Quinn, Mr. Justice James H. Cowhey, and Mr. Justice Walsh. The only time I did not handle this matter was when I was paralyzed or recovering therefrom.

11. It should not be assumed that defendant's conduct was "official" because he is being represented by the Attorney General. Defendant's conduct was no more "official" then a state official, while drunk, driving on a sidewalk, on his day off.

12. The destruction or suppression of judicial documents gives rise to a cause of action (Four Star v. Merrick, 56 A.D.2d 767, 768, 392 N.Y.S.2d 297, 298 [1st Dept.]; Briggs v. Goodwin, 569 F.2d 10, 26-29 [D.C. Cir.]). Wilkinson v. Ellis (484 F. Supp. 1072 [Pa]) is decisive on the subject.

B1. In view of the aforementioned, on this omnibus CPLR 3211 motion, there is no need to discuss in detail the other causes of action, particularly in the absence of a CPLR 3211(c) notice by this Court. Obviously to relate defendant's conduct vis-a-vis GEORGE SASSOWER would be overwhelming. It was I who was the object of defendant's excoriation, my wife was merely an innocent victim.

2. Defendant has the burden of pleading and proving any immunity or privilege he may wish to assert (Gomez v. Toledo, 446 U.S. 635, 640, 100 S.Ct. 1920, 1924, 64 L.Ed.2d 572, 578). As the Court stated in Dennis v. Sparks (449 U.S. 24, 29, 101 S.Ct. 183, 187, 66 L.Ed.2d 185, 190):

> "The burden is on the official claiming immunity to demonstrate his entitlement."

C. Defendant's attorneys have been repeatedly advised of the basic legal proposition that every republication of a defamation is a new actionable defamation (53 CJS §86, p. 138). Defendant's attorneys have been repeatedly advised that they have no judicial immunity where the defamation is not pertinent to the issues at hand (Dachowitz v. Kranis, 61 A.D.2d 783, 401 N.Y.S.2d 844 [2d Dept.]). Defendant's attorneys have been repeatedly advised of the legal proposition that any immunity attaching to an initial publication does not attach to republication (Hutchinson v. Proxmire, 443 U.S. 111, 121 n.10, 99 S.Ct. 2675, 2681, 61 L.Ed.2d 411, 422).

Neither this court nor any other court may prohibit the institution of new and additional law suits based upon causes of action thereafter arising. To rule otherwise would be unconstitutional and grant defendant and his attorneys carte blanche to continually defame me and my wife by the republication of the Signorelli diatribe.

Not only has defendant repeatedly refused to swear to the truth of his defamatory diatribe but he and his attorneys have failed to plead truth to the defamation action (because it would be legal grounds for an increase in damages). If defendant and his attorneys desire to halt the further proliferation of law suits, they must cease republication of this diatribe and repudiate its contents.

In Poulos v. New Hampshire (345 U.S. 395, 426, 73 S.Ct. 760, 777, 97 L.Ed. 1105, 1124), Mr. Justice Douglas [dissenting] stated:

> " What Mr. Justice Roberts said needs to be repeated over and again ... [H]istory proved that judges too were sometimes tyrants."

D. The Attorney General in these various actions represents (1) itself; (2) its employees; (3) the Surrogate's Court; (4) the Appellate Division [First and Second Departments]; (5) the Grievance Committee; and (6) Surrogate Signorelli.

The courts have an obligation to insure a fair judicial proceeding to all litigants and in that spirit will, on its own motion, disqualify an attorney from being an active witness and simultaneously representing a party. Nor will the court permit an attorney to represent in litigation adverse parties.

As representative of defendant herein, the Attorney General is able to secure confidential and private information concerning plaintiffs from the Appellate Division and the Grievance Committee.

The Grievance Committee has tried to prevent my disclosures in pertinent judicial proceedings under pain of new disciplinary proceedings against me.

Obviously, access to the courts is being denied me, when under threat of new disciplinary proceeding I am advised by the Grievance Committee (the client of the Attorney General) that I may not disclose information detrimental to my adversary (also a client of the Attorney General).

Certainly, if the Attorney General has no intention of having the State indemnify this defendant for any damage award against him, it has no right under the circumstances to defend him.

Even if the State is going to indemnify this defendant, plaintiffs contend that the Attorney General should not conduct his defense because, absent some realistic Chinese Wall, information that plaintiffs must give to the Grievance Committee or the Appellate Division, will inevitably be transmitted and used in this defendant's defense.

WHEREFORE, it is respectfully prayed that defendant's motion be denied in all respects and plaintiff's cross-motion granted.

GEORGE SASSOWER

Sworn to before me this
25th day of October, 1982

LAURA TEDESCO
Notary Public, State of New York
No. 4658708
Qualified in Westchester County
Commission Expires March 30, 19...