SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

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In the Matter of George Sassower, an Attorney and Counsellor-at-Law:

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,

Petitioner,

-against-

GEORGE SASSOWER,

Respondent.

----------x

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of GEORGE SASSOWER, Esq., duly sworn to on the 22nd day of March, 1982, and upon all the pleadings and proceedings had heretofore herein, the undersigned will move this Court at a Stated Term, held at the Courthouse thereof, 25th Street and Madison Avenue, in the Borough of Manhattan, City and State of New York, on the day of April, 1982, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard for an Order of this Court to (1) set down the limitations, if any, to respondent's disclosure of these proceedings; (2) dismiss petitioner's charges numbered "Six" and "Eight", as a matter of law; (3) dismiss petitioner's

charges numbered "Three", "Six", "Eight", and "Ten", as a matter of law; (4) set this matter down for a hearing on the question of discriminatory prosecution; (5) certify questions of law to the Court of Appeals, if this motion is denied; and (6) to set this matter down for the submission of formal briefs and oral argument at a Term of this Court; (7) together with such other relief as to this Court may be just and proper in the premises, including (8) interim relief.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, are to be served upon the undersigned at least five days before the return date of this motion, with an additional three days if such service is by mail.

Dated: March 22, 1982

Yours, etc.,

GEORGE SASSOWER, Esq.
Attorney for respondent-
Pro se.
283 Soundview Avenue,
White Plains, N.Y. 10606
914-328-0440

To: Gary L. Casella, Esq.
Robert Abrams, Esq.

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-against-

GEORGE SASSOWER,

Respondent.

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

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

I am the respondent in the within proceeding and submit this affidavit in support of my motion to stay submission of petitioner's motion dated Friday, March 19, 1982, returnable April 23, 1982, until a reasonable time has been afforded me to respond, if necessary, after the disposition of this instant motion.

By this motion, I respectfully request that this Court, by Order, (1) set down the limitations, if any, to my disclosure of this proceedings; (2) to dismiss petitioner's charges numbered "Six" and "Eight", as a matter of law; (3) to dismiss petitioner's charges "Three", "Six", "Eight", and "Ten", as a matter of law; (4) setting this matter down for a hearing on the question of discriminatory prosecution; (5) certifying questions of law to the Court of Appeals, if this motion be denied; and (6) to set this matter down for the submission of formal briefs and oral argument at a Term of this Court, (7) together with such other relief as may be just and proper in the premises, (8) including interim relief.

THE FACTS

By Order of this Court dated July 8, 1981, Honorable ALOYSIUS J. MELIA was appointed Referee in this matter with respect to the fourteen (14) charges lodged against me (#M190/191). This Court, by the same Order denied my cross-motion "without prejudice to raising the constitutional defense before the Referee".

During the ensuing hearings, the petitioner withdrew seven of the fourteen charges before the completion of testimony when it became evident that these charges were morally, ethically, and legally meritless. Indeed petitioner's attorneys, in justification of their actions, made scathing remarks about the ethics and tactics of my accusers, matters on which the Referee wholly concurred (Report, pp. 3-19, 85-86).

The Referee, in his lengthy Report to this Court dated February 4, 1982, recommended the dismissal of the remaining seven charges.

Petition now moves to confirm the Report of the Referee with respect to three of the remaining charges and to disaffirm the other four.

* * *

1a. On March 3, 1982, petitioner wrote me, stating:

> " The Committee has authorized the opening of a sua sponte complaint against you based on your apparent violations of the confidentiality requirement of Judiciary Law §90(10). ...

> Since the confidentiality provisions of Section 90 have not been vacated in the disciplinary proceeding by the Appellate Division, your two actions described above [disclosure of portions of these proceedings in two pertinent court proceedings] appear to have violated that statute."

My position is since the confidentiality provision was enacted for my benefit, I may waive such protection, particularly when others have extensively publically disclosured this disciplinary inquiry, but not its favorable outcome.

Having had to endure petitioner's lengthy and costly meritless prosecution I have no realistic alternative but to precisely comply, for the time being, in petitioner's skewed and strict interpretation of Judiciary Law §90(10), rather than risk still further prosecution.

I have consequently meticulously refrained from discussing this proceeding, since receipt of the aforementioned letter of March 3, 1982, with anyone.

I have not discussed this proceeding with counsel, lawyer collegues, family, friends, secretary, or anyone else (except petititioner's attorneys).

I have been kept in an intellectual quarantine, unable to subject my arguments and thoughts to the comments or criticisms of others, before I present them to this Court, including this instant application.

I have been unable to obtain the advise or suggestions of others, in presenting my position to this Court.

Unquestionably, my arguments to this Court will suffer as a result of the isolation imposed upon me by the petitioner.

Petitioner does not have any decision, rule, opinion, or any authority whatsoever for its position.

Petitioner is aware of the decision of this Court dated June 24, 1981 (#M-192/193), which stated:

> " We do not believe this section proscribes a complainant from referring to her own complaint against an attorney in court proceedings involving that attorney and the subject matter of the grievance complaint. This charge is dismissed.".

Certainly, if one may disclose in a judicial proceeding, a grievance complaint against another, he should be able to disclose in a pertinent judicial proceeding, the complaint made against himself.

I am unaware of any privilege in the law, even those of constitutional dimension, which cannot be waived by the person intended to be protected.

I have been witness to petitioner's prosecution of charges in #M192/193, as well as my own, and some of the charges were unquestionably fabricated.

I have been witness to petitioner's prosectuion of charges in #M192/193, as well as my own, and unquestionably some of the charges had no legal support whatsoever and were clearly contrary to established judicially enunciated opinions.

Nevertheless, petitioner, employing public funds, has the resources to harass me with meritless claims unless I succumb to its unjustified edicts.

b. Petitioner is aware that in a pending action for compensation for legal services, defendants have requested, as part of pre-trial disclosure:

> " [a]ll books, papers and other things concerning any Disciplinary Proceedings, inquiry or investigation of plaintiff (me) by any Bar Association, Bar Committee or Court."

The fact that the result of any inquiry may have revealed an attorney wholly innocent, or the complaint without foundation and malicious, will not prevent some to conclude, from the mere inquiry by the Grievance Committee, with nothing more, that the attorney did something wrong.

Nothing more is needed to adversely affect or destroy one's reputation than to assert that the attorney used his statutory and moral perogative and refused to respond as to whether he was the subject of inquiry or investigation. The refusal is tantamount, to many people, to an admission that such inquiry was made, and in turn, the fact that an inquiry was made is tantamount, to many people, to an admission that something wrong was done by the attorney.

To assert the privilege, to many, is proof of the guilt.

Given the realities of life, the attorney has no alternative but to submit to such nefarious disclosure demand, respond, and thereby waive the protection afforded by statute.

Having been compelled to submit to such disclosure demand or possible court order to such effect, the attorney, as I do, now faces further disciplinary proceedings by petitioner.

c. Petitioner's counsel has been made aware that because of its enunciated position, I have been compelled to hold in abeyance at least two additional motions, wherein revelation of this proceeding is essential.

Petitioner's interpretation has constitutional implications since it affects my right of free speech, communication, association, and counsel.

This issue should not be summarily adjudicated by motion procedures, but fully explored with formal briefs and oral arguments.

2a. As amended by petitioner during the hearings, Charge Eight alleges that I (¶59):

> " violated his (my) obligation as an officer of the Court and engaged in (verbal) conduct tending to bring the legal community into disrespect by being disrespectful and contemptuous of the Surrogate's Court proceedings and Surrogate Signorelli personally".

The Report of the Referee (pp. 77-80) found that "it does not appear that the charge has been sustained", finding, inter alia, that "[t]he dialogue was in every respect circumspect and respectful ..." (p. 78), a matter on which I will more fully explore in the event this aspect of this motion is denied.

It is my contention on this motion, that the dialogue set forth in Petitioner's Amended Petition, as amended during the hearings (Exhibit "1"), cannot become the subject of disciplinary hearings, without violating constitutional provisions of the federal and state government (12 ALR3d 1408).

The dialogue which is the basis of the charge is as follows (¶54):

> "THE COURT: ...The direction of this court is not negotiable. You have been removed - I reiterate and remind you - you have been removed as fiduciary in this case, and further ordered by the court to turn over the assets and books and records pertient to this estate to the Public Administrator; notwithstanding that you may consider my order unlawful, I have asked you to do this. Now, my question to you is: Do you intend to obey this order? You have not done it up to now.
>
> MR. SASSOWER: Right.

THE COURT: Do you intend to obey this order?

MR. SASSOWER: I would make - - - -

THE COURT: Just please answer my question. I want it answered now.

MR. SASSOWER: When the papers come in from Mr. Berger - -

THE COURT: I am asking you right now.

MR. SASSOWER: I don't know, Your Honor.

THE COURT: You don't know? You, a lawyer and member of the Bar? Will you [sic] obey my order?

MR. SASSOWER: I didn't say that. I will determine after looking it over, based on what Mr. Berger puts in the papers, as to whether I am correct and whether the order is lawful or unlawful.

THE COURT: I am not concerned with what you are going to do. I am asking you now. Are you going to turn over in conformity with this order, the assets, the books and records of this estate to the Public Administrator - - -

MR. SASSOWER: Insofar as - -

THE COURT: - -which I have so directed you to do? Are you going to do that? Yes or no?

MR. SASSOWER: I couldn't answer yes or no.

THE COURT: Then you just won't obey my order?

MR. SASSOWER: I cannot say that.

THE COURT: You cannot say that?

MR. SASSOWER: No Sir.

THE COURT: You realize, as a result of your wilful refusal to obey the order of this court, that that will result in your being held in contempt of this court and fined in the amount of $250.00 or thirty days in jail, or both? Now, I ask you one again,Mr. Sassower, and I might add parenthetically, in eighteen - in the eighteen years that I have been a Judge, I new saw fit to judge any lawyer to be held in contempt. I hope I don't have to do that today, but I tell you that now, and I ask you: Do you intend to obey the order of this court, and turn over the books and records, assets and property of this estate to the Public Administrator?

MR. SASSOWER: Again, Your Honor, at this point, at this point in time, I couldn't answer that yes or no. (TR 29-32)

...

THE COURT: Mr. Wruck, I am adjourning this matter to June 22, 1977, at 9:30 AM. I want full compliance by that date.

...

MR. SASSOWER: The next train starts at 8:30, and doesn't get me here until 11:30.

THE COURT: Allright; make it 11:30 (TR45, 47)"

This charge does not concern itself with what I did or did not do. That charge ("Four"), dismissal was recommended, and petitioner now moves to confirm.

This charge ("Eight"), concerns itself with what I said and has constitutional implications.

It is not alleged that I raised my voice, that I uttered any profanity, or that the dialogue constituted verbal acts of disorder on my part.

I contend that as a matter of law, the aforementioned dialogue may not be constitutionally made the subject of disciplinary proceedings (Spevack v. Klein, 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574). An attorney should not be subject to discipline because the Surrogate lacks the qualities enunciated in Craig v. Harney (331 U.S. 367, 376, 67 S. Ct. 1249, 1255, 91 L.Ed. 1546, 1551).

It is also an issue upon which I should be permitted to consult with others before fully presenting my arguments (a matter on which I am presently prevented from doing by reason of the institution of new proceedings against me because of my disclosures), and which should be briefed and opportunity extended for orally presentation.

b. As amended during the hearings, Charge Six of the Amended Petition alleges (¶¶45-47):

> "45. By notice of motion and affidavit dated April 30, 1977, respondent moved in Surrogate's Court, Suffolk County, for an order disqualifying the Hon. Ernest L. Signorelli 'from further participation in this matter as the Surrogate,' which was denied by decision of the Surrogate's Court, Suffolk County (Signorelli, J. presiding) dated May 27, 1977.
>
> 46. By notice of motion and affidavit dated May 6, 1977, respondent moved to vacate the orders ... and the motion was denied by decision of the Surrogate's Court, Suffolk County (Signorelli, J. presiding) dated May 27, 1977.
>
> 47. By initiating the motions set forth above, respondent engaged in frivolous litiation by bringing on motions wherein no relevant facts or law were set forth to support the relef sought."

Petitioner does not dispute the documented factual resume as set forth by the Referee in His Honor's Report to this Court which recommended dismissal on factual grounds.

My argument herein is that this Court may not constitutionally subject me to punishment for my conduct under this charge, as a matter of law.

The documented and undisputed facts, as set forth by the Honorable Referee, are as follows (pp. 67-72):

> " It is charged in substance, that the respondent engaged in frivolous litigation by moving to have a judge disqualify himself from presiding over matters involving the Kelly estate and to vacate certain orders.
>
> The respondent brought 3 motions, all returnable May 17, 1977.
>
> One motion (Ex. AT) sought to have the Surrogate recuse himnself from further participation in the Kelly estate matter.
>
> A second motion was to similar effect. (Ex 51)
>
> A third motion sought an order vacating orders of March 27, 1975 and March 9, 1976 pertaining to the alleged removal of the respondent as executor. (Ex 52)

The respondent has always claimed that his removal as executor was illegal. He argues that it was done without notice to any of the legatees except [Edward] Kelly, that it was done without a hearing on that issue and that it was done without notice to the alternate executrix, his wife.

In addition, he claims, with documentation and petitioner's testimony in support, that for one year after the order of removal, he was treated by all parties, inclucing the court, as the executor.

Indeed, his successor was not appointed for more than one year thereafter.

With respect to the motion for the Surrogate to recuse himself, (Ex. AT) the respondent submitted the following affidavit in support thereof:

SURROGATE'S COURT: SUFFOLK COUNTY
----------x

In the Matter of the
Estate of

EUGENE PAUL KELLY,

Deceased.

----------x

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

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

That he is the executor of the above estate and contends he is such notwithstanding any Orders of this Court, which reasons are not pertinent to this application.

This affidavit is in support of a motion to disqualify the Hon. ERNEST L. SIGNORELLI from any further participation in this matter.

That it is the desire of your deponent that in the event a similar motion dated April 30, 1977 is granted that the instant motion be withdrawn since clearly the Hon. ERNEST L. SIGNORELLI is not at liberty to refute those matters contained herein which His Honor may believe unwarranted.

In desiring fair treatment for himself, your deponent equally desires fair treatment for others.

It is the position of your deponent that the Hon. ERNEST L. SIGNORELLI has conducted himself with bias and prejudice to the extent that it would be improper for His Honor to participate as the Surrogate in this matter.

Only several instances of the conduct of His Honor will be briefly set forth herein to support the position of your deponent.

1. After much fruitless effort a contract to sell the house owned by the decedent was executed with the knowledge and consent of all attorneys interested in this estate and with the knowledge of this Court.

Although every attorney, including the attorney for the purchaser, wanted such sale to be completed, and desired that your deponent deliver a deed in accordance with the contract, His Honor refused.

That the arbitrary action of this Court benefited no one and prejudiced everyone including the prospective purchaser, this estate, and the infant beneficiaries.

That the Court did not advance any rational statement for its actions nor can your deponent find any rational purpose of the actions of the Court.

2. On April 28, 1977 Hon. ERNEST L. SIGNORELLI set down for the examination of EDWARD KELLY for Monday May 2, 1977 although your deponent stated that he had other engagements and committments and the attorney for EDWARD KELLY stated he did not know if his client could be available on such short notice.

Furthermore, His Honor desired such examination held in this Courthouse although deponent resides in Westchester County, the attorney for EDWARD KELLY resides and has his offices in New York County, and the said EDWARD KELLY resides in Queens County.

As matters turned out the said EDWARD KELLY did not appear and wrote a letter to this Court to that effect.

That on May 2, 1977 your deponent was out of this state, as he advised the Surrogate at the time His Honor fixed the time and place.

Any and all attempts to reschedule the time and place of such examination were patently in vain although there was nothing to indicate that your deponent and the attorney for EDWARD KELLY could not agree on a mutually convenient time and place for such examination.

Furthermore, His Honor aware of the physical problems of your deponent, as hereinafter set forth, exhibited an insensitivity, if not cruelty, in mandating that such examination proceed in Riverhead.

3. On April 28, 1977 His Honor purportedly scheduled another conference in this matter.

Although the matter was set for 9:30 a.m., His Honor did not arrive until about 10:00 a.m.

At about 11:30 a.m. of that day your deponent was advised that His Honor would shortly appear in the Courtroom (without any conference having been had wherein your deponent was a participant).

In the proceedings which ensued, His Honor had your deponent personally served with an Order dated April 28, 1977.

Such Order was apparently prepared by the Court and it was Court personnel that was employed to effectuate service.

That aside from this one act there was nothing which occurred necessitation the appearance of your deponent in this Court on that day.

* * *

In the early part of May 1976, your deponent's legs and hands became totally paralyzed as a result of what was then a rare illness called the Guillain-Barre Syndrome. For some time prior thereto imperceptible continuous loss of function of such limbs which evaded medical diagnosis. Thereafter because of the number of cases resulting from Swine-Flu vacinations, this syndrome has become more cognizable.

In any event your deponent's limbs were either completely or substantially paralyzed for a period of almost three months and the period of recovery has been long, partially, because the muscle tissue of these limbs atrophied during such illness.

In January 1977, your deponent fractured his right elbow and as a result thereof could not very easily manipulate the necessary parts of an automobile in order to drive same safely.

To this very day, the arm of your deponent has a very substantial limitation of motion.

During this entire period from May 1976 until the present time the operation of a motor vehicle has been either impossible or extremely difficult.

To drive from Westchester County of Riverhead poses a danger not only to your deponent but to others.

Recently, while driving to Riverhead in this matter, because of the physical limitations of your deponent, a very serious accident was narrowly avoided.

His Honor is not unaware of your deponent's physical situation, nevertheless not only does His Honor not make any attempt to accommodate to deponent's physical limitations, but seems to exacerbate the situation.

There is no substantial reason that the examination of EDWARD KELLY cannot be held in Queens County or in New York County as provided for in the Civil Practice Law and Rules.

There is no substantial reason for having your deponent travel to Riverhead in order to be served with papers.

* * *

That your deponent could give additional examples of the arbitrary conduct of His Honor which in all fairness disqualifies him from any adjudicatory function in this matter, but it would serve no useful purpose since His Honor well knows his feelings herein.

WHEREFORE, your deponent respectfully prays that the Hon. ERNEST L. SIGNORELLI be disqualified in this matter, together with any other, further, and/or different

relief as to this Court may seem just and proper in the premises.

GEORGE SASSOWER

Sworn to before me this
4th day of May, 1977

The second motion for recusal is to similar effect and contains additional factors.

He (respondent) recites that it will be necessary to call the Surrogate as a witness ... (Dennis v. Sparks, 449 U.S. 101 [101 S.Ct. 183, 66 L.Ed.2d 185]). He also stated that he would have to call Law Assistants and other personnel. "

Petitioner, in its Memorandum, to this Court states (p. 7):

" Petitioner does not argue with respondent's contention at the proceeding that the case of Dennis v. Sparks (449 U.S.24) stands for the proposition that a judge does not have immunity from testifying. ...

The Grievance Committee is cognizant that testimony and documentary evidence point to the fact that respondent was, in fact, thought of (by most, if not all of the attorneys and the Surrogate inovolved) as the executor even after service of the March 9, 1976 order removing him. On balance, however, the Grievance Committee believes the facts must be decided against respondent."

The issue on this motion, legal and constitutional, is whether an attorney may make a recusal motion without fear that a Judge or Surrogate may find it offensive, and have a disciplinary body undertake a retalitory disciplinary proceeding.

I do not contend that any and all recusal motions have immunity, but that the burden is upon the petitioner to show clearly and patently the motion is baseless, unwarranted, meritless, and made for ulterior purposes, which petitioner does not contend was the case herein.

On the contrary the petitioner agreed that Judge Signorelli's decisions that my papers "fail(s) to allege any facts or law warranting the relief sought" was clearly unjustified and unsupportable and should be striken from its Amended Petition (¶¶45, 46).

The legal issues involved requires more extensive treatment by briefs and oral argument, after I have had the opportunity of freely discussing the matter with collegues whose opinions I respect, which I am now precluded from engaging in.

3. With respect to all charges for which petitioner seeks to disaffirm, I contend without conceding any infraction on my part, that this Court is without authority to impose discipline.

a. The power of the Appellate Division is impose discipline upon an attorney is limited to (Judiciary Law §90(2) to "professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice".

The petitioner conceded at the hearings and the Referee found (p. 2):

> " It is important to note at the outset that none of these (fourteen) charges involve moral turpitude."

Indeed, neither in its Petition, Amended Petition, nor motion to disaffirm has the petitioner set forth the provisions, if any, of the Code of Professional Responsibility which it now contends I purportedly violated. Petitioner's attorneys made some attempt to set forth such provisions, at my request at the onset of the hearings, but in view of its wholesale abandonment of and amendment of charges, I am not aware of what provisions of the Code, if any, petitioner relies on in making its motion to disaffirm.

Since I am not charged with criminal activity, moral turpitude, or malpractice, then the charges must, if this Court is to have jurisdiction, fit into the category of "professional misconduct or prejudicial to the administration of justice". The constitutionality of these vague statutory terms as a basis for professional punishment, is questionable, particularly, where, as here, there is no "hard core" conduct involved.

4. Petitioner has not shown to this Court any prima facie case for the disaffirmance of Charges "Three" and "Ten". Since the reasons that these charges may not be the subject of discipline, as a matter of law, do not involve great and very substantial constitutional and legal issues, the matter can better be dealt with in my proposed affidavit in opposition to petitioner's motion to disaffirm, particularly since a great deal of factual material is involved.

Nevertheless, the irony of these charges are that petitioner claims that I did not timely obey an Order of Surrogate's Court (Charge Three), when petitioner itself did not timely obey the Order of this Court and make its present motion in the time mandated, and belatedly did so only after respondent had Hon. MILTON MOLLEN intervene who requested/directed petitioner to comply with the Order of this Court, dated July 8, 1981. Petitioner also requests that I be disciplined because I was unsuccessful in my federal court action (Charge Ten), when thus far, petitioner has been unsuccessful on thirty (30) charges against me and #M-192, and has not won on any one count.

5. The events since the close of the hearings, particularly the institution of the new sua sponte complaint, reveals a pernicious attempt by petitioner to unconstitutionally single me out and discriminately pursue me, for which an immediate hearing should be directed (People v. Utica Daw's Drug Co. 16 A.D.2d 12, 225 N.Y.S.2d 128 [4th Dept.]). As the papers, which I prepared on respondent's motion for summary judgment in #M-192, there have been repeated direct violations of Judiciary Law §90(10) by many others without there ever being any prosecution or disciplinary proceeding instituted.

6. In order to expedite this matter, in the event this Court should deny this motion, I respectfully pray that an Order be entered certifying the constitutional and legal questions posed for decision by the Court of Appeals. I believe them novel, significant, meritorious, and substantial.

WHEREFORE, it is respectfully prayed that my motion be granted in all respects (including interim

relief) together with any other, further, and/or different relief as may be just and proper in the premises.

GEORGE SASSOWER

Sworn to before me this
22nd day of March, 1982