

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

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In the Matter of

GEORGE SASSOWER, an Attorney and
Counselor-at-Law:

GRIEVANCE COMMITTEE FOR THE NINTH
JUDICIAL DISTRICT,

Petitioner,

- against -

GEORGE SASSOWER,

Respondent.

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August 18, 1981

B E F O R E :

HONORABLE ALOYSIUS J. MELIA,
Special Referee.

A P P E A R A N C E S :

DONALD E. HUMPHREY, ESQ.
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JOSEPH A. CAROLEO
Senior Court Reporter

THE REFEREE: This is a hearing in the matter of George Sassower.

Your appearance, Mr. Grayson.

MR. GRAYSON: Richard Grayson, Assistant Counsel, Ninth Judicial District, Grievance Committee.

MR. BRENNAN: Timothy Brennan, Assistant Counsel, Grievance Committee, Ninth Judicial District.

MR. SASSOWER: George Sassower, S-a-s-s-o-w-e-r, the respondent, pro se.

THE REFEREE: I'm going to offer in evidence as Court's Exhibit I, the oath of office I took appointing me Referee in this matter.

(Oath of Referee received and marked Court's Exhibit I in evidence.)

THE REFEREE: Gentlemen, what do we have on the agenda?

MR. SASSOWER: Well, first, if I may speak first?

THE REFEREE: Yes, sure.

MR. SASSOWER: I want to thank his Honor for any dislocation of the schedule I may have caused.

May I only state that the second phase of the trial that I was on started on July 6, 1981, which pre-dated the order of the Appellate Division, and we finished at 10 minutes to 5 this past Friday, which was the 14th of August, 1981. I say, "finished," because we are through going back on the case, but his Honor, the Justice who is trying the case in Supreme Court, Nassau County delayed his vacation for one week and it was an imposition on everybody. But he did very well get through the emergency part and, again, any delay that I caused, I hope the Court appreciates it.

THE REFEREE: That is understandable. What do we have?

MR. GRAYSON: I believe we have three motions that the respondent has brought that we are to discuss today.

MR. SASSOWER: Well, the first motion, I believe, is pursuant to CPLR 302(4)(b) of the CPLR or, under its corresponding section dealing with special proceedings, to strike certain material from the petition.

MR. GRAYSON: Excuse me. I believe the first motion is the one returnable July 27th that starts "A modification of the order for the date of the proceedings."

MR. SASSOWER: That was submitted to the Appellate Division.

MR. GRAYSON: Have you heard anything on that?

MR. SASSOWER: I have not. I think that possibly should be discussed first. I moved at the Appellate Division --

THE REFEREE: That was for an adjournment?

MR. SASSOWER: Right, to modify. I didn't think that was before your Honor. That is why I didn't mention it.

THE REFEREE: Let's hold that. Go on.

MR. SASSOWER: I just wanted to state with respect to that, that as of yesterday morning I have not heard from the Appellate Division with respect to that motion.

Getting back to what we may call the second motion is a motion under 302(4)(b) to strike certain prejudicial material from the petition. I have submitted my papers to his Honor, together

with a memorandum of law. I have received certain papers from the petitioner and, unless his Honor wants to hear me with respect to all of the matter or any part thereof, I must say I put everything that I thought was necessary in the papers.

THE REFEREE: The first part of this motion has to do with paragraph numbered 4, in charge 1.

I am correct about that, Mr. Sassower, am I not, the order of Judge Sarafite?

MR. SASSOWER: Correct, your Honor.

THE REFEREE: On what basis, Mr. Grayson, do you claim that this is a proper part of the pleading, the petition?

MR. GRAYSON: This is part of the Court order in this case and the language dealing with the striking of scandalous material, if you look at the cases, there is a great difference between the material that has been stricken as scandalous and the language in this order.

The scandalous material that was stricken in the cases --

THE REFEREE: I am not interested in that scandalous aspect, particularly with reference

to this portion of Judge Sarafite's order. I guess the argument on Mr. Sassower's side would go to prejudice.

MR. GRAYSON: The burden to convince the Court that this is scandalous rests with the respondent. I don't see where he has convinced me that this is scandalous material.

THE REFEREE: That it's what?

MR. GRAYSON: That this is scandalous material.

THE REFEREE: I am not talking about scandalous material. I am talking about prejudicial material.

MR. GRAYSON: I use scandalous and prejudicial --

THE REFEREE: They are two different things.

MR. GRAYSON: Yes.

THE REFEREE: Is this evidentiary material?

MR. GRAYSON: Yes, that will be entered in evidence, your Honor.

THE REFEREE: The case law on that point is, even though it be scandalous, if it's relevant, it's admissible at the trial. It's not necessarily strikable.

MR. SASSOWER: May I say something, your Honor?

THE REFEREE: Yes.

MR. ASSOWER: The question as to whether it is admissible is one question. The second question is, will the petitioner put that evidence in such form that it will be admitted to the trial? If I am going to met with hearsay opinions, then I would respectfully submit, your Honor, one of my contentions will be that in the form proposed by the petitioner it will not be admissible, because if we are going to have opinions then I'm going to have - or desire, the person who rendered the opinion to be present, subject to cross-examination and see whether that opinion is well founded.

Now is Mr. Grayson intending that he will have Judge Sarafite here to express this opinion and give me an opportunity to see whether that opinion is well founded?

By the way, I might say that I have been practicing over thirty years and I do not recall, except possibly a defamation suit, where opinions are part of a pleading in any sense of the word.

THE REFEREE: Mr. Grayson, that is of some concern to me.

MR. GRAYSON: Mr. Sassower seems to want to appeal the orders that are in here. He already pursued the appeals process and, in essence, he wants to bring the Judges in now and pursue the appeals process again.

THE REFEREE: That is not really the point, Mr. Grayson.

Let me see, Paragraph 7. We are talking here about an excerpt from an order of Judge Asch.

MR. SASSOWER: Now here, may I say, your Honor, without any equivocation, my point is not to become technical. Here is an opinion which, I say, factually, has little basis. I say this in all due respect to Mr. Justice Asch. Am I to be met with an opinion, let's say, rendered in the best of good faith - in the best of integrity, am I to be subject to a hearsay opinion when I do respectfully state my affidavit shows the opinion is factually erroneous.

Now, either I'm going to fight the case or give up, because I am met with hearsay opinions which are devastating and certainly prejudicial.

THE REFEREE: Mr. Grayson?

MR. GRAYSON: I think that the respondent has failed to denominate these as hearsay opinions. He had his day in court on these matters. These are now public documents. The certified copies will be offered. And he pursued his remedies as far as he could on these matters. The higher court sustained the lower courts.

THE REFEREE: In that regard it is one thing to allege a conclusion. It's another thing to conclude the evidence on which the conclusion is based.

For example, this paragraph, it well might be proper to allege that respondent here failed to comply with an order, and thereafter was held in contempt, without using the language of the Justice, the characterization of the accounting as incomprehensible and unacceptable. If we go through nine --

MR. SASSOWER: May I just say one word, your

Honor, please?

THE REFEREE: Yes.

MR. SASSOWER: There is a recent case by the Court of Appeals, Gilberg v. Barbieri, which was decided on June 16, 1981 which, I believe, is decisive on this issue because I have never been given -- I don't want to paraphrase it -- I think Gilberg v. Barbieri, I know of by the Court of Appeals on the subject, I think is very pertinent.

THE REFEREE: What does it say?

MR. SASSOWER: Gilberg v. Barbieri --

THE REFEREE: Gilberg?

MR. SASSOWER: G-i-l-b-e-r-g.

THE REFEREE: Right.

MR. SASSOWER: May I give a history of the case insofar as it is pertinent.

Barbieri was convicted in a lower court of assaulting Gilberg, an attorney. Gilberg thereafter sued Barbieri for money damages arising out of this assault and moved for summary judgment based upon the criminal conviction. The motion was granted by Special Term.

THE REFEREE: And reversed.

MR. SASSOWER: No, affirmed by the Appellate Division with one Justice dissenting. I say with all due respect, your Honor, I am speaking from memory, so I might be slightly in error, although I don't think so. I am trying to be rather careful.

One Justice dissenting in the Appellate Division. The Court of Appeals reversed, four to three, and said it's not collateral estoppel, it's not res judicata.

THE REFEREE: I have no problem with that. It seems to me that that has always been the law. I have no problem with that. That is the rationale applying to, well, in part, to this.

MR. SASSOWER: Again, may I say with respect to 7, I am not talking about what the Court did. I am talking about the opinions rendered by the Court, which are prejudicial, which is what your Honor said.

THE REFEREE: That is what I said.

MR. SASSOWER: Absolutely.

THE REFEREE: 9, that has to do with an

order of Judge Asch. It's a follow-up on Paragraph 7.

MR. SASSOWER: Correct, your Honor.

THE REFEREE: The same argument.

MR. SASSOWER: By the way, I want to state, one does not know, looking at the first cause of action, it is better spelled out in the second cause of action, or Charge 2.

May I ask your Honor to turn to Charge 2, because I think there it is clearer.

THE REFEREE: Yes.

MR. SASSOWER: In Paragraph 28, I am charged with failure to comply with orders referred to in Paragraph 24 and 25.

Now, let's go back to 20 to 24. I am not charged with failing to comply with those orders, although what has been put into the petition are prejudicial material relating to orders which I am not even charged with not complying with, although those decisions say I also did not comply. We have set forth that I did not comply, or was compelled to comply with certain orders -- I was compelled to comply with certain orders. And

they render an opinion.

When you come down to the final paragraph, which is 28, I am only charged with failing to comply with Paragraph 24 and 25.

Now with respect to Charge 1, which is what your Honor is dealing with, there is no place -- I withdraw that. One is at a loss, and I am at a loss, to know specifically what orders have I failed to comply with. I certainly did not -- I am not charged with failing to comply with Judge Sarafite's order. I complied with it. There was nothing to comply with, but I complied with it.

You go on further, I think it's paragraph -- other paragraphs where they set forth what I consider needless prejudicial material where there are no allegations that I never complied with it.

THE REFEREE: What about that, Mr. Grayson?

MR. GRAYSON: Paragraph 18 respondent is charged with failing to comply with Judge Sutton's order of March 12, 1980. That order is one in a series. They all pertain to the same alleged misconduct committed by the respondent.

MR. SASSOWER: If I may, your Honor, do I

understand that with respect to Charge 1, putting aside my conduct, the only order that I am charged with failing to comply with at this posture is Judge Sutton's order?

MR. GRAYSON: Look at Paragraph 18 of the charge.

THE REFEREE: What is the answer to that question, yes or no?

MR. GRAYSON: The answer is yes. Paragraph 18 said he did not comply with that one order.

MR. SASSOWER: That one order. So what do we need all the other orders and all the other needless prejudicial matter? The only issue involved in Charge 1 is that I did not comply with Judge Sutton's order.

MR. GRAYSON: The background of this case is the key. If you look at one order out of context, the Court will not be able to understand what has gone on for close to a decade.

THE REFEREE: There is some error to that, however, setting forth opinions, evidentiary matter, as a matter of fact it may not even be admissible evidentiary matter, I don't know at

this point, certainly it is not an artful pleading. Paragraph 11 --

MR. SASSOWER: Your Honor, I have argued before the Appellate Division at least a hundred times. I have agreed with the opinions some times, even when it was against me. I have disagreed with the opinions some times, even when it's been for me. But am I here to fight an opinion which, factually, I can show this Court was erroneous as far as the statements are concerned, because --

THE REFEREE: I read your memorandum.

MR. SASSOWER: Thank you, your Honor. I mean, if that is my job to prove that the Appellate Division is wrong, and these opinions go in, then I might as well, as I say, put on my hat at the present time and stop wasting everybody's time. Because the Appellate Division ruled and I accepted the ruling. Its statements that it made I do not accept, but I cannot fight an opinion where nobody is here for me to cross-examine to question the opinion.

THE REFEREE: 14 is the decision of Judge Sutton. 15, also, is an order of Judge Sutton

setting forth the language of the order.

25, Judge Hughes, a quotation from Judge Hughes' order.

40 is a quotation from the order of Judge Seidell.

Paragraph 45 has to do with an allegation that the respondent moved for the disqualification of Judge Signorelli and a denial of that application. I don't know what that would have to do with a disciplinary charge.

MR. SASSOWER: If I may, your Honor, the portion that I object to in this paragraph is not that the motion was denied, which I will accept and I will concede, but for the Judge to say there was no facts or law to support that application - well, that I totally disagree with.

If I had somebody to cross-examine, maybe that witness would agree that that statement was erroneous.

THE REFEREE: Paragraph 56 contains a statement by Judge Signorelli. Let me ask you this, Mr. Sassower --

MR. SASSOWER: Yes, your Honor.

THE REFEREE: -- with respect to various orders mentioned herein, do they not become the law of the case?

MR. SASSOWER: No.

THE REFEREE: Why?

MR. SASSOWER: For two reasons. May I?

THE REFEREE: Sure.

MR. SASSOWER: For two reasons.

First of all, on none of these orders was I given - and I use this in its legal sense, "A full and fair hearing."

Secondly --

THE REFEREE: Assume that to be so.

MR. SASSOWER: Okay. The second point is the quantum of proof necessary in a motion or in a civil proceeding is different than in a criminal or a quasi-criminal proceeding, which obviously this was.

THE REFEREE: I don't think this was a criminal proceeding.

MR. SASSOWER: I think it is a different standard of proof that is applicable. Let me put it in that way. So I don't think it is the

law of the case.

THE REFEREE: You don't? Mr. Grayson?

MR. SASSOWER: In that sense -- let me modify it slightly. If a Judge held me or any attorney to do something, the attorney, except for certain circumstances, should comply and must comply whether it's right or wrong. That I accept.

By the way, there are exceptions. So it's the law that his Honor, and this is my offhand opinion -- his Honor must tell me that I should comply with a Court order and his Honor cannot say whether that order was right or wrong. All right? Except in certain cases.

THE REFEREE: Okay.

MR. SASSOWER: Okay. So I would feel, this is as a general rule, that it is not within the province of his Honor to question the propriety of the order. I must comply.

THE REFEREE: In effect, at this point, aren't we agreeing that the order is the law of the case?

MR. SASSOWER: Maybe we are disputing semantics.

THE REFEREE: Before we get to that, that

does not necessarily include any verbiage that might be used.

MR. SASSOWER: Correct.

THE REFEREE: Not necessarily.

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MR. SASSOWER: It's going to become pertinent to one specific charge. There is, in my opinion, a duty upon the attorney to disobey certainly manifestly improper unconstitutional orders, and there is a duty to resist compliance. That is a different point which we'll take up at a different point.

THE REFEREE: Yes.

MR. SASSOWER: But I will agree with his Honor that it is the law of the case. I don't want to adopt that terminology because I have trouble with it. I will agree with your Honor that if a Judge tells you to do something, you comply or you get a stay, or you resort to alternate remedies. But I have no quarrel with his Honor in that respect.

THE REFEREE: All right. Paragraph 69 has to do with an order of Judge Gellinoff. Is the same argument to be addressed to each of these

paragraphs, Mr. Sassower?

MR. SASSOWER: Let me speak specifically on Judge Gellinoff. Judge Gellinoff -- may I ask, are you intending to call Judge Gellinoff or his law secretary?

MR. GRAYSON: No.

MR. SASSOWER: Judge Gellinoff and myself have met on at least two occasions since this particular incident. I might say that at both occasions the conversation was very amicable. I think Judge Gellinoff, being the man that I think he is, if he were to sit down here, particularly since he found out what has happened since that time, would be the first man to say, "This opinion by me is regrettable." What I am met with?

I am met with an opinion where Judge Gellinoff, himself, will not be here to recant some of the language used by him. I want to say this, I have a tremendous respect for a Judge that I tried my first case before, Judge Lockman, Supreme Court, Nassau County. A very, very hard case. read the whole petition to a jury, I certainly could not see anything like that happening, looking at this petition. But

whether any of this material is admissible at this point, I don't know. Some yes - some no, maybe none in - maybe all out, I don't know at this point. That would go to the question of admissibility.

Here we are simply dealing with pleadings. I agree that they are artfully wrong. However, at this stage I am not going to go back and have the petition redrawn. So I will deny the application and in that tone and language. You have another motion, I take it?

MR. SASSOWER: Yes, your Honor.

May I preface that motion with a statement?

THE REFEREE: Yes.

MR. SASSOWER: I'll refer to the Judge Gellinoff matter as merely one incident.

If I recall correctly, the record in that case, which went up to the Court of Appeals, by the way, your Honor, is maybe 3,000 pages long. When I received -- by the way, I had never, that I can recall, ever received any complaint from any Bar Association or any Grievance Committee with respect to that matter. The first notice

that I had of that matter -- by the way, this is seven years ago, eight years ago -- the first notice I had of that matter was when I was served with the petition by the petitioner. I frankly and honestly didn't even remember the remark. I didn't even know where they came from. I know there was a time when there was a little battling with his Honor, but did I remember those remarks? Absolutely not. Now I am told that I have to defend a charge eight years ago where many of the papers, which are the foundation of the charge were relevant to the charge, I no longer have. In view of that, am I not entitled to interrogatories on this and the other charges? Papers I don't have. My memory, while good, is not that perfect.

THE REFEREE: What are you asking for, Mr. Sassower, in connection with the Gellinoff matter, for example?

MR. SASSOWER: What I say about Judge Gellinoff goes with respect to the other matters. I could not possibly --

THE REFEREE: What are you asking for?

MR. SASSOWER: May I answer your Honor circuitously?

THE REFEREE: Yes.

MR. SASSOWER: On top of that, in order to try to refresh my recollection, I go to the County Clerk's office to look for the file.

THE REFEREE: I read that.

MR. SASSOWER: And the files are not even available to me. So I am placed in a position where I have to defend matters which are six, seven, eight years old, without court files, and it is because of that that I served upon the respondent -- petitioner certain interrogatories.

Now his Honor asked me with respect to Judge Gellinoff. What charge is that, Mr. Grayson?

THE REFEREE: Paragraph 69 covers it.

MR. GRAYSON: It's Charge 10. No, Charge 11.

MR. SASSOWER: "Charge 11.

"Annex the papers upon which the order of May 16, 1974 was made and the whole of said

said order and/or decision."

Now when I drew up this interrogatory, I didn't even have a paper. Over the weekend, fortuitously, I was able to get a copy of the decision from the record on appeal.

THE REFEREE: You are not asking for the papers?

MR. SASSOWER: I don't know if I have all of them, because it's an appendix. There is no record on appeal. From the appendix on appeal I was able to secure a copy of that decision and order. I was able to secure at least some of the papers that were used on that decision. Whether I have all the papers used on that decision, I do not know. Whether I have the papers that were used -- I do know I do not have all the papers that were used on the prior motion which related to this decision. I don't have them. And they're not part of the appendix.

So what I am asking Mr. Grayson - give me public records. Give me documents.

THE REFEREE: Is this file in the County Clerk's office?

MR. SASSOWER: The file was removed.

MR. GRAYSON: We never had the original file. We received copies, just as Mr. Sassower received copies.

THE REFEREE: You received copies?

MR. BRENNAN: Your Honor, if I may interject?

The files did not leave the possession of the County Clerk. I looked through those files, made copies of the entire files and then brought the original files, along with the copies which was brought in the certification room, they were compared with the originals and the entire file was certified.

So that there is a period of time where the file was in possession of the certification branch of the County Clerk's office, but we did not have the files. They should have knowledge.

THE REFEREE: Mr. Brennan, you have the certified copies of the entire file?

MR. BRENNAN: Yes, I do, your Honor.

THE REFEREE: Do you have them with you?

MR. BRENNAN: Yes, I do.

THE REFEREE: Will you show them to Mr. Sassower?

MR. SASSOWER: May I have copies?

By the way, may I just state this, Mr. Brennan, in absolute decency, and I say this for future cases, I have written you three or four letters. Why do you tell me, "We took out the file, but we returned them?" I would have gone back. They told me they returned them.

When I didn't hear from you, I felt you had it. Why didn't you tell me you returned them?

MR. BRENNAN: I just --

MR. SASSOWER: By the way, your Honor, I don't require certified copies of anything, but that is up to your Honor. I personally will not make any objection to any paper because of lack of certification.

THE REFEREE: Mr. Brennan will show you the file when we have concluded here. I assume there are only a few of the papers that you want copies of. The rest I assume you won't want. But that is your decision. You can make copies.

That is that.

MR. GRAYSON: If I may suggest one thing: Mr. Sassower said he was unaware of this charge until he received the petition. However, he was served with a copy of the underlying complaint in April of 1978 that concerned this matter.

MR. SASSOWER: I was served with what?

THE REFEREE: Just a moment. I don't want to get into extraneous matters. All I am concerned about is this motion.

MR. GRAYSON: Your Honor, we have, since yesterday morning when we were served with the interrogatories, we have prepared answers to them. So if you wish, we could go through them in order.

THE REFEREE: All right. We are on 11 now. We might as well finish that, then we will go back and go in order. We are on Charge 11. Does that take care of what you want in connection with 11?

MR. SASSOWER: No, your Honor. I would like to know, Item 2, they accuse me that respondent's statements are false. In what

respect are they false?

THE REFEREE: In what respect are the respondent's statements false, Mr. Grayson? Do you have your answer?

MR. GRAYSON: I refer your Honor to the reported material in the certified order that we will offer.

MR. SASSOWER: That is an opinion.

THE REFEREE: That is what he is claiming.

MR. SASSOWER: Well, this is the crux of it, and I don't want to belabor the point, but Judge Gellinoff made a statement filed in the County Clerk's office. Certainly it wasn't made ex cathedra. All of a sudden I am met with something Judge Gellinoff said. Of course he said it. I would be the last one to deny it. In fact, I haven't denied that he said it. But I am asking you, sir, after looking at all the papers and all the facts, what do you contend that I said was false? Not that Judge Gellinoff said it, that you say was false?

THE REFEREE: Reading Judge Gellinoff's, I don't see anything in here that says something

Mr. Sassower said was false.

MR. GRAYSON: I refer you to Paragraph 68. Paragraph 70 says the material quoted in Paragraph 68 was false.

THE REFEREE: All right.

MR. SASSOWER: Are you saying --

THE REFEREE: One minute.

MR. SASSOWER: Yes

THE REFEREE: It is saying Mr. Sassower made a false statement and knew it was false when he said, "This Court has learned nothing about 'due process' and fairness and that the 'tainted disposition by this Court' was a result of judicial 'improprieties.'"

What is your claim, Mr. Grayson?

MR. GRAYSON: Your Honor, although we will not bring in Judge Gellinoff to testify to this, Mr. Sassower is free to bring him in.

MR. SASSOWER: But --

THE REFEREE: Hold it.

MR. SASSOWER: I am sorry, your Honor.

THE REFEREE: That is not what I asked you.

MR. GRAYSON: Our claim is that those

statements were false and were known by Mr. Sassower to be false based on the history of that case.

THE REFEREE: What was false, that the Judge has learned nothing about due process and fairness?

MR. GRAYSON: Yes. And the other quotation, the "tainted disposition" quotation.

THE REFEREE: That may be unlawyer-like language, it may not be gentlemanly conduct, but to equate the expressing of an opinion about the Court's legal capabilities, I don't know how you can make a charge like that.

MR. GRAYSON: Your Honor, it is a false accusation against the Judge which is a specific violation of the Code of Professional Responsibilities.

MR. SASSOWER: That is a different charge. How are you going to prove that it was false? This is his opinion. This is his Honor's opinion at that time at that place. I will show to his Honor beyond the peradventure of a doubt, I will show his Honor beyond a peradventure of a doubt

that that statement, while I may agree with his Honor is unlawyer-like, was completely justified as an opinion, and you know it, Mr. Grayson. You know what precipitated this remark in motion papers. And to take a dozen words out of a 3,000-page record where all the other pages are just filled with respect and decency to the Court, is unwarranted, but that is besides the point.

THE REFEREE: That is besides the point.

MR. SASSOWER: Right.

THE REFEREE: We don't want to get beside the point.

MR. SASSOWER: Right.

THE REFEREE: What else on 11? Exculpatory information.

I am not going to take up exculpatory information any more after this. Of course, Mr. Grayson is aware of his continuing obligation to supply Mr. Sassower with any exculpatory information about anything involved in this proceeding.

"Set forth when the petitioner or its predecessor body became aware of the order of May 16, 1974."

That is denied.

"Why was there a delay in bringing this proceeding?"

That is denied.

"Set forth" --

MR. SASSOWER: Judge, may I make a comment on that?

On of my defenses as set forth in my answer is laches. I very frankly feel that to jump on anybody many years later --

THE REFEREE: Yes. On laches, Mr. Grayson?

MR. GRAYSON: There is abundant case law on that point which says that a disciplinary proceeding is not bound by laches.

MR. SASSOWER: Well, what objection do you have of giving this material? Your Honor, an ALR citation, the thrust of which is that laches is not like the statute of limitations. A legal defense, per se, it is a matter considered by the Court in several aspects, and may I just enumerate some of them?

THE REFEREE: Yes.

MR. SASSOWER: If, in 1964, they did not

think it was wrong --

THE REFEREE: '74.

MR. SASSOWER: '74. And all the intervening years they didn't think it was wrong, and now, because they want to bring other charges, they dig up what happened seven years ago, and certainly when it comes to proof and how to evaluate proof, the fact they had been sitting with this matter for seven years and make no mention of it, certainly renders me incapable of proving my case, whatever case there is.

THE REFEREE: I am inclined to believe, Mr. Grayson, that fairness and due process would require that if you knew about it in 1974, of course, I know you weren't even born in '74 --

MR. GRAYSON: Thank you, your Honor.

THE REFEREE: But if the Grievance Committee had it in '74, I think a good argument could be made.

MR. GRAYSON: Your Honor, as I stated earlier, the complaint concerning this matter came to the Grievance Committee in 1978 and a copy of the complaint was mailed to Mr. Sassower on April 14th

of '78. And enclosed to that complaint to him was a copy of Judge Gellinoff's order --

THE REFEREE: That answers that question.

MR. GRAYSON: -- of 1974.

MR. SASSOWER: I don't remember it.

MR. GRAYSON: Shall I show you a copy of the letter sent to you?

MR. SASSOWER: I don't recall it. I am very frank. I would like to know.

THE REFEREE: All right.

"Set forth the Disciplinary Rules and the subdivisions thereof that petitioner contends respondent violated by his conduct as alleged in Charge 11."

MR. SASSOWER: May I say to your Honor with respect to every charge, I have not been notified whether it be in a pleading or any other way what Disciplinary Rules or subdivision I am being charged with?

MR. GRAYSON: Disciplinary Rule 1-102(a)(5).

MR. SASSOWER: Why can't I get this in a written manner?

THE REFEREE: That is good enough. This is

the State Bar Rules?

MR. GRAYSON: Yes. This is the Code that is promulgated.

THE REFEREE: All right.

MR. GRAYSON: I just would like your Honor to know we received the interrogatory yesterday morning about 10 o'clock. The other Disciplinary Rules are 7-102(a)(1), 7-102(a)(5), and 8-102(b), as in boy.

THE REFEREE: Those are the rules that cover all the charges?

MR. GRAYSON: No. Those are the rules that cover Charge 11. He is charged with different rules.

THE REFEREE: These are all for 11?

MR. GRAYSON: Yes.

THE REFEREE: Let's go back to 1.

MR. GRAYSON: Your Honor, there are some general interrogatories on the first page that do not pertain to any changes, specifically.

THE REFEREE: Yes. You didn't give me your answer to this, did you?

MR. GRAYSON: Well, we received that

yesterday morning.

THE REFEREE: I thought you said you had it?

MR. GRAYSON: No. We put together answers, but not written.

THE REFEREE: All right.

"No. 1: Annex a copy of petitioner's report filed with the Appellate Division on April 12, 1979."

What do you mean?

MR. SASSOWER: It's alleged in the petition, your Honor --

MR. GRAYSON: Your Honor, I can explain that. That is a confidential report that is prepared for the Appellate Division and we believe it falls within 3101, work product and work for litigation, as well as divulging it would seem to be a violation of the confidentiality statute of Section 90 fo the Judiciary Law, which means all disciplinary proceedings are confidential.

MR. SASSOWER: Your Honor, it is my contention -- and I might just be taking a stab -- it is my contention that certain matters were

not considered by the Grievance Committee as subject to disciplinary proceedings at that time, and that these have been cooked up, some of these charges have been --

THE REFEREE: At what time?

MR. SASSOWER: -- and some of these charges have just been, pardon the expression, fabricated comparatively recently. I want to see what they complained to the Appellate Division that my misconduct was. Has it anything to do with these charges?

THE REFEREE: I will exclude that. You have the petition. These are the charges, regardless of what is there. These are the charges.

MR. SASSOWER: May I ask your Honor to review the application, in camera, and if there is any material in there which may be relevant, to disclose it to me.

THE REFEREE: I can't envision what you might be talking about.

MR. SASSOWER: I can envision many things, but that is because I know the case and your Honor is comparatively unfamiliar with it.

THE REFEREE: Yes.

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MR. SASSOWER: All I'm asking is, that your Honor look at that. And if there is anything in there which your Honor feels should be disclosed to me in the trial of this matter, then such matters be disclosed.

THE REFEREE: Do you have any objection to that?

MR. GRAYSON: No objection.

THE REFEREE: All right.

MR. SASSOWER: Thank you, your Honor.

THE REFEREE: "2. Annex a copy of the order of the Appellate Division dated May 18, 1979."

Do you have a copy of that?

MR. SASSOWER: No.

MR. GRAYSON: That is the order of the Second Department.

THE REFEREE: Yes.

MR. GRAYSON: I have no problem with that. I can give a copy of that.

THE REFEREE: Okay. That is granted.

"3. As to every charge, annex copies of all correspondence between the petitioner and

the respondent."

Don't you have that?

MR. SASSOWER: I don't have all of it, your Honor. They just mentioned about '78, which I tell your Honor I don't even remember. Here is a prime example.

THE REFEREE: You give him that.

MR. GRAYSON: Your Honor, there is a tremendous amount of material. I think that Mr. Sassower has a responsibility for maintaining his own correspondence.

THE REFEREE: Well, that is true, but I am not going to stand on technicalities if you have it and he doesn't.

MR. SASSOWER: I can tell you now, I saw no correspondence -- may I ask you this question, with respect to the 1978 complaint, since it was brought up, did I answer it?

MR. GRAYSON: Yes, you did. We have numerous letters from you. All signed by you.

MR. SASSOWER: Okay.

THE REFEREE: You don't have that, Mr. Sassower?

MR. SASSOWER: I didn't come across it.

THE REFEREE: It is strange you don't have that.

MR. SASSOWER: It is strange. Not only is it strange, I don't even have a recollection of it. Maybe if I saw the correspondence it will just jog my memory.

THE REFEREE: Show it to Mr. Sassower today after we conclude. If you want to make copies, you can make copies, Mr. Sassower, downstairs, or wherever.

MR. SASSOWER: Thank you.

THE REFEREE: Now, correspondence on every charge. Well, do you have your files here?

MR. SASSOWER: I don't have them here, but I have them available. Judge, if I may, logistics is not too much of a problem. Their office is about a mile from my home. I think it would be easier for everybody if I just visited their office, and I am sure they will make a room to accommodate me, and I will have my files.

THE REFEREE: Agreeable?

MR. GRAYSON: Yes.

THE REFEREE: Rather than have Mr. Grayson provide a copy of all the correspondence, you can bring your files over.

MR. SASSOWER: Fine.

THE REFEREE: And see what you have and what he has.

MR. SASSOWER: Fine. Thank you, your Honor.

THE REFEREE: Charge 1, Paragraph 1.

MR. SASSOWER: Your Honor, would it not be easier, - I say this with all due deference to the Court - would it not be easier for Mr. Grayson to state which interrogatory he objects to and then we just go to those interrogatories?

THE REFEREE: Good thought. Fine.

MR. GRAYSON: Okay. Would you like me to read them into the record before I give my response?

THE REFEREE: I guess so. I hate to burden our friend here, but I guess you have to do it.

MR. GRAYSON: "Charge 1.

"1. Set forth if any demands were made on respondent prior to January 23rd" --

MR. SASSOWER: You don't have to read it.

MR. GRAYSON: Okay. As to Charge 1, No. 1, we have no knowledge.

As to Charge 1, No. 2, that is a public document.

MR. SASSOWER: Have you got a copy of it so I can look at it?

MR. BRENNAN: We have the files. When you come into the office you can see it.

MR. SASSOWER: You have no objection, if you have it, you will give it to me?

MR. BRENNAN: No objection.

MR. SASSOWER: Okay.

THE REFEREE: All right.

MR. GRAYSON: No. 3 of Charge 1, we have no knowledge. Of course, it is a public document. It should be in the files that we received from the Court.

THE REFEREE: When you say you have no knowledge, you mean you don't know whether you have it or not?

MR. GRAYSON: That's correct. We have numerous files.

THE REFEREE: You will let Mr. Sassower see that file?

MR. GRAYSON: Yes, of course.

THE REFEREE: All right.

MR. GRAYSON: Charge 1, No. 4, Mr. Sassower should have that document.

MR. SASSOWER: I sent this document out. Was it received? Was it not received?

MR. GRAYSON: We have no knowledge. If it's a public document, it's probably in the file.

THE REFEREE: Do you have the file?

MR. SASSOWER: No, your Honor.

MR. GRAYSON: Presumably we have a copy of the file, yes.

THE REFEREE: You show the Kelly file to him. If it's there, it's there.

MR. GRAYSON: Yes. Again, No. 5 is a public document. If Mr. Sassower doesn't have his, he can look in our file.

THE REFEREE: All right.

MR. GRAYSON: No. 6, we have no knowledge of that. If it's in the public files, then, again, he has access to it.

No. 7, again, we have no knowledge of it.

No. 8, no knowledge.

No. 9, failed to file the proper accounting.

MR. SASSOWER: What does that mean?

MR. GRAYSON: You did not comply with the order because you failed to file a proper accounting.

MR. SASSOWER: But this is not what I am charged with in Charge 1.

MR. GRAYSON: This is what you are asking for.

MR. SASSOWER: Okay.

MR GRAYSON: No. 10, we have no knowledge.

No. 11, failed to file a proper accounting.

No. 12, no knowledge.

No. 13, again, it is a public document which Mr. Sassower can review.

No. 14, we have no knowledge.

No. 15, failed to file a proper accounting.

No. 16 --

MR. SASSOWER: Your Honor, may I interrupt for a second?

THE REFEREE: Yes.

MR. SASSOWER: To say I failed to file a proper accounting is something which eludes me.

THE REFEREE: In what respect?

MR. SASSOWER: In what respect did I fail to file a proper accounting?

THE REFEREE: Mr. Grayson?

MR. GRAYSON: There were certain items not listed in the accounting. There were certain -- apparently there were certain bills not paid. The accounting was deemed by the Appellate Division to be incomprehensible.

MR. SASSOWER: That is an opinion, okay? I would like to know, sir, because at no time, your Honor, and I am saying this to the trier of the facts, at no time before the opinion of Mr. Justice Asch did anyone, any time, any place, any where, say, "The accountings were not proper, not acceptable, incomprehensible," or anything of that nature. No written material. No oral statements. Nothing. Everybody accepted it as fine and proper.

THE REFEREE: There was no objection?

MR. SASSOWER: No objection whatsoever. All of a sudden, out of a clear blue sky --

THE REFEREE: Okay.

MR. SASSOWER: So I would like to know from Mr. Grayson, since he is making the charge, what's not proper? Don't tell me what Judge Asch, tell me in what respect it's not proper as to all these accountings.

MR. GRAYSON: I believe there is a letter sent to you by Mr. Berger.

MR. SASSOWER: He had nothing to do with this.

MR. GRAYSON: Which listed the items that are missing from the accounting.

MR. SASSOWER: Mr. Berger has nothing to do with Charge 1.

MR. GRAYSON: You are looking at the October 12, 1976 order, correct?

MR. SASSOWER: Which number is that?

MR. GRAYSON: 15.

MR. SASSOWER: Fine. That goes to 9, 11 and 15 on all three items, you said failed to file a proper accounting.

THE REFEREE: He is saying Mr. Berger wrote you a letter.

MR. SASSOWER: Mr. Berger has nothing to do with the charge.

MR. GRAYSON: You want to know in what manner the accounting didn't comply, and I am telling you: You received a letter from Mr. Berger. If you wish, I can draw it out of the file.

THE REFEREE: In which you allege deficiencies?

MR. SASSOWER: In these three particular accountings.

MR. GRAYSON: In these three accountings, meaning the two trusts or the two trusts and the estate.

MR. SASSOWER: We are dealing with Items 9, 11 and 15 on Charge 1. At no time prior to Mr. Justice Asch's opinion did anybody object to it. This is my assertion to his Honor, which I will make under oath, as far as I know. Now you are giving me, I did not file a proper accounting.

Tell me in what respect it's not proper?

MR. GRAYSON: The order of October 12, 1976 is enumerated in which paragraph of Charge 1?

MR. SASSOWER: October what?

THE REFEREE: 12th.

MR. GRAYSON: October 12, 1976.

MR. SASSOWER: Let's go to the first one,

if I may. No. 9 says I asked you in what respect to you contend that respondent did not comply with the order of October 15, 1974 -- April 25, 1974. We are dealing with Interrogatory 9.

Now you said I didn't comply with the order of April 25, 1974, and I say to his Honor and to you: Tell me how I didn't comply?

THE REFEREE: Yes.

MR. SASSOWER: That's all.

MR. GRAYSON: The accounting does not properly include all assets, liabilities and income distributions.

THE REFEREE: What is missing?

MR. SASSOWER: What is missing?

MR. GRAYSON: All the assets presumably, all liabilities.

MR. SASSOWER: Are you saying that all the assets were not put in that accounting?

MR. GRAYSON: The Court takes the position that they are unable to corroborate what is in the accounting.

MR. SASSOWER: Sir, I am not asking you what the Court said. I am asking you in what

respect.

THE REFEREE: What are you going to prove was wrong?

MR. GRAYSON: We are going to prove that the accounting was not properly filed.

THE REFEREE: In what respect? He presented a bill of particulars. What is wrong?

MR. GRAYSON: The Court was unable to determine what assets in the estate were not in the accounting or were mislabeled, what liabilities were not in there. The income distributions they were unable to determine the correctness of that.

MR. SASSOWER: Judge, I want to say this to your Honor, with all due respect, at no time, at any time, until a year or two years later did anybody object to this. In fact, I received one comment from one distributee who said, "I understand it. It is beautiful." I never, to this day, have heard from anybody in what respect it is incomprehensible. I will tell you this: I can take any high school child --

THE REFEREE: No, no.

MR. SASSOWER: In what respect is it wrong?

THE REFEREE: You are going to have to prove something was wrong. Mr. Sassower submitted a bill of particulars and said, "What do you say I did? Did I hold up Joe Blow on such a day or what?"

MR. GRAYSON: Mr. Sassower is the one with the records to prove this or not. Apparently --

THE REFEREE: No, you are the one who has to prove that he did something wrong in connection with that, and he is asking you, "What is it, so I can defend against it?"

MR. GRAYSON: The Courts were unable to determine the veracity of the accounting.

THE REFEREE: Why were they unable to?

MR. GRAYSON: Because the Court never had the records to compare the accounting with bills. Mr. Sassower retained these records.

MR. SASSOWER: Your Honor, with all due respect, Mr. Grayson is Grayson is apparently unfamiliar with the procedures. You make an accounting. The other side puts in objections. "I object to this item, that item, this item." Then the Court passes on it. There were never

any objections made. I am asking you now -- this is my livelihood, my profession. I am asking you, tell me specifically, what is in an accounting that I failed to set forth?

MR. GRAYSON: The objections are in the public documents which we have.

MR. SASSOWER: There are no objections there, sir. There are no objections.

MR. GRAYSON: Was the accounting accepted by the Court?

MR. SASSOWER: Absolutely. It was filed and no objections were put down at any time until a year and a half later and then -- excuse me, and I am speaking from memory, no objection was made to the accounting at that time.

Out of a clear blue sky Judge Asch, or his law secretary, or somebody, and I will show you why, said it was incomprehensible. In fact, in the Appellate Division the other side never even contended that it was incomprehensible. And to this day, I don't know why, it's incomprehensible.

THE REFEREE: You have his position. What is next?

MR. SASSOWER: But Judge, am I allowed to know, for 9, 11 and 15, failed to file proper accounting, and I am asking a simple question, in what respect?

THE REFEREE: Hold it.

MR. BRENNAN: Your Honor, part of the problem that we have here is that there have been accountings filed. We are not attempting to mislead the Court and say there were not purported accountings filed.

THE REFEREE: I know that.

MR. BRENNAN: What we are saying is, that there were documents denominated Trustees' accounting that the Court found unacceptable and at one point in time there was a request and Mr. Sassower turned over books and records so they could compare these things. They are missing. So that the matter cannot be settled absent looking at the actual books and records to determine if the accounting is accurate. The accounting has not been accepted.

MR. SASSOWER: That doesn't help me, your Honor, but I will be guided by your Honor's

judgment in this matter.

THE REFEREE: All right. 16.

MR. GRAYSON: We have no knowledge.

17, no knowledge.

MR. SASSOWER: Will Mr. Abuza be in court if I may inquire?

MR. GRAYSON: Yes.

MR. SASSOWER: Okay, fine.

MR. GRAYSON: 18, again, failed to file a proper accounting.

MR. SASSOWER: The question is: In what respect is it contended that respondent did not comply with the order of March 13, 1980? And to tell me, with all due respect to your Honor and to Mr. Grayson, did not file a proper accounting, tells me absolutely nothing.

THE REFEREE: I am inclined to agree with you, Mr. Sassower. Here we have another accounting, Mr. Grayson. What about this one?

MR. GRAYSON: This order is the Appellate Division order which reviewed Mr. Sassower's appeal.

THE REFEREE: Yes.

MR. GRAYSON: And it was pointed out the accounting was not properly filed and talked about --

MR. BRENNAN: In reading from the Appellate Division, they state, "We agree with Special Term that the accounting," in quotes, "file is incomprehensible and unacceptable. Inter alia, a proper accounting, should state in clear and understandable terms the nature and value of the trust corpus when received; any realized increases or decreases on principal; any income received; any disbursements and distributions to beneficiaries; any commissions paid; and the amount and location of any balance on hand. We are at a loss to understand why a proper accounting has not been filed."

MR. SASSOWER: Mr. Brennan --

THE REFEREE: That is what they are claiming.

MR. SASSOWER: No. Your Honor, if I may say, this is what the Appellate Division said an accounting should have.

THE REFEREE: Yes.

MR. SASSOWER: I am claiming, they don't say my accounting lacked these things.

THE REFEREE: Hold it. Are you claiming that that is what was wrong, that his accounting lacked those things?

MR. SASSOWER: The Appellate Division did not state that. That is a different point.

THE REFEREE: Is that what you are claiming?

MR. SASSOWER: Are you claiming that?

MR. GRAYSON: Yes, that is what we are claiming, your Honor.

THE REFEREE: Okay.

MR. SASSOWER: Okay. Fine.

THE REFEREE: 19.

MR. GRAYSON: No knowledge.

MR. SASSOWER: Excuse me, sir.

THE REFEREE: What he is saying is --

MR SASSOWER: They are telling this Court that they have no knowledge, and I am saying to your Honor, with all due respect, that the petitioner having the files in his possession has knowledge and they are just doing either sloppy work or playing fast and loose with this Court.

MR. GRAYSON: Your Honor --

THE REFEREE: I don't want to hear language like that from either side of the table.

MR. SASSOWER: All right.

THE REFEREE: What I translate Mr. Grayson to be saying to you is, that he personally does not have the knowledge now. He has the file. He will show it to you and that information will be there. Have I translated correctly?

MR. GRAYSON: Exactly. Thank you, your Honor.

MR. SASSOWER: Okay.

THE REFEREE: 21.

MR. SASSOWER: I will accept that explanation.

THE REFEREE: Thank you.

21 talks about exculpatory matters.

22.

MR. SASSOWER: What happened to 20?

THE REFEREE: Oh, 20?

MR. GRAYSON: No knowledge.

THE REFEREE: 21, exculpatory matter.

Granted.

22?

MR. GRAYSON: A copy of the complaint was sent to Mr. Sassower and as to any delay, I think we have gone over that before.

MR. SASSOWER: Let me ask you this question, if I may, with your Honor's permission. In any charge are you claiming that I caused any delay whatsoever?

MR. GRAYSON: The charges speak for themselves.

THE REFEREE: If you caused a delay in processing by the Grievance Committee? Is that what you are asking?

MR. SASSOWER: After they got knowledge of it, did I cause any delay in these proceedings?

MR. GRAYSON: They speak for themselves, but I would like to add that we attempted to serve Mr. Sassower with a petition in August, 1980 and were unsuccessful until October of 1980.

THE REFEREE: This discussion at this point is irrelevant to this. There is no claim at this point that you caused any delay. So we don't need to do into that.

MR. SASSOWER: I should say this, because

I think it is a rather prejudicial thing, I was communicated by --

THE REFEREE: Are you going into what he said? I am not interested in what he said.

MR. SASSOWER: Okay.

MR. GRAYSON: 23, the Disciplinary Rules are as follows:

Disciplinary Rule 1-102(a)(5). 6-101(a)(3). 7-101(a)(1), (a)(2), and (a)(3). And 7-102(a)(1).

THE REFEREE: We will take a short break here.

(At this time a recess was taken.)

(After recess.)

MR. SASSOWER: We are talking about Charges 11 through 14, which are intertwined. Charges 11 through 14 he will produce Mr. Dick next week. And he will be prepared to present his case on those four charges.

I will be ready and anxious to try those four charges at your Honor's convenience. Next week would be fine. All I need is the cooperation of Mr. Grayson, which I am sure I will get in getting all available documents.

I would ask Mr. Grayson for one further matter. Mr. Dick probably has a lot of papers on this matter in his file which are not filed in the County Clerk's office, or which you made photostated copies of, for example, there is about a 2,000-page transcript not in the County Clerk's office. I only have part of it. If you get from Mr. Dick the entire file and give me from that file any exculpatory information, I would appreciate it.

MR. BRENNAN: I understand that that transcript to which you referred, Judge Ellerin, who is a New York Supreme Court Judge, has that, because there was a recent motion made and the transcript is there. This was, I would say, within the last couple of weeks the entire transcript was in possession of Judge Ellerin.

MR. SASSOWER: Whatever you can get, get, okay? I will be able to proceed next Tuesday, which Mr. Grayson suggested, on that matter.

THE REFEREE: Tuesday you suggested, Mr. Grayson?

MR. SASSOWER: Did you suggest that or am

I in error? We are assuming we can get a hold of Mr. Dick by Friday, is that correct?

MR. BRENNAN: Yes.

MR. GRAYSON: I think Tuesday would be fine.

MR. SASSOWER: Okay. I am sure if there is any surprising information --

MR. GRAYSON: Excuse me.

MR. SASSOWER: Sure.

(Mr. Grayson conferring with Mr. Brennan.)

MR. GRAYSON: Wait a minute. Mr. Brennan, who is handling those charges, will not be available until Thursday.

MR. SASSOWER: Thursday is fine with me.

THE REFEREE: What is that?

MR. GRAYSON: Mr. Brennan is handling certain of these charges.

THE REFEREE: Yes.

MR. GRAYSON: He will not be available until Thursday of next week.

MR. SASSOWER: Thursday is fine with me.

MR. GRAYSON: Thursday. Okay.

MR. SASSOWER: What day is that?

THE REFEREE: The 28th.

MR. SASSOWER: I have one engagement in this court on that date, but let me see what I can do with that engagement. I am sure if it means being excused for an hour or so, I will have no problems with your Honor.

THE REFEREE: Right.

MR. SASSOWER: It's in this courthouse.

THE REFEREE: Who is the Judge?

MR. SASSOWER: My adversary called me up and said it was Judge Egeth. I will have no problem.

THE REFEREE: Okay. Thursday, August 28th.

MR GRAYSON: Your Honor, as to the other witnesses --

MR. SASSOWER: Let me finish. That is the your charges?

THE REFEREE: Right.

MR SASSOWER: We will try that. You put in your case, I will put in my case.

THE REFEREE: Right.

MR. GRAYSON: Right.

MR. SASSOWER: Now, on the other charges, I have told my adversary, make a statement as to what each witness will testify to. I will concede

that would be their testimony without conceding the truth thereof. No problem. Only one person which then they have to produce, Mr. Abuza. Also Mr. Mastroianni. They have to give a statement. And any other witness, which I cannot see them testifying to anything except perfunctory matters.

THE REFEREE: Great. That's the way to do it.

MR. SASSOWER: Get it in. Make your statement, and no problem. You will bring Mr. Abuza in and try the Kelly matter at a time which I may suggest to your Honor should be decided after we finish or while we are proceeding on the Dick matter, because then I can guide myself better. If your Honor wants to fix a date now, I have no objection.

THE REFEREE: No. I appreciate when counsel on both sides cooperate. I just want to proceed expeditiously. Whether there is a day or two in between, I don't care, but I just want to proceed expeditiously.

MR. SASSOWER: May I ask your Honor, a problem that I face, and as your Honor suggested,

obviously other conflicting engagements I have to put in affidavits of actual engagement which I have no problem with, except this is supposed to be confidential, at least until conviction, what do I say in an affidavit of engagement?

THE REFEREE: I am talking off the top of my head, whether this would be of any value. I would be glad to call the Judge involved and explain.

First of all, you may have some objection of my mentioning to the Judge that I have this disciplinary proceeding. No, I wouldn't have to say that. That you are involved in a matter that has been referred to me by the Appellate Division.

MR. SASSOWER: As an attorney?

THE REFEREE: Yes. Without disclosing the nature of the matter.

MR. SASSOWER: This doesn't have to be on the record?

THE REFEREE: No.

(Discussion off the record.)

MR. SASSOWER: May I put this on the record?

I intend, on all conflicting engagements where I put in an affidavit of actual engagement, I'm going to falsely state -- it's not falsely, because I am the attorney.

THE REFEREE: No. I had that in mind. It is what they call a mental reservation. You may state that you are involved as an attorney in a matter before me in which the Appellate Division has directed that this matter be concluded by order of that Court within thirty days, so you may submit such an affidavit.

MR. SASSOWER: Thank you, your Honor.

THE REFEREE: If you have any difficulty, I would be glad to follow it up.

MR. SASSOWER: I generally have no difficulty, Judge.

THE REFEREE: All right.

MR. SASSOWER: May I make a further suggestion, your Honor?

THE REFEREE: Yes.

MR. SASSOWER: Since it is the 28th, why don't you, Mr. Grayson, give me the answer to the interrogatories for Charges 11 through 14

within the next couple of days?

THE REFEREE: Oh, by tomorrow.

MR. SASSOWER: I will take the next couple of days --

MR. GRAYSON: We have the answers here. I thought we were going to continue?

MR. SASSOWER: And then you can save the others.

MR. GRAYSON: I would just as soon, if your Honor would like, to finish them today.

THE REFEREE: All right.

MR. SASSOWER: I am guided by your Honor.

THE REFEREE: For your own purposes, when you got to Mr. Grayson's office tomorrow, you can limit yourself to just taking the information on the last four counts, but that is up to you.

MR. SASSOWER: Yes.

By the way, Mr. Grayson, my present purpose and intention when I come to your office, which will probably be Thursday, but I will call you beforehand, is to come to your office on Thursday -- tomorrow I am engaged in this cour

Thursday I will come to your office. I will only be requesting and only asking that you make available to me the materials related to the last four charges.

THE REFEREE: Okay.

MR. SASSOWER: We can save the other matter for a different day.

THE REFEREE: Okay.

MR. GRAYSON: Your Honor, one point: One of my witnesses who I must call is not available the entire month of September.

MR. SASSOWER: Who is that?

MR. GRAYSON: The IRS agent.

MR. SASSOWER: I will concede whatever he has to testify to. Make a statement and I will concede. In all likelihood, that if he were called, this is what he would say, without conceding the truth thereof.

MR. GRAYSON: He is an expert witness, your Honor.

MR. SASSOWER: Put it down. I am not going to controvert an expert witness on his expert testimony.

MR. GRAYSON: I think it important that the Court understand and get a full picture of what this witness can testify to concerning failure to turn over -- concerning what occurred because certain documents were not turned over. What occurred is that the estate was taxed and penalized something like \$70,000.

MR. SASSOWER: What? Make the statement. If it's not outrageous --

THE REFEREE: If Mr. Sassower cannot contest it that they were excessive, that is it.

MR. SASSOWER: Why don't you do this -- I think very frankly what you say may not be correct: Why don't you get an affidavit from him and give an affidavit to the Court.

THE REFEREE: Submit an affidavit.

MR. SASSOWER: Since he is not available in September, he is available in August.

THE REFEREE: Charge 2, Paragraph 1, Mr. Grayson?

MR. GRAYSON: We have no knowledge. And again, the public files are open when Mr. Sassower comes to our office.

2, again, we have no knowledge, but it might be in a public document.

MR. SASSOWER: Excuse me. May I state that my interrogatory dealing with exculpatory information is not only as to information in your possession, but available to you.

Now, if what you have done is culled certain material from records and not taken the exculpatory information, then I think you are not complying with what I understand the law is.

MR. GRAYSON: We did not cull records. We requested and received several files in these matters, because, Mr. Sassower, in his answer, claims that the Court should view the entire file and get a full picture and we have the complete file to turn over to the Court.

MR. SASSOWER: Does that include the Surrogate Court file in Suffolk County?

MR. GRAYSON: We have a complete file.

MR. SASSOWER: We will work that out. Fine.

MR. GRAYSON: Charge 2, No. 3. No knowledge.
4, again, no knowledge.

MR. SASSOWER: Again, may I interrupt, rather

than going through all that? Is there any interrogatory which you want to object to answering?

THE REFEREE: Yes. Just read them to yourself. What about 5?

MR. GRAYSON: Again, we have no knowledge of that.

MR. SASSOWER: Okay. Just those that you object to answering. That is all I am interested in. I didn't mean to pre-empt your Honor, but I thought it was a more expeditious way of proceeding.

THE REFEREE: It was very helpful. Absolutely.

MR. SASSOWER: I don't know if I said this on the record, but I will say it again. I do not need certified copies and I will not make any objection to any document that, facially, looks proper because of the lack of certification.

MR. GRAYSON: Your Honor, concerning Charge 2, there is nothing that we object to. We, as I said earlier, we don't have knowledge of these items. As to No. 24, the exculpatory

information, we have none. As to Charge 25, excuse me, Interrogatory 25, again, we will show Mr. Sassower a copy of the complaint.

MR. SASSOWER: Fine.

MR. GRAYSON: As to No. 26, the appropriate Disciplinary Rules are as follows --

MR. SASSOWER: Why don't you give it to me in a little memo or in writing.

THE REFEREE: No, I want it.

MR. SASSOWER: All right. I am sorry.

MR. GRAYSON: Rule 1-102(a)(5). 6-101(a)(3). 7-101(a)(1), (a)(2) and (a)(3). And 7-102(a)(1). Charge 3. No. 1 is irrelevant.

MR. SASSOWER: Why is it irrelevant?

THE REFEREE: He doesn't have to --

MR. SASSOWER: I ask your Honor for a ruling on that. I think it is relevant to my case, your Honor.

THE REFEREE: It is obvious that this explains it.

MR. SASSOWER: I will accept that, your Honor.

MR. GRAYSON: 2, again, no knowledge.

MR. SASSOWER: Just tell me what you object to.

MR. GRAYSON: Okay. No. 3 is irrelevant.

MR. SASSOWER: You are charging me, if your Honor please, with failing to reasonably complete or do a certain task, and I am asking the petitioner, what do you consider to be a reasonable time to do the task in?

THE REFEREE: That's denied.

MR. SASSOWER: Denied?

THE REFEREE: Yes.

MR. SASSOWER: Okay.

MR. GRAYSON: No. 7, again we object to it.

THE REFEREE: Sustained.

MR. SASSOWER: Your Honor, would you hear me for a moment?

THE REFEREE: Yes.

MR. SASSOWER: There is always a way of doing a thing faster. If there was no prejudice for anything I did or did not do, does not your Honor consider the non-prejudicial effect of a matter?

THE REFEREE: Certainly.

MR. SASSOWER: Am I not entitled to know from the petitioner whether they claim that what I did was prejudicial or not?

THE REFEREE: Well, I am in favor of as much disclosure as possible. In that sense, yes. Are you in a position to state whether there was prejudice, and if so, what it was?

MR. GRAYSON: Yes, your Honor. The prejudice is enumerated in the charges, additional legal expenses, penalties imposed by the IRS.

MR. SASSOWER: Fine. Set it forth. That's all.

THE REFEREE: That's right.

MR. GRAYSON: They are enumerated in the charges.

MR. SASSOWER: Okay, you don't object to answering the interrogatory from what I understand you to state?

MR. GRAYSON: Well, yes.

MR. SASSOWER: Okay, so give me the answer. That's all.

MR. GRAYSON: No. 9, again, Mr. Sassower received a copy of the complaint.

MR. SASSOWER: Fine. You don't object to the interrogatory. I just want those interrogatories which you object to.

MR. GRAYSON: No. 10. These are the rules: 1-102(a)(5). 6-101(a)(3). 7-102(a)(1). 7-101(a)(1), (a)(2), and (a)(3).

THE REFEREE: Charge 4.

MR. GRAYSON: Your Honor, No. 2 not only do we have no personal knowledge of this, but it seems to be a bit too broad.

THE REFEREE: Yes. I think so.

MR. SASSOWER: Your Honor, this is so vital, and I make this representation to your Honor, this is so vital to this charge and to several other charges that I must respectfully request of this Court to rely on my representation of the crucial aspect of this testimony in this proceeding in requesting that the petitioner answer this interrogatory to the best of its ability.

THE REFEREE: Isn't this a matter for you to prove that certain parties repeated your execution of your duties as executor?

MR. SASSOWER: No. I go one step further, your Honor.

First of all I recognize that the same proof coming from the mouth of the petitioner is more effective and of more probative value than coming from my mouth.

THE REFEREE: Yes. Can you clarify this as to exactly what you are talking about?

MR. SASSOWER: I am talking about Item 2.

THE REFEREE: Yes.

MR. SASSOWER: According to the petitioner's motion, I was removed as executor on March 6, 1976. And nevertheless, this Court will find, without any question whatsoever, that I acted as administrator for a whole year afterward expressly with the permission and consent of the Court, expressly with permission and consent of everybody involved, that what happened a year later, through records being tampered with, and I put that in quotes, something that happened a year before was changed or put a different interpretation on. And a year, over a year later, the Court said, disregarding everything that had transpired,

"Oh, you were removed a year before and all the acts that you did as executor are null and void, et cetera, et cetera, et cetera." And it is my position that I acted legally.

I was recognized as a legal executor throughout that period of time. And if I can prove this charge, or this matter, then I say three or four charges must go down the drain.

THE REFEREE: In that connection what are you asking?

MR. SASSOWER: I am asking for them, and they have the records, of all acts of which you have knowledge, and all conduct, as far as you have knowledge, and all documents, insofar as you have knowledge, between March 9, 1976 to March 27, 1977, more than a year later, which are inconsistent or consistent with my position as executor because they allege that I was removed on Marcy 9, 1976.

THE REFEREE: Mr. Grayson is going to make available to you all those records, so that takes care of the records.

MR. SASSOWER: Fine. If you have any other information, put it forth.

MR. GRAYSON: Yes.

THE REFEREE: You will make the file available?

MR. GRAYSON: We will give him access to the records. As to any other information --

MR. SASSOWER: If you know.

MR. GRAYSON: We don't know anything.

MR. SASSOWER: Okay, if you don't know, you don't know. That's all, period.

THE REFEREE: Okay. Continue, Mr. Grayson.

MR. SASSOWER: Thank you, your Honor.

MR. GRAYSON: Nos. 2 through 7, again, we have no information on.

MR. SASSOWER: What charge?

MR. GRAYSON: No. 8 is no exculpatory information that we know of.

THE REFEREE: All right.

MR. GRAYSON: Again, No. 9 he has a copy of the complaint.

No. 10 is the Disciplinary Rules. They are as follows: 1-102(a)(5). 6-101(a)(3). 7-101(a)(1), (a)(2), and (a)(3), and 7-102(a)(1).

Charge 5. 1 through 3, no knowledge.

MR. SASSOWER: Just your objections, that's all.

MR. GRAYSON: No. 4 we have no exculpatory information.

No. 5, again he received a copy of the complaint.

No. 6, Disciplinary Rules are as follows: 1-102(a)(5), 6-101(a)(3), 7-101(a)(1), (2) and (3), and 7-102(a)(1).

Charge 6, No. 3 we object to. Not only is it work product and material preparing for litigation, but it also appears to conflict with the confidentiality statute of the Judiciary Law, Section 90.

MR. SASSOWER: Your Honor, would you hear me for a moment?

THE REFEREE: Yes.

MR. SASSOWER: One of the issues that I raised before the Appellate Division -- I don't know if your Honor has copies of the papers --

THE REFEREE: Yes, I do.

MR. SASSOWER: -- of the Appellate Division. So I will make it brief.

One of the issues that I raised before the Appellate Division was the constitutionality of the basis of certain charges. The Appellate Division, in its order -- I don't have it in front of me now so I am not quoting it verbatim -- but the Appellate Division in its order said that all constitutional issues are to be raised before his Honor.

THE REFEREE: Yes.

MR. SASSOWER: It is my contention, there is a case on point in California where in a disciplinary proceeding the equal protection of the laws were specifically raised and found to be well founded. It is my contention that if I am singled out on that where nobody else has ever been charged with something like that, then I am being singled out. I might say to your Honor that -- I don't think I am telling anything to his Honor -- that I have seen many motions denied where the Judge said, "There is no law; no facts to substantiate this application." And I have never heard, in my lifetime, that anyone should ever be -- not that I say

it is true -- I say it is false -- but I mean if it were true, I am saying that I am being discriminated upon because I know of no case where a person has been charged with disciplinary proceedings because he made a motion and the Judge said, "Motion denied. There are no facts or laws to substantiate the application."

THE REFEREE: I don't know of any.

MR. SASSOWER: And if I am being singled out, then --

THE REFEREE: I have seen no motions like that.

MR. SASSOWER: May I state with just as great enthusiasm and vigor that there was substantial reason, in fact, and there was law to disqualify Judge Signorelli.

THE REFEREE: This charge, in effect, alleges engaging in frivolous litigation. I would assume, Mr. Grayson, that the frivolous litigation in the context here is present with the notion that this was deliberately done with knowledge, I assume.

MR. GRAYSON: To delay the matter, to harass

the Judge, yes.

THE REFEREE: On the other framework, as you set forth, Mr. Sassower, I don't see anything that would effect this frivolous litigation with knowledge and for an improper intent.

MR. SASSOWER: I have no objection if Mr. Grayson is so inclined to amend 47 to set forth those assertions stated by his Honor.

Do you wish to amend Paragraph --

THE REFEREE: He adopted what I said. I asked him if that were true. Because otherwise I couldn't see any basis for the charge.

MR. BRENNAN: Could you describe what item?

MR. SASSOWER: I want Item 47 to specifically read that way.

THE REFEREE: In effect he is giving you a bill of particulars by adopting what I said to be his position.

MR. SASSOWER: May I be clear?

THE REFEREE: Yes.

MR. SASSOWER: Could you tell me and the Court, Mr. Grayson, that 47 alleges that I engaged in frivolous litigation with an intent

to what? To do what?

MR. GRAYSON: To delay the matter.

THE REFEREE: With the deliberate purpose of delaying or in another way delaying the progress of a matter. Is that your position?

MR. GRAYSON: And to harass the Judge, the Surrogate. Yes, that is the position.

MR. SASSOWER: Judge, whenever you make a recusal motion you unquestionable delay a proceeding.

THE REFEREE: Yes, but that is not what I am talking about.

MR. SASSOWER: Your Honor, I wish you would appreciate the quandary I am in.

THE REFEREE: I do.

MR. SASSOWER: I clearly don't understand. Am I to feel that every time I make - and I have made them four times in my lifetime - if I made it that many times, do I have to feel that every time I make a motion, any motion, that I fear that the Judge may say, rightly or wrongly, "No facts, no support for the motion," therefore, I am subject to disciplinary proceedings.

THE REFEREE: No. That is why I was asking Mr. Grayson, when I read the charge, I couldn't imagine that what you said is what he meant.

MR. SASSOWER: That is what it says.

THE REFEREE: Well, he has frivolous litigation here. Now there is "frivolous" and "frivolous." Frivolous can be just a dumb motion with no facts of law. Then there can be be frivolous where a lawyer summa cum laude from Harvard Law School and every place else, with knowledge of forethought, deliberately brings a motion for an improper purpose to harass the Court, to bring down witnesses.

MR. SASSOWER: I will go along with that.

THE REFEREE: Am I stating your concept correctly?

MR. GRAYSON: That's it.

MR. SASSOWER: So I have brought on these motions, why do you say, to harass the Court? I want to know what I did.

MR. GRAYSON: To delay matters and to harass the Court, yes.

MR. SASSOWER: To delay the matters and

harass the Court. Because very frankly, your Honor, I am going to make several motions, including one of dismissal after the petitioner's case.

THE REFEREE: Yes.

MR. SASSOWER: I want to know what I am fighting here.

THE REFEREE: You are right.

MR. SASSOWER: Thank you, your Honor.

THE REFEREE: Next.

MR. SASSOWER: Delaying and harassing.

MR. GRAYSON: We are up to No. 3.

THE REFEREE: We are on Charge 6, right?

MR. GRAYSON: Right. No. 4 is none.

5, again, you received a copy of the complaintiff.

No. 6, the Disciplinary Rules are as follows: 1-102(a)(5), 7-102(a)(1), and (a)(2).

Charge 7, 1 to 3 we have no knowledge.

MR. SASSOWER: Excuse me, Mr. Grayson, I hate to interrupt you, I didn't ask for this. I said "annex copies of all papers submitted on the motion dated on or about June 1, 1977."

This is why I do not want to put Mr. Grayson in a position where he answers a question now. I will give him all the time he wants to answer these questions and reflect upon them. All I want to know right now is which you object to. Take your time with the others.

MR. GRAYSON: As to No. 6, I object as I did earlier.

MR. SASSOWER: Okay.

MR. GRAYSON: Work product and material for litigation and Section 90 of the Judiciary Law.

MR. SASSOWER: Mr. Grayson, although I think your charge is factually without any merit whatsoever, if you think that while I, considering the physical condition I was in, by failing to hold an examination before trial and waived my right to examination before trial, I am subject to a disciplinary proceeding for just failing to attend an EBT where I told the other side I was going to, is that a disciplinary proceeding? I waived my rights to hold an EBT because I couldn't go out to Riverhead. Is this the subject of a disciplinary proceeding?

THE REFEREE: It could be neglect, depending on the circumstances.

MR. SASSOWER: I waived it. The charge is not that I neglected it. The charge is not that I neglected, legal neglect. I will agree with your Honor wholeheartedly if the charge against me were legal neglect.

MR. GRAYSON: One of the underlying disciplinary rules is neglect of a legal matter.

THE REFEREE: Is that what you are charging here?

MR. GRAYSON: That is one of the Disciplinary Rules, yes.

MR. SASSOWER: I should have a hair on my head as to how many EBT's that I went to where the other side did not show up. And how many demands for a bill of particulars I have made where I did not receive answers and made numerous motions. So am I not entitled, your Honor, with all due respect, to know whether any other person has ever been charged under the equal protection cause with some nonsense such as this?

THE REFEREE: Mr. Grayson?

MR. GRAYSON: Again, I say if we prosecuted anybody for this, it would have been under 30101, material prepared for litigation.

MR. SASSOWER: Don't identify the name for me.

THE REFEREE: Just the body, numbers.

MR. GRAYSON: I am not at liberty to say whether or not we have ever prosecuted anybody for that.

THE REFEREE: Why aren't you?

MR. GRAYSON: Because under the confidentiality statute I am required to maintain silence, in essence.

THE REFEREE: We are not talking about identifying a respondent. We are only talking about saying how many cases in the last twenty years, or whatever --

MR. BRENNAN: If I might interject, your Honor?

THE REFEREE: Yes.

MR. BRENNAN: Whenever there is a charge of neglect or taking action to harass or a notice or doing something prejudicial to the

administration of justice, it is a question of fact, it is a question of law, and the attending circumstances. That is what is alleged in this petition. This charge is part of another charge which is part of an entire scope of conduct. This is only one part of it.

THE REFEREE: On the one case?

MR. BRENNAN: In this particular instance.

MR. GRAYSON: Charges 3 through 9, I believe, concern the same estate.

MR. BRENNAN: It is all part of the same estate proceeding. So that in the abstract to say that we are going to charge somebody for failing to show up for an EBT is improper unless you know the facts that we are alleging that their conduct and this matter has gone on for years and years and this is only a part of a pattern of conduct.

THE REFEREE: In other words, you have five or six allegations with respect to one estate proceeding?

MR. BRENNAN: Correct.

THE REFEREE: So we are not talking about

one instance, one charge in a complaint where you failed to show up for an EBT. It is a matter of a course of conduct.

MR. SASSOWER: Assuming, your Honor, for argument's sake that I committed, one, two, three, four, five, six, all related to the same thing. Let's say I failed to show up five times or I refuse to answer a bill of particulars five times. Let's say I failed to show up three times. That is one charge. You don't multiply this and chop it up into little bits. I know they do it in criminal law, unfortunately. You don't chop it up into little pieces to make it different charges. It's one charge.

THE REFEREE: What would be the one charge, you failed to show up three times?

MR. SASSOWER: Yes.

THE REFEREE: Well, there are three separate charges here, too, because you might have a valid defense for two. I will deny that.

MR. SASSOWER: Am I not entitled to know, has anybody been charged, per se, with this type of conduct?

THE REFEREE: No, because as it is now restructured, we are not talking about one piece of paper with one charge on it that you failed to show up for an EBT, but rather we are talking, for example, about five pieces of paper which allege, in effect, in connection with case so and so, this was done, this was done, this was done, and this was done. The failing to show up for an EBT was just one of those allegations. I will deny that.

Next.

MR. SASSOWER: Your Honor, I can rely, I am certainly sure I can, that it will be that interpretation which is the gist of this charge, not just a mere abstract failing to show up on an EBT, by the way, which is not true.

THE REFEREE: All right. That is the way I interpret it.

MR. SASSOWER: I will accept that interpretation, your Honor, but they are to be put to their proof on that interpretation.

THE REFEREE: Yes.

MR. SASSOWER: That is the interpretation

they have to meet.

MR. GRAYSON: No. 7, no exculpatory information.

MR. SASSOWER: Just tell me the ones you object to, please?

MR. GRAYSON: No. 9, Disciplinary Rules, 1-102(a)(5), 6-101(a)(3), and 7-102(a)(1).

No. 1, the transcript of June 25, 1978, sic. I don't know if that is a correct date.

MR. SASSOWER: That is what you put in your petition and I question you whether or not that is the right date.

MR. GRAYSON: We don't have a transcript for that date.

MR. SASSOWER: All right, fine. If you haven't got a transcript, all right.

#6

No. 2, how could you not have a transcript of that day when you put that transcript as part of your petition?

MR. GRAYSON: Which paragraph are you referring to?

MR. SASSOWER: I will give it to you in a moment.

MR. GRAYSON: Are you referring to Paragraph 58, which says January 25th?

MR. SASSOWER: Some place you put down June 25th. So I put "sic." It should be January 25, 1978. I am sorry. So you must have a transcript.

MR. GRAYSON: We do, but if you want January, put January. Don't put June. No. 2, I think any employment relationship is irrelevant and we have no knowledge anyway.

MR. SASSOWER: But you don't object to it, if you have knowledge.

MR. GRAYSON: I think it's irrelevant.

THE REFEREE: You don't have any information?

MR. GRAYSON: We don't have any information.

THE REFEREE: You don't have to go beyond that.

MR. GRAYSON: I think No. 3 is irrelevant.

MR. SASSOWER: That is very relevant.

THE REFEREE: This is for argument later on.

MR. SASSOWER: Judge, let's talk about it. The issue is going to come up. The Judge says to you answer. You are under arrest. You say, "I stand mute under the Fifth Amendment."

THE REFEREE: He will put in his proof and you put in your proof.

MR. SASSOWER: As an interrogatory, do you contend the actions of the Judge were lawful? That's all. It's a simple question.

MR. GRAYSON: It speaks for itself.

MR. SASSOWER: I am asking you whether you contend it is lawful.

MR. GRAYSON: We are contending what the Judge did he had a right to do.

MR. SASSOWER: Was it lawful? It's a simple issue.

THE REFEREE: If he says he had a right to do it, then he is saying it was lawful.

MR. SASSOWER: Are you saying what the Judge did was lawful? That's simple. Let's cut down the issues in this matter. If you want to serve your opinion, just let me know whether you contend it was lawful.

MR. GRAYSON: Well, we don't contend it was unlawful, therefore, you can assume we contend it is lawful.

MR. SASSOWER: All right.

THE REFEREE: He is saying it was lawful.

MR. SASSOWER: Okay. Your answer is, it was lawful.

MR. GRAYSON: Again, No. 9, I have an objection similar to the objections I made earlier.

MR. SASSOWER: Fine. Let me answer that, your Honor.

I know one man that was charged with misconduct for the same thing like that, United States Supreme Court said, "Out the window." Spivak v. The United States, decided by Supreme Court of the United States.

THE REFEREE: All right.

MR. SASSOWER: So I am asking you, since that time, since the Supreme Court rule, has anybody ever been charged with this kind of stuff?

THE REFEREE: Charged with what?

MR. SASSOWER: Asserting a constitutional right to be silent.

THE REFEREE: I assume he is saying that you didn't have a constitutional right. I assume that is his position.

MR. SASSOWER: Is that your position? Are

you saying I had no constitutional right?

THE REFEREE: By that a constitutional right was not involved here.

MR. SASSOWER: Judge, I very frankly, very respectfully, would like to hear from him.

THE REFEREE: I am trying to cut it down.

MR. GRAYSON: We are claiming that there is no constitutional question involved here.

MR. SASSOWER: Okay. Give me that answer.

THE REFEREE: Otherwise you couldn't have the charge.

MR. SASSOWER: It's as clear as day that it was unconstitutional. You are contending that there is no constitutional right?

MR. BRENNAN: We contend that there is no constitutional right involved in the particular circumstances of that case. It's not a constitutional right floating around in the air.

THE REFEREE: He is saying the constitutional right did not apply here.

MR. GRAYSON: No. 10, the Disciplinary Rules are as follows: 1-102(a)(5); 1-101(a)(1), (a)(2), and (a)(3), and 7-102(a)(1) and (a)(2).

MR. SASSOWER: Why don't you give me the Disciplinary Rules, and that is all, which you should have given me initially. Give me the rules. Write them for me tomorrow.

THE REFEREE: Charge 9.

MR. GRAYSON: Charge 9. Rules 1-102(a)(5), 7-101(a)(1), (a)(2), and (a)(3), 7-102(a)(1) and (a)(5), and 8-102(b).

THE REFEREE: Charge 10.

MR. GRAYSON: The Rules are 1-102(a)(5), 7-101(a)(1), (a)(2), and (a)(3), 7-102(a)(1) and (a)(2), and 8-102(b), as in boy.

THE REFEREE: We have 11. You gave us that.
12.

MR. GRAYSON: The Rules are 1-102(a)(5), 7-102(a)(1), and (a)(5), and 8-102(b), as in boy.
13, 1-102(a)(5) and 7-102(a)(1).

Charge 14, 1-102(a)(5) and 7-102(a)(1).

THE REFEREE: Gentlemen, I will see you
10 o'clock, August 28th.

MR. SASSOWER: Your Honor, one question
before we leave.

THE REFEREE: Yes?

MR. SASSOWER: I will ask you the question because this is the first disciplinary proceeding that I have ever been involved in, so I am unfamiliar with the procedure.

THE REFEREE: I am very grateful both sides cooperate.

MR. SASSOWER: Can I have someone here taking notes?

THE REFEREE: Yes.

MR. SASSOWER: A non-witness.

THE REFEREE: Someone from your office?

MR. SASSOWER: My daughter.

THE REFEREE: Off the record.

(Discussion off the record.)

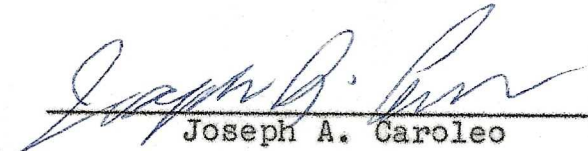
MR. SASSOWER: Your Honor, thank you very much.

THE REFEREE: Thank you both.

MR. SASSOWER: Mr. Grayson, I will call on you Thursday, but tentatively expect me on Thursday. I am sure we can work this out.

* * *

The above is a true and accurate
transcript taken in this case.



Joseph A. Caroleo
Senior Court Reporter

9th JUDICIAL DISTRICT

NOV 13 1981

GRIEVANCE COMMITTEE

State of New York
Grievance Committee for the
Ninth Judicial District

200 BLOOMINGDALE ROAD

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INVESTIGATOR

November 10, 1981

CONFIDENTIAL

Mr. Joseph A. Caroleo
Senior Court Reporter
New York Supreme Court
60 Centre Street
New York, NY 10007

Re: Our File 1035
Sassower Disciplinary Proceeding


Dear Mr. Caroleo:

Thank you for delivering the August 18, 1981 (pages 1-97) transcript of the above disciplinary proceeding before Judge Melia.

You inadvertently failed to include a certification page in this transcript. The Committee would appreciate your preparing such a page and sending the original to Judge Melia (c/o Room 359M of the New York County Courthouse) and a copy to the Committee for inclusion in your transcript.

Thank you for your cooperation in this matter.

Sincerely,


Richard E. Grayson
Assistant Counsel

REG/meh
attachment

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d

JOSEPH A. CAROLEO
OFFICIAL COURT REPORTER
NEW YORK SUPREME COURT

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November 12, 1981

State of New York
Grievance Committee for the
Ninth Judicial District
200 Bloomingdale Road
Whiteplains, NY 10605
Attn: Richard E. Grayson, Esq.
Assistant Counsel

9th JUDICIAL DISTRICT
NOV 13 1981
GRIEVANCE COMMITTEE

Dear Mr. Grayson:

Please excuse the oversight for not including
a certification page, re, your file, 1035.

Enclosed is certification page you requested.
I have filed a copy in Room 359M for Judge Melia.

Sincerely,

Joseph A. Caroleo