

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - FIRST JUDICIAL DEPT.

-----: :
IN THE MATTER OF GEORGE SASSOWER, : :
AN ATTORNEY : :

GRIEVANCE COMMITTEE FOR THE : :
NINTH JUDICIAL DISTRICT, : :

Petitioner : :

- against - : :

GEORGE SASSOWER, : :

Respondent. : :
-----: :

60 Centre Street,
New York, New York,
September 25, 1981

B E F O R E

HON. ALOYSIUS J. MELIA,

Referee.

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

DONALD H. HUMPHREY, ESQ.,
200 Bloomingdate Road,
White Plains, New York,
BY: RICHARD G. GRAYSON, ESQ., Of Counsel
& TIMOTHY BRENNAN, ESQ., Of Counsel
Attorneys for the Petitioner.

GEORGE SASSOWER, ESQ.,
283 Southview Avenue,
White Plains, New York,
Respondent pro se.

Phillip J. Reig,
Official Court Reporter.

September 25, 1981

(Hearing continuing)

THE REFEREE: You gentlemen ready?

MR. BRENNAN: Before we begin your Honor, I'd like to take some time to make a short statement. As your Honor is aware of the interrogatory--as your Honor is aware, in accordance with the interrogatories served by Respondent, and the ruling of this Court, Petitioner was to serve various answers and documents upon Mr. Sassower. We attempted to comply expeditiously and in good faith. With respect to charges 1 and 3 the information and documentation essentially came from the witness Mr. Abuza. The documents which we gave Respondent from the files of Mr. Abuza were those that Mr. Abuza had given us.

At that time no inspection of Mr. Abuza's correspondence file was made by either Mr. Grayson and myself. Following the cross examination of Mr. Abuza at the last session, Mr. Sassower requested that this Court direct Mr. Abuza to turn over his correspondence file to us, which he did. It is with great embarrassment I must advise this Court that additional relevant documents were discovered in

that file, including a document that Mr. Abuza testified that it did not have.

Copies of these documents were yesterday turned over to Mr. Sassower, and to the extent that these recently produced material has prolonged this proceeding both Mr. Grayson and I offer our apologies. I'm stating only that we proceeded in ignorance, but good faith. The answers to the interrogatories supplied to Mr. Sassower were in large part based on information supplied to us by Mr. Abuza. Mr. Sassower has advised us he declined your Honor's suggestion to mark such answers as exhibits into evidence, mainly because they contained our signatures and that he first wished to give us an opportunity to redact same.

Rather than disassociate ourselves from these answers, we wish only to state that insofar as that represents documents of the Petitioner, they represent information secured in good faith. Again it is with apologies to the Court.

THE REFEREE: Well, Mr. Brennan and Mr. Grayson, first of all, there is absolutely no question in my mind about your good faith. Not having discovered these materials earlier, I can appreciate that seeing

the files in this case, that was a monumental task. Mr. Sassower has the benefit, if I can label it that way, of intimate knowledge with all of the details. You two gentlemen are relatively newcomers to it. That is, however, not to excuse, but rather to understand the problem. All right. Anything else?

MR. SASSOWER: I appreciate the statement and the candor by the Grievance Committee's statement. There is only one request that I really would like to make at this time. If your Honor recalls, yesterday we had a vacant slot in the exhibits, and we took an exhibit which was produced on cross examination and called it Exhibit 20. I would appreciate your Honor if we could make that as part of Defendant's Exhibit B because I want it to be clear to this tribunal, as well as the Appellate Division that this exhibit was produced by Mr. Abuza, as part of cross examination.

THE REFEREE: Motion granted.

MR. SASSOWER: Okay. May we call that, instead of 20--

THE REFEREE: We'll call it Q.

MR. SASSOWER: We will call it Q.

THE REFEREE: I want the record to reflect that there now is no Exhibit 20. Gentlemen, in the exhibits that you returned to me this morning, at least I do not find Exhibit 20 in place.

MR. SASSOWER: Twenty is for identification. Do you want identification in there also?

THE REFEREE: Twenty is for identification.

MR. SASSOWER: Twenty is for identification as well as K for identification. Do you want the identification exhibits as part of your--

THE REFEREE: No.

MR. SASSOWER: That's why I took it back.

THE REFEREE: Right.

MR. SASSOWER: That's for identification also.

THE REFEREE: So we'll mark this 20, that will be Q for identification.

(Document formerly marked Petitioner's Exhibit No.20, now marked Respondent's Exhibit Q for identification.)

MR. SASSOWER: Off the record.

THE REFEREE: Off the record.

(Discussion off the record.)

THE REFEREE: Are we ready now, gentlemen?

MR. SASSOWER: I am.

MR. GRAYSON: Yes.

Proceedings
Abuza-For Petitioner-Cross

C H A R L E S Z. A B U Z A, called as
a witness in behalf of the Petitioner, having been
previously duly sworn, resumed the stand and testi-
fied as follows:

CROSS EXAMINATION

BY MR. SASSOWER: (contg.)

Q Good morning, Mr. Abuza. Mr. Abuza, you have
been made aware that these three documents or photostatic
copies thereof have been removed from your correspondence
file in the Kelly matter by the attorneys for the
Grievance Committee since you last testified here on
Wednesday?

A I have been so told.

Q Since approximately when has a copy of my
letter to Mr. Albert J. Barnovsky dated January 10, 1974,
been in your file?

A Is there a date stamped on it, sir?

(Letter handed to the witness.)

A (contg.) I don't know. At that time when we use
to get copies of things they had been stamped on here.
I don't see any stamp on this copy. I assume it came
within whatever the mailing period would be of the date
of it.

Q Or from Mr. Arenson's office when he first

consulted you?

A That's correct, I would assume. Yes, looking at the date of it that would be more likely that it was given to us by Mr. Arenson.

Q And it's been in your file ever since?

A Oh, yes. If it was in this file, it's been in there.

MR. SASSOWER: I offer it in evidence.

(Letter handed to Mr. Grayson.)

MR. GRAYSON: No objection.

THE REFEREE: Received, R in evidence.

(Letter dated January 10, 1974 marked Respondent's Exhibit R in evidence.)

Q Can you explain to the Court why you did not give the Grievance Committee or your attorneys this document or advise them of this document?

MR. GRAYSON: Objection.

THE REFEREE: Overruled.

A They had access to the file. I didn't give them any particular papers.

Q When you say, "They have access to the file", how many conferences have you had with the Grievance Committee or their representatives?

A I'd say approximately four.

Q And how many would you say within the past month?

A All of them.

Q All in the past month?

A Yes.

Q At any of these conferences did you give them your file to inspect?

A Basically I left my--whatever files I had with them. You know, I didn't go through the file. I left for them. I am not prosecuting the case.

Q I mean did you physically give them your files?

A Yes.

Q Did you see them inspect your files?

A No.

Q At the time you gave them your files, were you present at the time?

THE REFEREE: That he gave them?

MR. SASSOWER: Yes.

Q (contg.) Were you present while they had your files in their possession?

A Yes.

Q And did you see them going through your files?

A Sometimes we went through them together. Sometimes we looked for specific items that they asked me about.

Otherwise I left the file with them.

Q Did you see them going through your correspondence file?

A I don't recall specifically. I know they went through files, and different files were given to them at different times when they asked for it, and I don't recall which file was given to them when.

Q I show you my covering letter or a photostatic copy thereof of my letter of February 13, 1974, addressed to Schacter, Abuza & Goldfarb also taken from your file, and did you not testify here before this Court that your file did not reveal the existence of this letter as having been received by your firm?

A Yes, I did so testify. I don't know why I didn't see it. It was in the file. I don't deny it.

MR. SASSOWER: May we have this marked as F-1.

THE WITNESS: If one were trying to hide something, wouldn't be in the file.

THE REFEREE: What did you say, F-1?

MR. SASSOWER: F-1, if your Honor please.
F is the copy which I produced after Mr. Abuza denied receipt thereof.

THE REFEREE: F-1. No objection, I take it?

MR. GRAYSON: No objection.

(Letter dated February 13, 1974 marked Respondent's Exhibit F-1 in evidence.)

Q Do you now agree that your testimony about the non-receipt of Exhibit F-1 by your firm was false?

MR. BRENNAN: Objection.

THE REFEREE: Correct. Well, was untrue-- inaccurate?

THE WITNESS: Ask him, your Honor.

Q And do you concede that since the receipt of Exhibit F-1, or shortly thereafter, this letter, speaking of F-1, has always or almost always been in your file in this matter or in your possession?

A Yes. If it were in the file, and that's where they found it.

Q Did not the Grievance Committee attorneys make known to you that they had to produce this letter in response to interrogatory 4 and 5, and did you not give them the following information in September of 1981 and I will review both the question and the answer.

"No.4. Q: Annex a copy of Respondent's Notice of Appearance with respect to said motion as received by the attorneys for Edward Kelly.

"A: A copy of the Notice of Appearance is

attached. No cover letter was discovered in the file for Edward Kelly."

Q Was that the answer that you gave to the Grievance Committee attorneys?

A Yes.

Q Before you gave that answer to the Grievance Committee attorneys, did you look through your file?

A Yes. I also looked through my file in Court here, and I didn't see it for some reason. I don't know why.

Q It was your correspondence file?

A Yes.

Q And irrespective of how voluminous the correspondence--

THE REFEREE: Excuse me. Did it appear in chronological order in your correspondence file?

THE WITNESS: I don't know, your Honor. They found it.

MR. BRENNAN: I can testify to that, your Honor. Upon inspection of the file it appeared in chronological order.

THE REFEREE: All right.

Q And irrespective of how voluminous this file may be, the correspondence file that you kept in this matter is comparatively small, would you not agree?

A Yes.

Q (Reading)

"Letter 5. Q: Annex a copy--"

THE REFEREE: For the record, you're reading a question?

MR. SASSOWER: Five.

"Q: Annex a copy of Respondent's Letter of February 13, 1974 with respect to said motion as received by the attorneys for Edward Kelly.

"A: The attorney for Edward Kelly does not have a letter from Respondent dated February 13, 1974 in his file and has no specific recollection of receiving one from Respondent at or about that time."

Q Was that the answer you gave to the Grievance Committee attorneys?

A Yes.

Q And when you gave that answer to the Grievance Committee attorneys, did you look through your correspondence files?

THE REFEREE: This is repetitious.

MR. SASSOWER: Okay.

Q And am I not correct that as you testified here last Wednesday, almost throughout that testimony

you had before you and you were looking through your correspondence file?

A Yes.

Q I show you this memorandum as having been taken from your correspondence file. (

(Memorandum handed to the witness.)

A Yes.

Q And do you concede that was taken from such file?

A Oh, yes.

Q And it's entitled--

MR. SASSOWER: May we mark it for identification.

THE REFEREE: Do you ultimately intend to offer it in evidence, or you don't know.

MR. SASSOWER: In part, definitely. The entire part I don't know at this point.

THE REFEREE: We'll hold it.

MR. SASSOWER: We'll hold it. All right.

Q I show you--well it's called memo to file and it's dated February 15, 1974, and this is also a document which you failed to reveal either to the Grievance Committee attorneys--

THE REFEREE: No. Is it a document?

Q (contg.) Is it a document which you failed to

reveal to the Grievance Committee attorneys?

A I didn't fail to give them anything. I gave them the file.

Q Well, sir, when you testified here this past Wednesday and you had your correspondence file in front of you, and throughout that testimony you kept looking at your correspondence file, did you not see this memo to file dated February 15, 1974 when asked specifically about the motion dated or returnable February 15, 1974?

A I assume I did not see it. Nothing to hide.

Q And we agree that in a typewritten portion that the designation "Mr. Duff" is Mr. Donald Duff, the Clerk of Special Term Part I?

A Again I don't know. I assume so.

Q All right. I show you a calendar for 1974.
(Calendar handed to the witness.)

Q (contg.) Which you may use for your testimony on the following questions. Will you agree that February 15, 1974, the return date of the motion, was on Friday?

A Yes.

Q And we have already established through Defendant's Exhibit Q that the telephone conversation between myself and Mr. Scharter took place on February 13,

which was a Wednesday, or two days before the return date?

A Yes.

Q Is that--

THE REFEREE: Is that true?

Q (contg.) --is that true?

A Yes.

Q Can we also agree that insofar as the typewritten portion of this memorandum is concerned, where it says, "Sassower had phoned last week," that "Last week" is probably an error?

A I don't know. Maybe you had another conversation with Mr. Schacter. I did not draft the memo.

Q Well, would you look at the typewritten portion, and ask you if there are any memorandum in your file, memoranda which would show any conversation with Mr. Schacter prior to February 13, 1974, two days before the return date of the motion.

THE REFEREE: Between Mr. Schacter and you?

Q Right.

THE REFEREE: Any conversation within the previous week; is that it?

MR. SASSOWER: Right.

Q Mr. Abuza, I would very much appreciate it and

I hope I am not taking the prerogative of the Court, while you're welcome as far as I'm concerned to ask the Grievance Committee questions, the answers are yours.

THE REFEREE: That's what he said. Let's go on.

MR. SASSOWER: All right.

THE REFEREE: Did you look from February 1 up until February 13, see if there is--

THE WITNESS: The reason I was asking the Grievance Committee since they took some papers out of here, it's no longer in order.

MR. BRENNAN: I'll stipulate I didn't find any other memo during the period of time.

Q So the only memorandum you have of any telephone conversation between myself and your firm's office was on February 13, 1974?

A It would appear that would be the only written memorandum.

Q Okay. Now, let me read you what the memorandum says in typewritten portion. May I? By the way, who dictated this typewritten portion?

A Mr. Schacter. I was not there.

Q And it was this normal firm practice to dictate

or make memorandum of at least important messages at that period of time?

A Not a firm policy. Mr. Schacter had a habit of making memos. I did not.

Q It reads as follows: "Attended Court. Sassower had given a slip to service to mark it for May 1st. I opposed and insisted on being ready. The Clerk then marked it submitted and told me to see Mr. Duff, Clerk of Special I in charge of trust accounts. Duff said to watch the Law Journal--" continuing following paragraph. "Sassower had phoned last week and said he would appear in Court and give me a notice of appearance and a stipulation to adjourn it for two weeks. He failed to keep his promise." When, for the first time did you see this memorandum?

A I have no recollection.

Q Well, sir, various affidavits were submitted by you and Mr. Schacter in the latter part of 1974 and more specifically when I made a motion to vacate the order of Judge Sarafite. Did you not, when I submitted papers in opposition and make statements with respect to this motion, look at your correspondence file to see what memorandum--memoranda you had in this matter?

A Not necessarily. You're talking about something

that took place about six months later.

Q When I assume the correspondence file was relatively small, much smaller than it is today?

THE REFEREE: True?

A There was not necessarily any reason to look, and if you recall, I previously testified, and you asked me whether or not I addressed those particular questions in the answering papers, and the testimony was that we did not address that.

Q Well, let's get to that response. I show you your affidavit, affirmation of September 23, 1974. Would you take it from your file--or, let me read it to you to save time. All right?

THE REFEREE: Go ahead.

Q (contg.) Quote .

A Sorry. What date was that?

Q September 23, 1974.

A Yes, sir.

Q (Reading)

"SIX: As stated in my reply affirmation dated September 16, 1974, in the contempt proceeding, this firm never agreed to any adjournment with Respondent in the original proceeding. This firm submitted on March 15, 1974--"

A February 15.

Q (contg.) "February 15, 1974." Was that a statement made by you under penalty of perjury?

A Yes, and it's born out by that memorandum, that's what Mr. Schacter did.

MR. SASSOWER: Excuse me. Move to strike as not responsive.

THE REFEREE: Strike it.

Q I ask you to look at the typewritten portion of this memorandum and ask you what's in that typewritten portion negates my assertion that in a conversation with Mr. Schacter it was agreed that the motion would be adjourned?

A Mr. Schacter apparently said, "I opposed," and insisted on being ready, because he states in the typewritten part that he did not meet--that you did not meet with him in Court as agreed and did not give him a notice of appearance and did not give him a stipulation in Court.

Q But we do--

THE REFEREE: It's argumentative.

MR. SASSOWER: Okay.

Q But you will concede that your file does have the notice of appearance and does have the covering letter

yes or no?

A Yes, but the date of receipt is after this.

Q Okay, now, sir, was it not the practice of your office, as I know it is the practice of, I think, most attorneys--

THE REFEREE: Was it the practice of your office.

Q (contg.) --was it the practice of your office that when a letter or communication came in which contained material which was more than one, two or three days old, not to annex to the material received the envelope in which it came in so that you could see what it was mailed?

A No.

THE REFEREE: In other words, the--if a letter was dated March 1, and you received it April 1, and the postmark on the envelope was April 1 and the date was of some significance, would you then attach that envelope to that letter?

THE WITNESS: Only in a case of real significance. This was a letter dated--

THE REFEREE: No, no, that's getting to another point. We're talking about practice.

THE WITNESS: Practice, no. Only if a letter-- only if a postmarked date was so--

THE REFEREE: My question--

THE WITNESS: The date of the letter.

THE REFEREE: Mr. Abuza--

THE WITNESS: What I'm trying--our practice was not to keep envelopes. I'm sorry.

THE REFEREE: Of course your practice is not to keep envelopes, it's nobody's practice, but my question included the qualification if the date was of significance, the letter was dated February 1, embracing something that had happened on February 15th, and the envelope shows a postmark of March 1, would you keep that envelope?

THE WITNESS: If we deemed it significant.

THE REFEREE: Question.

Q In any event did you keep the envelope in which the Notice of Appearance with a copy of an affidavit of service was annexed thereto on February 13 with a covering letter of February 13th, did you keep that envelope?

A No.

Q Is it not a fact that there were occasions where, as part of your affidavit, you annexed my envelope to the Court to show when it was mailed?

A When what was mailed?

Q My affidavit?

A I don't recall.

Q Mr. Abuza, I draw your attention to the written portion underneath the typewritten portion, and ask you if that two handwritings or one handwriting, and do you recognize the handwriting?

THE REFEREE: Before we do this, there has been many references to the document, so I think we'll have to mark it for identification. This will be S for identification.

(Document marked Respondent's Exhibit S for identification.)

THE REFEREE: Are they two writings? Referring to Exhibit S for identification. This memo is also the one about which testimony has been given concerning Mr. Schacter's statement about an adjournment and Mr. Sassower's failure to appear in Court, etcetera.

THE WITNESS: I think it's one handwriting but I can't be sure. It's not my handwriting.

Q Do you know whose handwriting it is?

A Yes. Mr. Schacter's.

Q Now, are you familiar with Mr. Schacter's handwriting, abbreviations and things of that nature?

A I haven't seen it in five, six years so--

Q In any event, could you read the handwritten portion?

THE REFEREE: Allowed.

Q (contg.) Allowed, as best you can?

A There is a date, 2-28.

Q Which we will concede means February 28th?

A Correct.

Q 1974.

THE REFEREE: The memo is dated February 15, 1974.

MR. SASSOWER: Right.

THE REFEREE: All right.

A I am not sure of the first word. It may be Ruth, R-U-T-H, who was a secretary in our office at the time. I'm not sure, though.

THE REFEREE: Ruth.

A (contg.) Then there is something that I cannot decipher. I don't know whether it's suppose to be a letter or--it's indecipherable. And then says "Check" I assume "Calendar 3-1."

THE REFEREE: 3/1?

A "3/1." Then a dash. "Not on calendar." Then there is a line. Next word would be "Sassower."

Q Can I read it and see if you will agree with my reading of it sir, Mr. Abuza? Mr. Abuza, you want

me to read it, sir?

(Document handed to Mr. Sassower.)

Q "2/28--Ruth--" What was Ruth's last name?

THE REFEREE: Doesn't make any difference.

A I don't remember.

Q "Check calendar," that's C-A-L, "For 3/1.

Not on calendar. Sassower phoned with adjournment of one week. Will call later. Phone again. Return--"-- something--"Tomorrow". Would you say that's a fair reading?

(Document handed to the witness.)

A I'm not sure about the very last phrase. I quite frankly, I can't read it.

Q All right.

But I don't disagree with you.

Q Now, Mr. Schacter was a member of the Bar-- how old was he at the time?

THE REFEREE: About.

A About seventy-five.

Q Active practitioner for many years?

A For about fifty years I presume.

Q And familiar with the practice in Special I-- okay. Mr. Abuza, if the matter had been submitted on February 15, 1974, can you tell us why he would have

the secretary Ruth check to find out whether the motion was on the calendar for March 1, 1974?

A I presume that he was not sure whether or not the Court had accepted your services request for an adjournment, or whether the Court had accepted his demand that it be submitted.

Q Well, sir, you have been in Special I many times; is that not correct?

A Yes.

MR. SASSOWER: May we go off the record please for a moment, your Honor?

THE REFEREE: I don't think we need to.

MR. SASSOWER: All right.

Q Mr. Abuza, the memoranda, memorandum clearly indicates that Mr. Schacter was in Court on February 15, 1974 the matter had been marked submitted, according to his memoranda; as far as the calendar was concerned that was the end of that motion insofar as any further appearance on the calendar; is that not correct?

A Yes, but I suppose--

Q Okay. Now, what rational reason would there be--

THE REFEREE: Repetitious and argumentative.

Q Am I not correct, from your experience in

Special I, that once a motion is marked submitted, it no longer appears on any subsequent calendar?

THE REFEREE: That's repetitious and again argumentative. We also know if a motion is marked submitted, it doesn't appear. Mr. Abuza argues that possibly Mr. Schacter was mistaken and wasn't sure that it was submitted. That's his position.

Q But you did state in later, in two affidavits that unequivacally your office did not consent to an adjournment?

A That is correct.

Q And that the matter was submitted on February 15, 1974?

A That is correct.

Q And you never revealed to the Court that as late as February 28, 1974 there was any question in anyone's mind in your office that may be in fact the matter was not submitted on February 15, 1974, but in fact had been adjourned to March 1, is that not correct?

A There was no reason to say--there was no question in mind.

THE REFEREE: The question is, did you?

THE WITNESS: No.

THE REFEREE: I think in fairness to you,

Mr. Abuza, I think the question contained the qualification--well, no, I'll withdraw that. You were going to say something about question of mind?

THE WITNESS: Yes, your Honor. And all--if I may.

THE REFEREE: Yes.

THE WITNESS: That Mr. Sassower asked if I should state that I did not advise the Court in my affidavit as to the question of mind.

THE REFEREE: That there was any question in the mind of your office?

THE WITNESS: That is correct, but there was no reason to do that in an affidavit six months later when it had been determined that that in fact had been submitted. In other words, if there was a question in Mr. Schacter's mind back then when it had been submitted or not, it had in fact been submitted.

THE REFEREE: That's your conclusion?

THE WITNESS: I assume so, your Honor. Again, I was not--

Q But at that time that you submitted that affidavit, you were also aware that I had in my

possession a report from American Clerical Service which indicated that in fact the Court had adjourned it for March 1st?

A No, I was not aware until I got your answering affidavit or your motion papers.

Q Right. When you got my motion papers, you were aware that American Clerical Service was under the impression that the motion was adjourned to March 1st, 1974?

THE REFEREE: Is that true?

A Yes.

Q Now, Mr. Abuza, can we agree that there is no essential difference in the context of this particular matter between a stipulation to adjourn a motion for two weeks and a letter from me to your office confirming there is an agreement to adjourn for two weeks?

A There is a legal difference but as a matter of practice, no.

Q All right.

MR. SASSOWER: I offer this document in evidence.

THE REFEREE: As Exhibit S?

MR. SASSOWER: As Exhibit S, with the qualification that I do not concede the truth of that portion which says, "Last week."

THE REFEREE: All right. Any objection?

MR. GRAYSON: No objection.

THE REFEREE: Received S in evidence.

(Respondent's Exhibit S formerly marked for identification, now marked in evidence.)

Q By the way, how long did Ruth remain in your employ subsequent to February of 1974? I say "You" I mean your former firm's employ?

A I would have no exact recollection.

Q Approximately?

A Maybe a year.

Q And it was way after the motion to vacate that she remained in your firm's employ; is that not correct?

A She was a part-time typist.

Q Now, when the motion to vacate came in your office, did you have any discussion with Mr. Schacter and say, in sum and substance, and point out to him that this letter confirming this adjournment, the memos were in your file? Did you make any inquiry of him as to his recollection as to what took place?

A He told me that--

Q No. Yes or no?

THE REFEREE: Did you?

A I believe yes.

Q By the way, Mr. Schacter is now deceased?

A That is correct.

Q And how long has he been dead?

A Dead, I think he died a month ago or two months ago.

Q Was there any indication of mental, intellectual senility in 1974?

MR. BRENNAN: Objection.

THE REFEREE: Overruled.

MR. BRENNAN: Could there be a qualification?

THE REFEREE: In '74.

MR. BRENNAN: I don't understand.

MR. SASSOWER: Senility.

MR. BRENNAN: Just as in common observance, that what we're talking about?

THE REFEREE: Very good, Mr. Brennan. Very good. I think that is a matter of--I think the lay experience probably is sufficient to detect senility. Mr. Abuza.

A No.

Q In any event this memorandum was in your correspondence file when you testified two days ago?

MR. GRAYSON: Objection.

THE REFEREE: What was the question?

MR. SASSOWER: Is that on the ground it's

repetitious?

MR. GRAYSON: Yes.

MR. SASSOWER: Would you repeat the question again.

(Last question read by the Court Reporter.)

THE REFEREE: Sustained.

MR. SASSOWER: On the grounds of repetition, your Honor.

THE REFEREE: Yes.

Q And there is no question that this memorandum, which is marked S in evidence, was in your file when you executed your affirmations of 9/23/1974 and 9/16/1974?

A I presume it was there.

Q By the way, at any time, were any memoranda from this file destroyed?

THE REFEREE: To your knowledge?

A Not to my knowledge.

Q I show you letters dated October 16, 1975, March 28, 1975, July 31, 1974, July 21, 1974, July 9, 1974, October 22, 1975, May 1, 1974, March 22, 1974, which were annexed to the Grievance Committee answers to my interrogatories dated September 13, 1981, which is Exhibit K for identification, in further response to their answers to my interrogatories, and ask you if

these are the only--and ask you is it not a fact that these are the only documents they took from your correspondence file in answer to those interrogatories?

THE REFEREE: Stipulated and agreed that these letters were in fact taken from Mr. Abuza's correspondence file.

MR. GRAYSON: Remember I gave you two letters. Is that included in that batch? I am presuming that's the batch Tim I gave you.

THE WITNESS: Yes.

Q Are my two letters that I gave you in there?

MR. SASSOWER: Off the record.

THE REFEREE: Off the record.

(Discussion off the record.)

MR. BRENNAN: We will stipulate that the documents Mr. Sassower has just enumerated were received by the Grievance Committee from Mr. Abuza on 9-13 pursuant to our request for letters in his file for a period of time, I believe January 1974 to August 1974, although these letters go beyond that period of time.

MR. SASSOWER: Okay. May we mark these letters for identification, your Honor.

THE REFEREE: Collectively for identification.

Letters marked T for identification.

(Letters marked Respondent's Exhibit T for identification.)

THE REFEREE: That is seven letters.

MR. GRAYSON: Excuse me. You gave eight dates.

MR. SASSOWER: Seven. Eight. You are correct. October 16th.

THE REFEREE: Hold it.

(Respondent's Exhibit T handed to the Referee.)

THE REFEREE: Eight is correct. Eight letters are included in the exhibit.

Q Mr. Abuza, I further draw your attention to the fact that you failed to turn over to the Grievance Committee attorneys or reveal to them the following exhibits, which were also in your file.

THE REFEREE: Before we go down that road any further, Mr. Abuza's testimony, his position is that he turned over the file.

MR. SASSOWER: Well, the testimony is, as I understand it, the statements made to the--by the Grievance Committee, is at variance with that statement.

MR. BRENNAN: I think, your Honor, if I can

clarify.

THE REFEREE: Yes.

MR. SASSOWER: Well, I would appreciate it if you clarified it outside Mr. Abuza's--because you're testifying now as a witness, and he should be excluded from such testimony.

THE REFEREE: No, this is just clarification. What Mr. Brennan just said is on the record. I may be confused.

MR. BRENNAN: Friday we went to Mr. Abuza's office and asked him the specific interrogatories. One of the questions had to do with certain letters in a time period from January to August of 1974. We received at that time--

THE REFEREE: Time period of what?

MR. BRENNAN: Of from January 1974 through August 1974. At that time, at the end of that meeting, we took some files with us, some of Mr. Abuza's personal files with us, and Mr. Abuza made copies of the letters which he gave to me on Sunday at a second meeting that we had at the Grievance Committee office.

MR. SASSOWER: When you took his files you did not take his correspondence file?

MR. BRENNAN: At that time, no.

MR. SASSOWER: Right, no.

MR. BRENNAN: Right.

MR. SASSOWER: Okay.

MR. BRENNAN: That during the preparation of the interrogatories--we submitted all the letters that we had received including the letters going beyond 1974, and I personally had not inspected the correspondence file as of that date; that I did not personally inspect that file until this week.

Q Now, the next question is, is it not a fact that you failed to turn over or reveal to the Grievance Committee attorneys the following exhibits, which have also come from your correspondence file: The memorandum of February 13, 1974, which is Q in evidence, the letter of May 1, 1975, which is No. 29 in evidence, the letter of May 14, 1975, which is No. 30 in evidence, the letter of October 18, 1975, which is No. 31 in evidence, the letter of October 19, 1975, which is 31A in evidence?

THE REFEREE: That's for identification.

Q (contg.) As modified by his Honor. I accept that. The letter of November 13, 1975, which is 32 in

evidence, the letter of November 13, 1975, which is 33 in evidence, the letter of February 13, 1974, which is F in evidence, the letter of July 29, 1974, which is G in evidence, the letter of August 13, 1974, which is L in evidence, the letter of 8-14-74 which is--

THE REFEREE: The letter of August 13, 1974 is--

MR. SASSOWER: Is L.

MR. BRENNAN: I have 7-18-74 for that.

THE REFEREE: Right. Letter from Mr. Abuza to the Respondent is August 13, 1974 and that's H.

MR. SASSOWER: Right. Did I say L? Sorry. I meant to say H.

THE REFEREE: All right.

Q (contg.) The letter of August 14, 1974, which is I in evidence, the letter of August 22, 1974, which is J in evidence, the letter of July 18, 1974, which is 8 in evidence, the letter of August 1, 1974, which is M in evidence, the letter of September 2, 1974, which is N in evidence, and the three documents which were marked today which were turned over to me by the Grievance Committee attorneys yesterday, is that not correct, by Mr. Brennan--

THE REFEREE: No, the question is to Mr. Abuza.

Q Is that not correct?

A I did not turn them over to the Grievance Committee-- with qualification, your Honor.

THE REFEREE: Yes. You may answer.

A At the discussion, when I first met with the gentleman from the Grievance Committee, we generally went over the interrogatories. They asked me to look through my files. I gave them whatever they asked me for at that time. I was under no obligation to just hand them things that I thought--they told me what they wanted and my file was open to them. If they wanted--whatever they wanted, they took. I had no obligation to pick and choose.

THE REFEREE: This is getting back to what we were going over the other day. Again, did you feel any obligation to enlighten Mr. Brennan and Mr. Grayson both with respect to anything that would be condemnatory of Mr. Sassower as well as those things that would be to his benefit?

THE WITNESS: Absolutely, your Honor. They had my files. They told me what they wanted.

THE REFEREE: Mr. Abuza, now I want to put that statement in juxtaposition to the one you made thirty seconds ago that you felt no obligation to call their attention to anything?

THE WITNESS: They were the presecutors and I shouldn't have said I felt no obligation.

THE REFEREE: I would hope so.

THE WITNESS: All i'm saying is that I did everything that I could to cooperate with them. They asked me to look in the file. I gave them, and they told me they would want copies of certain things. I don't remember whether or not they said that they didn't want copies of other documents. Whatever they asked me for I gave them copies of.

THE REFEREE: You're not saying there was a point in time when they told you they didn't want copies of particular documents that might be of help to Mr. Sassower, you're not saying that?

THE WITNESS: No, your Honor. Oh, no.

MR. SASSOWER: May I ask, before we go, I want--

THE REFEREE: Just a moment. Mr. Sassower.

MR. SASSOWER: Sorry.

MR. BRENNAN: In terms of clarification, that the specific question of the interrogatory is at No. 7 "Annex any and all written material between Respondent and the attorneys for Edward Kelly between February 15, 1974 and

August 13, 1974," so specifically our request was for that limited period of time.

THE REFEREE: Yes.

MR. BRENNAN: Now, as to all these other documents, we never made a specific request to those.

THE REFEREE: So we not get too far afield. The period of time that you mention, Mr. Brennan, in fact covers most of the documents to which we are now making reference.

MR. BRENNAN: From February '74 to August '74.

THE REFEREE: That covers most of the documents to which we made reference.

MR. BRENNAN: Just made reference to half a dozen documents in 1975.

THE REFEREE: I said it covers most of the documents to which reference has been made.

Question, Mr. Sassower.

Q Is it not correct, Mr. Abuza, that the only letters or correspondence contained in Exhibit T are letters which do not contain any exculpatory material regarding the adjournment?

THE REFEREE: No. Excluded.

MR. SASSOWER: May I finish my question, your

Honor, and then if your Honor objects then, you know, I'll accept your ruling but I'd like the record to show the question.

THE REFEREE: I know what the question is. It's excluded.

MR. SASSOWER: But may I have it for the record, your Honor? At some time that your Honor feels--

THE REFEREE: Go ahead. Go ahead.

Q Is it not correct, your Honor,--is it not correct, Mr. Abuza, that the letters you turned over to the Grievance Committee represents or which they took, which is marked Exhibit T, do not contain anything about any alleged adjournment of February 15, 1974 nor do they contain any material with respect that I had-- of the difficulties and problems that I had with the accountant Mr. Albert Bannofsky (phonetic).

MR. BRENNAN: Move to strike.

THE REFEREE: Overruled. Is that true?

A I have to refer--

(Documents handed to the witness.)

Q And your response, sir?

A No. I am sorry--

THE REFEREE: They do not contain any of that

material?

THE WITNESS: That is correct.

Q And is it not correct, Mr. Abuza, that the letters and memorandum are later produced at this hearing, primarily on cross examination, and pursuant to an inspection of your file by the Grievance Committee attorneys since the conclusion of your testimony this past week, are all letters and memoranda which contain exculpatory information and, in particular, regarding the February 1974 adjournment and the difficulties that are asserted I had with Mr. Barnovsky?

MR. BRENNAN: Objection, your Honor.

THE REFEREE: Overruled.

A What was the beginning of the question? I assume the answer is yes.

THE REFEREE: Another question.

Q Mr. Abuza, isn't it not obvious--withdrawn. Mr. Abuza, is it not a fact that the documents, correspondence, documents turned over to the Grievance Committee attorneys prior to the hearing of this matter were pruned?

THE REFEREE: No.

MR. BRENNAN: Objection, your Honor.

THE REFEREE: Sustained. Repetition. Improper

in form. Let's get on to something else. New subject.

Q Mr. Abuza--

MR. SASSOWER: May I, your Honor, so we can move more expeditiously give your Honor a copy of certain documents and to the Grievance Committee attorneys and to Mr. Abuza and we can all follow this at the same time without a lot of passing around.

(Documents handed to the Referee and to Mr. Brennan and Mr. Grayson by Mr. Sassower.)

Q Mr. Abuza, I draw your attention to the affidavit of Edward Kelly verified May 19, 1975, a copy of which I have given to you, to the Grievance Committee counsel and to the Court, and did you prepare that affidavit?

A I believe I so testified.

Q And was this affidavit made out to the Petitioner Edward Kelly?

THE REFEREE: You mean for signature?

Q (contg.) For signature? I would presume so.

A I would presume so.

Q Do you have a covering letter which way you mailed this affidavit to Mr. Kelly?

THE REFEREE: Well, off the record.

A Yes, I have a covering letter.

Q May I see it, please?

(Document handed to Mr. Sassower.)

Q And you receive any letter from Mr. Kelly when he sent back the affidavit, if he mailed it to you?

A There does not appear to be any written reply from Mr. Kelly.

Q May we see your letter of May 1, 1975?

(Document handed to Mr. Sassower.)

MR. SASSOWER: May we mark the letter of May 13, 1975 in evidence, your Honor please.

Any objection, Mr. Grayson?

MR. GRAYSON: No.

THE REFEREE: U in evidence.

(Letter dated May 1, 1975 marked Respondent's U in evidence.)

Q Now, Mr. Abuza, when the affidavit came back from Mr. Kelly, did you read the affidavit again?

A I doubt it.

Q Did you prepare and Order to Show Cause based upon that affidavit?

A Yes.

Q And that also was prepared by you personally?

A I presume so.

Q Now, let's take the affidavit of Mr. Kelly, sworn to on May 19, 1975. Paragraph one, you charge me quote "For willfully disobeying the orders of Mr. Justice Sarafite and Mr. Justice Asch," dated-- withdraw that. Am I not correct, Mr. Abuza, that nowhere in this affidavit is there any mention of accounting No. 1, which had been received by your office approximately ten months before?

A That is correct.

Q Is there no question that nowhere in this affidavit is there any mention of accounting No. 2 which had been received by your office approximately ten months before?

A That is correct.

Q And is there no question that nowhere in this affidavit is there any mention of accounting No. 3 which you were aware of at least for several months according to your testimony?

A That is correct.

THE REFEREE: You could have simplified that by 1, 2 or 3.

Q Is that correct?

A Yes.

Q Is it not also correct that there were no other affidavits or affirmations submitted to the Court in support of this order to show cause besides Exhibits--

THE REFEREE: Besides what?

MR. SASSOWER: Exhibits.

A Not that I know of.

Q Okay. And is it not true that none of the exhibits submitted to the Court as part of this affidavit contained accounting 1, 2 or 3 or any mention of those accountings?

A I don't know without looking at the exhibits.

Q Would you please? We'll save that for later on, when we can get the original documents.

THE REFEREE: We'll take a ten-minute recess.

(Whereupon a ten-minute recess was declared.)

C H A R L E S Z. A B U Z A, resumed the stand, and testified as follows:

CROSS EXAMINATION

BY MR. SASSOWER: (contg.)

Q Now, in the first paragraph, Mr. Abuza, of Mr. Kelly's supporting affidavits, you request that the Court hold me in contempt of Court "For willfully

disobeying various orders." What evidence did you have at hand at that time that I was "Willfully disobeying?"

A You had not served a proper accounting or filed one.

Q Mr. Abuza, I draw your attention to Holms' preface to the Common Law wherein Justice Holms' distinguishes between the legal consequences between intentional conduct and negligent conduct by this phrase: "Even a dog--"

THE REFEREE: Now--

MR. SASSOWER: Let me finish the sentence.

THE REFEREE: No, no. This is the ultimate fact in issue. He gave his explanation. Excluded.

Q So the failure to serve what you considered a proper accounting was "Willfull disobedience".

A Or to file a proper accounting.

Q Was "Willful disobedience"?

A That's correct.

Q But the Court, you can understand other people drawing different conclusions?

THE REFEREE: Next question.

Q Let me put it this way: Did you believe at that time you should make it crystal clear to the Court as his Honor, to adopt his Honor's phrase as to

specifically what I did and did not do?

THE REFEREE: That's repetitious.

Q The orders which you accused me of "Willfully disobeying" were the orders of Mr. Justice Sarafite of April 23, 1974, October 11, 1974. Could you tell us in what respect I "Disobeyed" the order of October 11, 1974 and the order of October 11, 1974 is Exhibit 13--Mr. Abuza, I show you Exhibit 13 and I ask you in what respect had I disobeyed any directive in that order?

(Exhibit 13 handed to the witness.)

A This was the order denying your motion to vacate and in essence it kept the original order in effect.

Q Sir, I'm just asking you, sir, is there any directive in that order whatsoever, not your interpretation of the order?

A No.

Q Okay. Paragraph two, if your Honor wants to follow me on that same affidavit, prepared by you, Mr. Abuza, for Mr. Kelly. This proceeding is one by a guardian of infant children. By the way, if I read incorrectly at any point tell me. Unless you tell me I must assume I've read it correctly. Is that statement true or not true?

A I believe I already testified that that statement was in error.

Q So how many times now has the same error been repeated by you, Mr. Schacter and by your client, up to this point?

THE REFEREE: Repetitious. Excluded.

Q Speaking of this trust for infant children, you state in the same paragraph that it terminated on January 2, 1974. Is that true about the trust for the infant children?

A No.

Q Okay. Continuing in the same paragraph. "To date no account has been rendered by this trustee," and we are talking about June--May 19, 1975. Is that what is said in that affidavit?

A That's correct.

Q Was it true as of May 19, 1975?

THE REFEREE: This is repetitious, Mr. Sassower. It's Mr. Abuza's position that accounts labeled one, two and three were not accountings in his view.

MR. SASSOWER: I suggest to the Court, and if I may adopt your Honor's terminology, the attorney has obligations--

THE REFEREE: Yes.

MR. SASSOWER: It's crystal clear.

THE REFEREE: This is repetitious.

MR. SASSOWER: Okay.

Q There is no question that as of that date accounting one, two and three had served and or filed notwithstanding that statement by your client in an affidavit prepared by you; is that not true?

A Documents labeled accountings, if you want to term them that.

Q Paragraph four. Last sentence of that paragraph. "Mr. Sassower willfully failed to file such an accounting." Do you contend that statement was true?

THE REFEREE: Excluded.

Q Next page, paragraph eleven. "To date Respondent has still willfully failed to account despite the order of two justices of this Court, directing him to do so."

THE REFEREE: That's repetitious.

MR. SASSOWER: Well, each time he makes a statement, I'm entitled to find out if I think, your Honor,--your Honor, if it's a true statement.

THE REFEREE: Well, we have his position and your position on this. We're just repeating the

same thing over and over again.

MR. SASSOWER: It's my position, your Honor-- let me come right to the point. All the papers I'm going through right now are all papers which led to the order of Mr. Justice Asch of September 1975 which your Honor, if I'm correct, has admitted or accepted in evidence tentatively. It is my position most emphatically that the Court was deceived by--

THE REFEREE: I gather that.

MR. SASSOWER: By repetitious--

THE REFEREE: Don't--

MR. SASSOWER: Okay. And if I must repeat the repetition, because unquestionably the repetition affected the Court.

THE REFEREE: May I suggest--

MR. SASSOWER: I certainly--

THE REFEREE: (contg.) --that you offer this document in evidence. If you just want an accumulation of this point, you'll have that. It's in evidence and you have Mr. Abuza's position that he did say that and he says it's not an accounting.

MR. SASSOWER: Well, may I somewhat adopt your Honor's position. I will get together with

Mr. Brennan and Mr. Grayson and draw up a statement of all the assertions made by Mr. Abuza.

THE REFEREE: Can be stipulated.

MR. SASSOWER: And we will stipulate on the record.

THE REFEREE: Fine.

MR. SASSOWER: Will that be acceptable to you?

MR. BRENNAN: Fine.

MR. SASSOWER: But let me have a few from each document on all testimony.

THE REFEREE: All right. I'll give you two for each.

MR. SASSOWER: Let's make it an average of two so I can take three on one. I draw the record to paragraph fifteen. I draw the Court's attention to paragraph sixteen. I draw the Court's attention to paragraph seventeen. And I draw the Court's attention to the wherefore clause. All right.

THE REFEREE: Again I come back to my suggestion that you put this document in evidence.

MR. SASSOWER: Well, except my putting it in evidence, your Honor, I put in evidence and before the Court matters which I don't believe are

admissible in evidence.

THE REFEREE: They are if you have no objection.

MR. SASSOWER: I do have objection. That's why I'd rather draw a statement.

THE REFEREE: All right. I am. I am suggesting you might, just suggesting you might be better off with it in evidence. If you don't think so--

MR. SASSOWER: Well, I'll think about it, your Honor.

THE REFEREE: All right.

MR. SASSOWER: And I'll certainly consider your Honor's suggestion.

Q Now, there is no--I draw your attention to the Order to Show Cause dated May 22, 1975 and to the language in that Order to Show Cause prepared by you, Mr. Abuza, and I will include that as part of the stipulation. I next draw your attention, Mr. Abuza, to my eleventh line, affidavit in opposition, affirmation in opposition, and when I say "Eleventh line" I omit the title and--

THE REFEREE: Okay.

MR. SASSOWER: Okay. May I read it, your Honor, because it has the context, the next affidavit first.

THE REFEREE: Yes.

Q "The motion is meritless and based on the assertion that affirmant willfully failed to account since the order (obtained by default) on April 23, 1974. Annexed hereto is a photostat of the top sheet of affirmant's accounting as filed with the County Clerk on July 31, 1974." Is it agree, Mr. Abuza, that's accounting number two?

A Yes.

Q Annexed also is a photostat of the top sheet of affirmant's accounting as filed with the County Clerk on January 2nd (dated December 31, 1974). Do you agree that's accounting number three?

A Yes.

THE REFEREE: That should be January 2, 1975.

MR. SASSOWER: Correct, your Honor. Yes, I am sorry. You're right.

Q (contg.) The various orders are the direct or indirect result of default orders after agreements were made to adjourn (confirmed by Court service) and missing affirmations in opposition being submitted.

THE REFEREE: And missing affirmations in opposition after being submitted.

Q Now, you replied to that affirmation, eleven-line

affirmation on June 3, 1975?

THE REFEREE: Is that correct.

Q (contg.) Is that correct, sir?

A Yes, your Honor.

MR. SASSOWER: Now, we're going to leave out a lot of material which we put into stipulation.

Q You state in your affirmation, paragraph three, that my affirmation is a complete sham, trust terminated January 2, 1974, and that I had yet to submit his account in proper form for judicial review. I draw your attention to that portion "For judicial review". Was there any requirement in any prior order that I do anything except file an account?

A If you file it with the Court one would presume it would be for judicial review.

Q I am asking not to presume. Is there any directive that I do anything else but file an account as of that date? Yes or no?

A No.

Q In what respect do you contend, as you did in paragraph four that I sought by eleven-line affirmation to mislead the Court?

A Furnished them only with cover sheets of what was purported to be an accounting and did not show them

what the account, what you purported to actually be an account.

Q And this is--you're talking about two and three?

A That is correct.

Q Okay. Now, let me read five.

THE REFEREE: Two and three, they had been filed with the Court?

THE WITNESS: Yes, your Honor.

MR. SASSOWER: Yes.

Q Now, let's read five. "The answering affirmation--" that's my affirmation--"Has annexed thereto as exhibits topsheet of to so-called accountings. The question is why did he not annex copies of what was under the so-called topsheets? The answer is that they did not contain anything resembling an accounting as a review of the file will show." Is that the statement you made?

A Absolutely.

Q Then you go on seven and you say "Annexed hereto are Exhibits A and B, are the only two so-called accountings ever sent to Plaintiff's attorney by Respondent. We contend that they are not proper accounts and they do not make sense." So what I attached and

represented to the Court was accountings two and three; you attached to your reply but you didn't attach two and three, you attached one and two intentionally intending to mislead the Court; that the two accountings that you referred to as two and three, you put down as one and two; is it not true, sir?

A No, sir.

Q Why did you not include accounting--sorry. Why did you not include--withdrawn. Would you agree that accounting three--

THE REFEREE: Let's go back and see what Mr. Abuza agrees he submitted as Exhibits A and B. What alleged accountings were they?

THE WITNESS: No. 1 and 2, and I state in there--

THE REFEREE: Just a minute. It was one and two?

THE WITNESS: That's correct.

Q And you knew that my affirmation, my eleven-line affirmation only referred to two and three as being the only two accountings filed in Court, and you took the two accountings, attached it to your reply but you didn't attach number two and three, you attached one and two, and one being the scratch sheet that was sent

out early part of '74; is that not correct, sir?

A With an explanation.

THE REFEREE: Wait. Is that true?

THE WITNESS: Yes.

THE REFEREE: Explanation.

THE WITNESS: If you read it, it says "Are the only two so-called accountings ever sent to Plaintiff's attorneys. These were the only ones that were ever sent to us, one and two. Until these papers were served on us, i.e. Mr. Sassower's affirmation in opposition, where he gave us a copy of the top sheet for number three, I do not believe that we even had any knowledge of that.

Q Sir--

THE WITNESS: (contg.) And we were under a time pressure to reply to his answering, and so I did not have time at that point to get a copy of what was in the Court, but the fact remains is we said these were the only ones that were sent to us.

THE REFEREE: When you--

THE WITNESS: And we were never sent--can I explain one thing further, your Honor?

THE REFEREE: Yes.

THE WITNESS: That when Mr. Sassower sent

documents to us, one and two, there was no cover sheet attached to them. In his moving--in his answering affirmation, all there was was a top sheet with nothing underneath.

THE REFEREE: Yes. I understand that, however, when you got a top sheet, you were then on notice that something else had been filed in the Court, were you not?

THE WITNESS: That was the first time we learned of it, yes, your Honor.

THE REFEREE: You were then on notice.

THE WITNESS: Yes, your Honor.

THE REFEREE: Well, again this falls into that very gray area of not being very clear to the Court. You mention the only two ever sent to Plaintiff's attorney, but you don't--Mr. Sassower was making a point, that you did not mention anything to the Court about this top sheet which indicated the existence of a third and, in any event, since you were alerted to this, didn't you have some obligations to see what this is, either call Mr. Sassower and ask him what is this or send your clerk down to the County Clerk's office and see if there is something new?

THE WITNESS: I presume we did so, your Honor. I am not sure. I don't recall at the time.

THE REFEREE: Well, if you did and learned something about it, then wouldn't you have had some obligation to put something in here about that, either characterizing that as a nothing or a something because it may be, it may be that now Mr. Sassower has filed the most extensive accounting you ever saw in your life, so you didn't do anything to find out if that was so?

THE WITNESS: I believe we did. I don't see we would have done this, knowing that he had filed an accounting, a proper accounting.

THE REFEREE: No. Go ahead.

Q Mr. Abuza, I assert to you--sorry, your Honor. Mr. Abuza, I tell you that my vivid memory--

THE COURT: Now, this is--

Q (contg.) --is to the effect--

THE REFEREE: No, no. You are not testifying.

MR. SASSOWER: Okay.

Q Mr. Abuza, is it not true that only two days ago you testified in this Court that you secured a copy of accounting number three in January or February of 1975 by an inspection of the file which was three

months before the execution of this affirmation of June 3, 1975, and I'm ready to bring the stenographer up here to read your testimony in that respect?

A I believe I testified that I thought--when I see this document, I believe that we did not know about it.

Q Mr. Abuza, is there any indication in your file as to when you received, from any source, accounting number three?

A I'd have to look at the documents.

Q Well, would you look at--you look at your file and produce the top sheet that was sent to you by me on January 2, 1975 and any memoranda of any conversation I had with you with respect to the receipt of that top sheet, in the first week of January 1975, sir?

MR. SASSOWER: And I ask the permission of the Court to permit the Grievance Committee attorneys to inspect Mr. Abuza's file for such document.

A The Grievance Committee pulled out the accountings from my file.

Q I want the top sheet of accounting number three as sent to Mr. Abuza by myself on January 2, 1975.

A I don't believe, your Honor, there has been any

testimony that he sent it to me. If there was a copy of that accounting in my file, it was probably one I made on a Xerox machine in the Court.

THE REFEREE: Well, where is it?

MR. SASSOWER: And any memorandum that may exist of a telephone conversation the first week of January of 1975 with respect to that accounting between Mr. Abuza and myself.

THE WITNESS: Your Honor, that accounting that was pulled from my file is in evidence so I'd have to--whatever--

MR. SASSOWER: I just want the top sheet.

(Document produced by the witness.)

Q Mr. Abuza, is there any indication in your file as to when you received this?

A There does not appear to be anything on the surface of the document that would indicate that.

Q Mr. Abuza, if you knew in May of 1974 that my only obligation was to file an account, don't you think it was incumbent upon you before you secured an Order to Show Cause, to check the records of the County Clerk to determine--

THE REFEREE: Repetitious.

Q (contg.) --to determine whether I did file such

an account?

THE REFEREE: Repetitious. We've just gone over that.

A In answer to your question about memoranda, there is no--there is no memoranda in the file.

Q But it was your testimony it was not your habit to make memorandum or memoranda but it was Mr. Schacter's?

A That is correct.

Q Are you telling the Court that between January 2, 1975 and June 3, 1975, a period of approximately five or six months, you never inspected the County Clerk's docket book or file in this matter?

A That may well be true. It is our practice when people are suppose to file accountings they serve copies on the other attorneys.

Q No. You have told us, sir, that the practice is both in Surrogates Court and Supreme Court that the only requirement is to file an accounting?

A No, I did not say that, sir.

Q The requirement generally is--

A No, I did not say that.

Q Are you not familiar that in 1975, Mr. Abuza, that the firm, the Arenson firm, asked me to waive

service of a citation and never served me with an accounting, I had to make a specific request of it, and that is Exhibit--withdrawn. Would you say the Arenson firm is knowledgeable in the field of accountings?

THE REFEREE: That is argumentative. Exclude it.

Q Were you familiar with the fact that the Arenson firm when they made application for a citation never sent me a copy of the accounting? Answer the question.

THE REFEREE: Are you familiar with that?

THE WITNESS: No.

Q Arent you familiar with the fact that when you made several applications to Surrogates Court, Suffolk County, for citations against--

A Wait. Wait. You're talking--may I--we're talking about practice, your Honor.

THE REFEREE: Wait.

Q Practice. Talking about practice.

A All right.

Q You were handling, according to your testimony the estate matter--

A If an estate--

Q Excuse me. You were handling, according to

your testimony, the estate matter of the Kelly Estate in 1974, correct?

A Yes.

Q Is it not a fact that the Arenson firm, at my suggestion, rather than serve me, sent me a citation upon which I was to admit service, which I did do.

Are you familiar with that?

A Not offhand.

Q Okay. Are you familiar with the fact that the Arenson firm, since you were working on the file, when they sent me the citation never--

A In what proceeding, sir? Citation, what proceeding?

Q A probate proceeding. What's the difference?

A No.

THE REFEREE: No. Let's not--question.

Q A probate proceeding. All right. They never sent me the petition.

A They didn't file a petition for probate. You did, sir. Are you talking about a petition to--

Q Okay. Withdraw that. We'll get back to that. Is it not true that you filed various papers in Surrogates Court, Suffolk County, which resulted in the issuance of a citation, and you served me only with the citation and not the underlying proceeding? Yes or No?

A Yes, with an explanation of practice, your Honor.

Q I'm talking about practice.

A A citation is a summons. You serve a summons on somebody. When they appear, they ask you for copies of papers. You give them copies of papers.

Q Fine. An accounting requires only the filing of an accounting, and when you are asked for a copy of the accounting, you send it?

THE REFEREE: That's the end of that.

Q All right. The question is, you did not look-

A I am sorry. The Grievance Committee just handed me my file. Something they would, which is about, about that time that he asked for may I--

THE REFEREE: Right.

(Whereupon the witness read to himself.)

A You had asked me a question, Mr. Sassower, whether I had reviewed filed in the Supreme Court to see whether or not an accounting had been filed.

Q Between January 2nd and June 2nd 1975?

A There is a memo in the file. That's in my file. It's a memo to me from Mr. Schacter, and one of the portions says, "Review Supreme Court, New York County file. Is his time up to file the account?"

THE REFEREE: What's the date?

Q The date?

A The date is 1-9-75. Now, I cannot tell from this memo nor can I--whether this meant to look at the Court file or to look at our file because we had two files on the Kelly thing. One was labelled--

THE REFEREE: That's all right. There are two files.

A (contg.) --one was labelled, and here it is in Mr. Schaeter's writing, Supreme Court and the other was marked Surrogates Court.

MR. SASSOWER: I offer that document in evidence, your Honor.

THE REFEREE: Any objection?

MR. GRAYSON: Let's see. No objection.

THE REFEREE: V in evidence.

MR. SASSOWER: Sorry. Could you hold it for a moment. I thought this--that was the end of the memo. Apparently there is a lot more. Let me see what the rest is. I apologize to his Honor.

(Whereupon Mr. Sassower read to himself.)

MR. SASSOWER: Your Honor, I only offer--

THE REFEREE: Rather than offer, why don't you read into the record.

MR. SASSOWER: Well, except that at a rate of ^{later} point, I may want to offer the rest.

THE REFEREE: At this point.

MR. SASSOWER: All right. "Memo ^{to} the C.A.," which I assume is Charles Z. Abuza.

THE REFEREE: Is that correct?

THE WITNESS: Yes.

MR. SASSOWER: "Dated January 9, 1975. Re: Kelly v. Sassower. Kelly phoned."

Q I assume that means Ed Kelly phoned?

A Yes.

MR. SASSOWER: (contg.) "I explained to him the status of the Supreme Court, New York County matter and the Surrogates Court matter." The rest I don't believe is admissible. Continuing. "Review Supreme Court, New York County file. Is his time up to file the account? If not make an entry in the diary when the time is up so that we may follow it." May we offer this for identification at this point?

THE REFEREE: We don't want to unnecessarily clutter the record. You've read it in evidence. It's conceded that is an accurate reading.

Q Now, did you have a diary follow-up system in

your office at that time in some sort of form?

A Yes and no. There was no central diary. Occasionally notes might be made in my own personal diary.

Q Well, sir, did you make a note in your own personal diary to follow up this matter?

A I have no recollection. I didn't always do it. Mr. Schaeter suggested that I do.

Q Mr. Abuza, would I not be correct that the evidence thus far shows, a, your office as being overzealous in this matter?

MR. BRENNAN: Objection.

MR. GRAYSON: Objection.

Q Very diligent?

THE REFEREE: Sustained.

Q At the time was your office located at 225 Broadway?

A Yes.

Q Which is across the street from what, sir?

THE REFEREE: We've gotten that into the record before.

Q How far is it from--

THE REFEREE: We have that in the record too.

Q How far--

MR. SASSOWER: Sorry, your Honor, I don't

recollect.

Q And I assume at this period of time, since with the information in this memorandum with respect to Ed Kelly, he was calling you rather constantly or rather often wanting you to move this thing along; am I not correct?

A I would presume so.

Q And during this period of time we're speaking of January 2nd to June 2nd, could you tell us how often approximately you would be at 60 Centre Street?

THE REFEREE: You would be what?

Q At 60 Centre Street, this building?

A Not very often.

Q Once a week, twice a week on the average?

A As far as I can recall this probably was the only case we had pending in the Supreme Court at that time.

Q Would you be at Surrogates Court very frequently?

A Yes.

Q Which is only a block and a half away from this building?

A Yes.

Q Would you not say that in the normal course of events, you would have checked this file to see if

an accounting had been filed when one was due to be filed?

A No, because--

Q At the latest the first week in January 1975, yes or no?

A No, with an explanation.

THE REFEREE: Okay.

Q Give us the explanation?

A It was, as I said, most of our practice in Surrogates Court. We were not fully--this is probably, I believe it was the first inter vivos trust that I had ever been involved in in the Supreme Court. We were use to Surrogates Court practice where people serve papers and we were not use to accounting proceedings where papers were not served.

Q Mr. Abuza, are you telling us that pro forma your office at that time served accountings on all parties?

THE REFEREE: Excluded. We're not going down that road anymore.

Q Then you continue in paragraph eight and your again referring to the accountings number one and accounting number two, accounting number one and accounting number two.

THE REFEREE: Question.

Q Am I correct?

A Your question, sir.

Q Did paragraph eight refer only to accounting one and two? You say "The alleged documents".

A I would assume so, yes.

Q Now, sir--

THE REFEREE: And this reference in that same paragraph to the children, is that erroneous here too? Is that so, Mr. Abuza?

THE WITNESS: That is correct, your Honor.

THE REFEREE: It's erroneous?

THE WITNESS: Yes.

Q Now, Mr. Abuza, to this reply affirmation I submitted a sixteen-line affidavit dated June 6, 1975; is that correct?

A Yes.

Q To which you responded to Mr. Justice Asch by letter dated June 9, 1975?

THE REFEREE: Is that correct?

Q Is that correct?

A Yes.

Q And you say to Mr. Justice Asch, "We'd like to call your Honor's attention to the following facts";

is that correct?

A Yes.

Q Now, this was the document marked 20 on the submission to Justice Asch, and is the last document rendered to Judge Asch prior to his making his decision; is that correct? You want to see the cover sheet, the cover sheet of the order?

MR. SASSOWER: Well, let's mark this in evidence. Mr. Grayson, any objection?

MR. GRAYSON: No objection.

(Document marked Respondent's Exhibit V in evidence.)

MR. SASSOWER: I draw the Court's attention that item No. 20 indicates the letter of Petitioner's counsel.

THE REFEREE: Item 20 on exhibit referred to on Exhibit V, Judge Asch's order of July 29, 1975 refers to Mr. Abuza's letter to Judge Asch of June 9, 1975, correct?

MR. SASSOWER: Correct, your Honor.

THE REFEREE: All right.

Q One. You make several points to Judge Asch. One, with respect to item one, was there any requirement of any order prior to June 9th 1975 which required that we serve you with a copy of the order of the accounting?

A No.

Q Would you say item one was misleading to the Court?

THE REFEREE: Well, couldn't be misleading.

MR. SASSOWER: There was no requirement to say we never did it, it seems to imply that we had the obligation.

THE REFEREE: Well, presumably the Court would know whether you did or did not have such--

MR. SASSOWER: Well, with four hundred motions a day, your Honor, I--

THE REFEREE: Well, that's argumentative.

MR. SASSOWER: Okay.

Q Two. Would you agree that as of that date that there was no requirement by any order of any Court that we accompany the filing of an accounting with any papers for the judicial settlement thereof, yes or no?

A There was no requirement.

Q In fact, up to that point, such requirement as was inserted by you in the order of April 23, 1974 was expressly stricken, yes or no?

MR. BRENNAN: Objection. Repetitive.

THE REFEREE: Repetitive. Sustained.

Q Three. Would you agree, referring to the first line, that up to that date there was no requirement

in any order of the Court for a formal petition?

MR. BRENNAN: Objection. Repetitive.

THE REFEREE: Well, I'll--

MR. SASSOWER: This, your Honor, is the only document I'll accede to two item ruling.

THE REFEREE: All right.

MR. SASSOWER: I hope.

THE REFEREE: Overruled.

A Sorry, your question?

Q As of that date was there any requirement in any order that I submit a formal application?

THE REFEREE: For judicial settlement.

Q (contg.) --for judicial settlement?

A There was no requirement, but I don't believe this states that it was.

Q Wait a second.

THE REFEREE: In this same paragraph three, this refers to infants and the appointment of a Guardian-at-Litem is also in error?

THE WITNESS: That is in error, yes.

Q And also there is no requirement in any order of the Court that I give notice to all parties or any parties; is that not correct?

A Correct.

THE REFEREE: The reference in the last paragraph of your letter, Mr. Abuza, charging Mr. Sassower with failing to carry out the Court's order, "which directed the filing of a formal account on notice," that's incorrect, is it not?

THE WITNESS: The notice part is, or, if you want to say, the word "Formal."

THE REFEREE: But the notice part is incorrect?

THE WITNESS: That's right.

Q So would you not say, Mr. Abuza, that that letter to the Court on a motion to hold a party in contempt of Court proliferated with errors?

THE REFEREE: No. Excluded.

MR. SASSOWER: I've made my point, your Honor.

Q Now, Mr. Abuza, in the memorandum of Mr. Justice Asch, dated July 29, 1979, which was rendered after considering your papers on this motion, and his Honor granted your motion to hold me in contempt of Court; is that not correct?

A Correct.

Q The Court stated, "The trustee has ignored or disobeyed several orders of this Court." Can you tell us what orders of the Court I have disobeyed in this matter prior to July 29, 1975, the "Several orders"

that Judge Asch is talking about?

A I can't presume to determine what the Judge had in his mind when he wrote a decision. Obviously--

Q How many orders was it possible for me to have--

THE REFEREE: Excluded.

MR. SASSOWER: Your Honor has introduced this document--off the record.

THE REFEREE: Off the record.

(Discussion off the record.)

Q Mr. Abuza, how many outstanding orders were there against me at that time?

THE REFEREE: Oh, I--

MR. SASSOWER: May I make an argument, your Honor?

THE REFEREE: Yes.

MR. SASSOWER: It is my contention that at minimum the Court was seriously misled--

THE REFEREE: All right.

MR. SASSOWER: Okay. Now, I've got to show the misleading statements.

THE REFEREE: Right.

MR. SASSOWER: And the effect.

THE REFEREE: Right.

MR. SASSOWER: Okay.

THE REFEREE: In that regard I think that this, whatever you referred to Mr. Abuza, should go into evidence.

MR. SASSOWER: Okay. I offer it in evidence. I am sorry. I intended to your Honor.

MR. GRAYSON: No objection.

THE REFEREE: W in evidence. That's the letter of June 9, 1975.

(Letter dated June 9, 1975 marked Respondent's Exhibit W in evidence.)

MR. SASSOWER: Would you hear me, your Honor, for a moment.

THE REFEREE: Yes.

MR. SASSOWER: Your Honor has tentatively included in the evidence certain opinions and certain orders which imply a certain opinion.

THE REFEREE: Right.

MR. SASSOWER: Okay. Over my objection.

THE REFEREE: Yes.

MR. SASSOWER: Now, if the opinion is in evidence, it's an extra judicial opinion--by extra judicial opinion, I mean an opinion read outside this proceeding.

THE REFEREE: Yes.

MR. SASSOWER: I have an opinion in evidence which would be accepted by your Honor as evidence but you give me, and I'm not saying this in any derogatory manner, I am not given the opportunity to attack something which is in evidence as an opinion.

THE REFEREE: Where I drew the line here. You were asking Mr. Abuza how many orders there were.

MR. SASSOWER: That's right, to show the opinion is erroneous, patently erroneous, because Judge Asch says I have defied several orders of this Court, and I say it's impossible for me to have defied several orders of the Court of necessity because there are only two orders in existence at this time, and obviously he was misled by many of the assertions made by Mr. Abuza, and I'm going to continue to show the assertions by Mr. Abuza.

THE REFEREE: All right. But I think what you're talking about now is really a matter of argument, matter of argument, because you have to adduce the facts on which to base it on.

MR. SASSOWER: Let me speak on--would you

excuse us, Mr. Abuza, for a moment.

(Whereupon the witness left the hearing room.)

MR. SASSOWER: Your Honor has posed to me a question and a problem and I'm speaking out loud. The first question is what I predict will be the length of this proceeding, and I say to your Honor that depends to a large extent on the rulings adopted by the Court, because it is my intention at the present time, since your Honor has become aware of certain opinions, rendered outside the hearing of this tribunal, which I will classify as extra judicial opinions, even though they were judicially rendered, as far as this proceeding is concerned they are extra judicial.

I must, and I think unfairly, bear the burden of the bringing in the writer of the opinion to justify the opinion, which in this case is Mr. Justice Asch. Now, I refer his Honor to a late Supreme Court of the United States opinion, a copy of which I gave to my distinguished adversary. It is Dennis V. Sparks. I don't have the official citation, but it is reported on 101 Supreme Court 183 66 Lawyers edition 2d 185. In fact I don't even think it's been officially reported as yet. And I'm referring to the Supreme

Court citation on page 188, Mr. Grayson, first column, half way down, where Mr. Justice White, speaking for the entire Court states, "Neither are we aware of any rule generally exempting a judge from the normal obligations to respond as a witness when he has information material to a criminal or civil proceeding," and I'm put in the predicament where six years later I'm asking a Justice of this Court to justify an opinion or to explain an opinion rendered by his Honor six years prior thereto.

That's the first thing. I am asking him to render an opinion when the calendar in Special I of this Court at times reached four hundred motions per day on the calendar, and I am putting myself in the precarious light. I'm speaking pragmatically of trying to cross examine a highly-esteemed justice of this Court before another highly esteemed justice who sits as a Referee in this Court.

THE REFEREE: What's your bottom line here?

MR. SASSOWER: My bottom line is that when you analyze the situation, the predicament that I face realistically is extremely unfortunate and prejudicially detrimental and I say this, carry it one step further, because your Honor has received

in evidence the opinion of the Appellate Division that difficulty is compounded still greater because I am met with an opinion which in my view, no matter how it's looked at, cannot be justified, cannot.

I mean--

THE REFEREE: Evidentiarywise.

MR. SASSOWER: Right. Let me carry it one step further. I am putting this Court in a position of requesting this Court in effect to say, "I have heard all the evidence, I have heard the testimony. It is my honest opinion--" and I am not to presume what your Honor is going to say, but this is what I'm going to ask your Honor to say: "I having listened to all the testimony believe the Appellate Division and Mr. Justice Asch, no matter how studious they made of this case, that they were absolutely off base," because I'm going to show your Honor the brief that was handed by Mr. Abuza to the Appellate Division, the misleading statements back and forth, and I say this, your Honor, the Appellate Division, with all great respect, does not sit on every case, ex cathedra. They make mistakes like everybody else. But I am putting your Honor in a position where I want your Honor to say to the Appellate

Division, "Wipe this badge of infamy from the neck of Mr. Sassower because I think he got unfair judgment."

We can do it to Socrates, we can do it Christ, we can do it to Galileo, but somehow we can't do it to living people. I won't go into it any further, but I am telling your Honor the burden I face.

THE REFEREE: I agree. I thought that you were going to discuss evidentiarywise, what you wanted to do about--

MR. SASSOWER: That's my problem. How do I approach this, and it's something constantly because it's in constant turmoil that I cannot give to your Honor a responsive answer because I'm inclined to do one thing today, depending upon the evidence. I change my mind tomorrow, I change my feelings tomorrow, and I can't be that candid to your Honor, and for that reason, I apologize.

THE REFEREE: No need to apologize because the legal question you raise has been uppermost in my mind. I was about to say that I alerted both sides early on to legal question of the effect of the orders, and I ask counsel on both sides to address themselves in legal research.

to that kind of problem. I agree. I agree.

MR. SASSOWER: And if I may say, if I may speak with permission of the Grievance Committee attorneys, we have discussed the matter--off the record.

THE REFEREE: Off the record.

(Discussion off the record.)

C H A R L E S Z. A B U Z A, called as a witness in behalf of the Petitioner, resumed the stand, and testified as follows:

MR. SASSOWER: I think we left--we possibly may have left the matter unanswered or at least unanswered in my mind with respect to your questions that I posed to Mr. Abuza, regarding the opinion on Mr. Justice Asch. Well, let me ask a question.

CROSS EXAMINATION

BY MR. SASSOWER: (contg.)

Q Mr. Abuza, I turn your attention to that portion of Mr. Justice Asch in the paragraph where his Honor states I have "Ignored or disobeyed several orders of this Court," and I ask you, sir, as of the date of that opinion, which was July 29, ¹⁹⁷⁵ 1979, which orders of this Court do you content that I possibly could have disobeyed?

THE REFEREE: I don't know that that's Mr. Abuza's province. He can't speak for Judge Asch.

Q Let me ask you this question, sir: What orders were extant on July 29, 1975 against me directing me to do something?

A I believe Justice Sarafite's order.

Q Of April 23, 1974?

A And Justice Asch's order.

Q So there were two orders?

A I believe so.

Q Now, of those two orders, have I ignored, and if so, in what respect anyone of those two orders?

THE REFEREE: You're saying he didn't properly account?

THE WITNESS: Exactly.

Q And using the word "Disobeyed" as distinguished from "Ignored," well, "Ignored" is "Ignored." "Disobeyed" is something--well, you say I "Ignored" in that I didn't properly account. That was "Ignored" and that was "Disobeyed"?

A I didn't say "Ignored" or "Disobeyed." The Judge did.

Q Did you ever content, sir, to Mr. Justice Asch

that I had "Ignored" the order?

A I don't believe so.

Q Did you ever contend to Mr. Justice Asch that I had "Disobeyed" any orders?

A Yes.

Q Now, sir, with respect to the accounting number three, prior to July 29, 1979, had you ever contended that accounting number three was incomprehensible, yes or no?

A No.

Q Did you ever contend, prior to July 29, 1979, that you could not understand accounting number three?

A I had not received it or seen it.

Q Well, you received it in June, I think you said, first you said January or February, then you said you saw it in June, now, as of July 29, 1979, did you find it incomprehensible?

A Yes.

Q When did accounting number three become comprehensible to you, since I draw your attention to Defendant's Exhibit K for identification, which I submit to you does not claim in any respect that that accounting is incomprehensible or there is any claim being made that such accounting is incomprehensible?

MR. BRENNAN: I object, your Honor.

THE REFEREE: Objection sustained. What is your question.

MR. SASSOWER: My question is when Mr. Abuza says--

THE REFEREE: Question, question.

Q When you saw the accounting, accounting number three, you saw accounting number three, was it comprehensible to you?

A Not as a proper accounting, no.

Q Sir, not proper, was it comprehensible to you, did you understand the figures, did you understand what the figures meant?

A Not necessarily. I have to look at it.

MR. SASSOWER: May we show--

THE REFEREE: Did you find it was--

THE WITNESS: I have never used the word "Incomprehensible." Only the Courts have. I never said that.

Q Well, did you ever say to me at any time, at any place, this or that I do not understand about accounting three?

THE REFEREE: Regardless of what he said, doesn't it speak for itself.

MR. SASSOWER: To who? I ment with an opinion by Mr. Justice Asch, and I'm asking--

THE REFEREE: Whether he agrees or disagrees with Judge Asch, does it make any difference?

MR. SASSOWER: Yes, it does, your Honor. I'll tell you why. Because if in fact this proceeding dealt with only adults, only adults, whether Mr. Justice Asch or any other Justice understood it becomes irrelevant. It only deals with adults. It's only whether the Petitioner understands it.

THE REFEREE: Yes. All right.

MR. SASSOWER: But if it deals with infants then we have a different ballgame. Okay.

THE REFEREE: Yes, but we've established it does not deal with infants and representations were made through the Court that it does.

MR. SASSOWER: Let's carry on.

Q By the way Mr. Abuza, I draw your attention to the affirmation of Samuel Schacter, August 19, 1975. I turn to page--sorry, paragraph 9. Would you say--by the way, this affirmation preceded the signing the order of Mr. Justice Asch which held me in contempt, correct, the order holding me in contempt, and this affidavit included thereon is September--some day in

September of 1975.

MR. GRAYSON: 23rd.

Q (contg.) September 23, so this August 19, 1975 included in the order holding me in contempt insofar as paragraph nine is concerned is in error, if I may shorten it, one, it does not involve infants, the infant's trust; two, the infant's trust did not terminate in 1974 more than eighteen months ago, and Mr. Sassower was not obliged by any order of the Court to settle his account; is that correct?

THE REFEREE: Is paragraph nine incorrect insofar as it states "A trust for the benefit of infants"?

THE WITNESS: Yes, that is incorrect.

THE REFEREE: It's incorrect too in two respects; one, it did not involve infants; and, two, it any event that trust had not terminated.

THE WITNESS: That is correct, your Honor.

Q And, three, that there is no requirement that I judicially account?

THE REFEREE: Repetitious.

MR. SASSOWER: That's, your Honor--and I don't want to argue the case now, is the repetition that made fact in the Court's mind.

THE REFEREE: I'm very well aware of that.

Q Mr. Abuza, there came time when you received a notice from the Appellate Division to appear before Mr. Justice Aron Steuer; is that correct?

A Yes.

Q And do you recall that you appeared before Mr. Justice Steuer on January--I believe it was 30th, 1976?

A I don't recall the date, but I do recall appearing at whatever time the notice called for.

Q Do you recall if I was there?

A I believe so.

Q And you were there?

A Yes.

Q And Justice Steuer was there?

A Correct.

Q And is what we call a pre-argument conference; is that correct?

A Yes.

Q And an interrogatory was posed to the Grievance Committee Attorneys?

THE REFEREE: Say that again.

Q An interrogatory was posed to the Grievance Committee Attorneys as to what was said at that conference? Was that interrogatory posed to you by such attorneys?

A I believe so.

Q And did you say in sum and substance to the Grievance Attorneys, Grievance Committee Attorneys, that you did not recall what occurred at that conference?

A I couldn't recall any exact knowledge. I know the conference didn't settle the case.

Q Well, do you recall what Justice Steuer said; what you said; what I said?

THE REFEREE: In substance.

Q In substance?

A In substance the purpose of that--it's obviously to attempt a settlement of the matter and--

THE REFEREE: A settlement of what matter?

THE WITNESS: The matter before the Court on an appeal.

THE REFEREE: All right.

A (contg.) --and I believe it was readily evident to Judge Steuer this was just not a case or type of case that was meant to be settled by this kind of discussion.

MR. SASSOWER: Move to strike what was evident to Mr. Justice Steuer.

THE REFEREE: In substance, what was said?

THE WITNESS: Mr. Justice Steuer asked us

what the case was about. We told him. He asked whether it could be settled and I believe we both said "No."

Q And what did Mr. Justice Steuer say?

A I don't recall.

Q Have you ever gone to a pre-appeal conference before Mr. Justice Steuer before?

THE REFEREE: Excluded. Get to the matter.

Q And that's all that happened there?

A As far as I recall. There was no transcript.

Q Mr. Abuza, the matter came--in March of 1976 you submitted a brief to the Appellate Division, First Judicial Department, with respect to the appeal from Mr. Justice Asch's order?

A I presume I did, yes.

Q And is this a copy of your brief?

(Document handed to the witness.)

A That is correct.

MR. SASSOWER: May I mark it for identification, please?

THE REFEREE: X for identification.

(Brief marked Respondent's Exhibit X for identification.)

MR. SASSOWER: Your Honor, no matter what you--

your Honor finally takes on the matter, because of the obvious importance of the Appellate Division decision, and its effect upon this tribunal, I ask that I be exempt from the two-question rule, with respect to this document.

THE REFEREE: Yes.

MR. SASSOWER: Okay.

Q Page two. True or false, or misleading? One, two, three. "The trust in question terminated on January 2, 1974. More than two years have elapsed since an accounting was requested of this attorney fiduciary. He still has not accounted. This is March of '76." True, false?

A True.

Q Was that statement inserted by you with an intent to mislead the Court?

A No.

Q Question presented for review by you. One. "Was the Respondent-Appellant in contempt of Court when he ignored and failed to comply with the following orders of this Court: A. Order of Mr. Justice Sarafite, dated April 23, 1974; B. Order of Mr. Justice Sarafite, dated October 11, 1974." I think you already testified there was nothing in the October letter of 1974 to comply

with?

A It reinstated or reaffirmed the previous order.

Q But there was nothing, no direction there.

C. "Order of Mr. Justice Asch dated November 7, 1974.

D. "--so we have two orders so far. "D. Orders of the Appellate Division, First Department, dated April 24, 1975--"

THE REFEREE: Take it easy.

MR. SASSOWER: Sorry.

Q (contg.) "Dismissing Respondent-Appellant's appeal from the order directing him to account." Is it not true that I appealed from Justice Sarafite's order which denied my motion to vacate the April 23, 1974 order?

THE REFEREE: Is that true?

A Yes.

Q And when I filed accounting number three of necessity that order became moot, did it not?

A Only if you agreed that that was an accounting.

Q In any event, the order of the Appellate Division dismissing my appeal without opposition, April 24, 1975, there was no direction by the Appellate Division that I do anything, right?

THE REFEREE: This is argument. This is

argument.

MR. SASSOWER: I'll abide by your Honor's ruling.

Q Then you talk about Justice Asch's order of September 23, 1975, and then you conclude, after repeating five orders of the Court, "In each instance the Court below has directed the Appellant to account. He has not done so." First of all, those five--first part of the question. Is it true that in each instance that you mentioned that the Court has directed me to account, yes or no?

THE REFEREE: That's argument. The orders are in evidence and you can make your argument.

MR. SASSOWER: May I have an admission from the witness?

THE REFEREE: No.

MR. SASSOWER: Even as to credibility?

THE REFEREE: No. We get into argument here. He makes a distinction. He says it's not an accounting; you say it was. So he says you didn't comply.

Q Did you say on page five "Thus after two years this attorney-fiduciary has not filed a proper accounting together with the usual petition to settle

such account and remains in willful disobedience of a succession of orders of the lower Court." Misleading, yes or no, Mr. Abuza?

THE REFEREE: Did you so state in the brief?

THE WITNESS: Yes, I did so state.

Q Misleading?

A No.

Q Intended to be misleading, Mr. Abuza?

A No.

THE REFEREE: It's not misleading, he said.

MR. SASSOWER: Point one.

THE REFEREE: I think times up. Ten A.M..
October 7th.

MR. SASSOWER: Your Honor, have a nice vacation. I'm sure I say this on both sides.

THE REFEREE: At the request of counsel for both sides, I am again returning all of the exhibits in this matter to Mr. Grayson so that counsel can work on them.

(Whereupon the hearing was adjourned to October 7, 1981 at 10 A.M.)

Certified to be a correct transcript
of the minutes in this case.

Phillip J. Reig

Phillip J. Reig,
Official Court Reporter.

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CHARLES Z. ABUZA	6

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