

**Elena Ruth Sassower**

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July 1, 2011

Matthew G. Kiernan, Clerk  
Appellate Division, Second Department  
45 Monroe Place  
Brooklyn, New York 11201

RE: Untimely Opposing Affirmation; Right of Reply  
McFadden v. Sassower: Appellate Division #2010-09890

Dear Mr. Kiernan,

I am the *pro se* movant for a June 14, 2011 reargument motion, personally served and filed on that date and returnable today, July 1, 2011.

Although my notice of motion invoked CPLR §2214(b) in requiring answering papers at least seven days prior to the return date, your Clerk's Office nonetheless accepted an opposing affirmation from Leonard Sclafani, Esq., dated June 29, 2011 – which was plainly untimely.

I received Mr. Sclafani's opposing affirmation only this afternoon – although I learned of it yesterday when I called the Clerk's Office to verify whether any opposition had been received to my reargument motion. Jeannine Padro, Supervisor of the Motion Department, instructed me to write you about the situation.

Please advise as to whether the Clerk's Office is supposed to be accepting untimely opposition papers – thereby burdening a movant with having to request that they be rejected or that the return date be adjourned so as to be able to reply.

Notwithstanding the deceit of Mr. Sclafani's paltry 1-1/2 page opposing affirmation will be obvious to the four Justices upon comparison with my fact-specific, record-based reargument motion, I wish to reply – and to formally seek sanctions and costs against Mr. Sclafani and his client, John McFadden, pursuant to 22 NYCRR §130-1.1.

Kindly confirm that I may file a reply affidavit further supporting my reargument motion in the same letter as identifies the procedures the Clerk's Office is supposed to follow when presented with untimely opposing papers.

Thank you.

Very truly yours,

  
Elena Sassower

cc: Leonard A. Sclafani, Esq.  
New York State Attorney General Eric T. Schneiderman  
ATT: Deputy Solicitor General Benjamin N. Gutman  
Doris L. Sassower

