

DORIS L. SASSOWER

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By Fax: 694-5018

June 25, 1991

Westchester-Rockland Newspapers
One Gannett Drive
White Plains, New York

Att: Milt Hoffman, Editor, Letters to the Editor Page

Future Gannett News inquiries of me will probably receive a "no comment"--in view of your latest example of inaccurate, slanted and selective ^{reporting} coverage in your June 22th story about me. Despite the article's repeated use of the word "refuse"---including in its headline--the issue, as I explained to your reporter, is not one of "refusal", but whether there was a lawful order requiring my compliance. Under the Rules of Professional Conduct, an attorney is not required to obey an unlawful order. Indeed, it is the particular duty of attorneys to ensure that governmental action proceeds on proper jurisdictional and substantive basis.

It is shocking that the price imposed for asserting constitutional due process rights was immediate and unconditional suspension--without any evidentiary hearing or decision of the Court addressing the legitimate factual and legal objections raised, and without the requisite specific finding--supported by probative evidence--that I was guilty of any "professional misconduct immediately threatening the public interest".

EX "F-1"

⑤

Significantly, your reference to the contempt proceedings before Judge Fredman--out of which the suspension order arose--failed to include two facts of broader public interest--both of which I discussed at length with your reporter: (1) that at the time those proceedings were brought against me by Harvey Landau, Esq., before Judge Fredman, neither of them disclosed, as ethical rules require, the disqualifying fact that Mr. Landau was the Chairman of the Scarsdale Democratic Club, actively endorsing Judge Fredman's nomination for the Supreme Court in the fall of 1989; and (2) that a few days before my well-publicized first appearance before Judge Fredman in the summer of 1989, Mr. Landau's law firm made a \$500 contribution to Judge Fredman's election campaign.

In fact, I encouraged your reporter to investigate whether the manner and timing of my suspension might be connected with the Ninth Judicial Committee's having imparted such information to the Governor, who, according to Gannett papers, was then about to nominate Mr. Landau for an interim appointment to our Supreme Court.

The Ninth Judicial Committee, of which I have been serving as pro bono counsel to protect the public interest, believes that politics does not belong in the judicial arena. It is for you to demonstrate what role the press will play when it is shown and documented that our judicial system is being corrupted by politicians.

FAX TRANSMISSION SHEET

NINTH JUDICIAL COMMITTEE

Chairman: ELI VIGLIANO, Esq.
Counsel: DORIS L. SASSOWER, P.C.

Telephone: (914) 997-1677

FAX: (914) 684-6554

6/25/91
DATE

1 p.m.
TIME

13
NUMBER OF PAGES
(including this one)

TO: Fary Sherlock

FAX NUMBER: 696-8124

FROM: DLS

If you do not receive the indicated number of pages, or if there is a question as to the transmittal, please call (914) 997-1677.

MESSAGE:

I will provide copies of all court papers and other relevant documents.

- As requested
- As promised
- For your information
- For your review and comment
- Please review and call me

Mr. Sherlock: Enclosed per our phone conversation are the following items:

1. my letter to the Editor 6/25/91, & monetary contribution page & pages from Code of Judicial Conduct - Canon 3 & opinion 11/91 the NYS BA
2. my letter to Laurie N. Koleski dated 1/31/90
3. letter to Editor of Westchester NY Times 6/19/91
4. 5/5/91 - article by David Wilson EX "F-2"

6/25/91

was peeled back after the 5:50 a.m. crash at the Weaver Street bridge.

Westchester County police closed all but one lane on the northbound Hutch so the wreckage could be cleared and the truck's payload transferred to another truck. Delays of about an hour were reported throughout the day.

The scene was finally cleared about 12:45 p.m. No injuries were reported.

Lawyer suspended for refusing to take medical examination

By Michael Meek

Staff Writer

A White Plains divorce lawyer was suspended from practicing after refusing to submit to a medical examination to determine whether she was incapacitated.

Doris Sassower's indefinite suspension took effect Wednesday with an order from the state Appellate Division of state Supreme Court.

The order arose out of a disciplinary proceeding against Sassower initiated by the 9th Judicial District Grievance Committee, which handles complaints against lawyers in Westchester.

The court had ordered the medical examination of Sassower last October.

Sassower, a former president of the New York Women's Bar Association, said yesterday she was appealing the suspension, which she claims violates her civil rights.

Sassower said she refused to comply with the court's order because it violated its own procedures and regulations, violated her civil rights and improperly delegated the responsibility of finding a medical expert to the grievance committee.

She said she also refused to comply because defendants should be examined by at least one expert to have a lawful evaluation.

Sassower said the complaint against her came from a proceeding against her before state Supreme Court Justice Samuel G. Fredman. Fredman held the contempt hearings against Sassower last year because of Sassower's more than three-month delay in turning over a former client's file to another lawyer.

Fredman never issued a decision in the proceeding, Sassower said. The proceedings were delayed three times because of Sassower's claims of medical disability.

Gary Casella, chief counsel for the grievance committee, said confidentiality statutes prevented him from commenting on why the committee started proceedings against Sassower.

Sassower, 57, also was the lawyer representing the 9th District Judicial Committee, which unsuccessfully challenged the legality of cross-endorsements of judicial candidates. It is appealing the case to the state Court of Appeals.

1/22/91
Not True
Casella
?
not true
I will document this
It was documented that I was hospitalized
I have this personal

passed by the legislature a week earlier.

The most controversial of those cuts were in school aid. Cuomo's original budget chopped \$891 million from last year's level; the Legislature had put about half of that back in; the governor took it out.

Next week, lawmakers are to begin negotiating anew with the governor, and those who attended yesterday's meeting of the Westchester-Putnam School Boards Association all vowed to get more money for education.

Assemblyman Richard Brodsky, D-Greenburgh, said he hoped negotiations would work. But if not, he said, the Democratic majority would seek to override at least some of Cuomo's cuts, a move that would require a two-thirds vote of both houses.

Republican lawmakers yesterday attacked the drop in school spending, but only one — Assemblyman Henry W. Barnett, R-Bedford — explicitly announced he would vote to override the governor to restore education aid.

Speaking of Cuomo's actions, Assemblyman George Pataki, R-Peekskill, said, "It's an act of war on the school district, the taxpayers, the kids and the future of this state."



Salvatore Corda

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Two calls to not returned ye

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Boy dies who may have been born with Lyme disease

By Barbara J. Durkin

Staff Writer

A 6-year-old Connecticut boy whose parents say he was born with Lyme disease and who sparked the creation of a national foundation died yesterday at Jersey Shore Medical Center in Neptune, N.J.

The cause of death was unavailable late yesterday, pending an au-

topsy.

Jamie Forsch a.m., according to woman. Little info able late yesterday

His mother, Kathleen, well-known Lyme formed the Lyme tion in Tolland, father, Tom, als

Westchester's black le

By David McKay Wilson

Staff Writer

Westchester black leaders split yesterday over how to create a state legislative district that would send a minority lawmaker to Albany from the county for the first time.

Sheila Morris of the Black Women's Political Caucus said the district should be drawn up solely within the county's boundaries, but others like County Legislator Herman Keith, D-Yonkers, said he would support a district that dipped into minority neighborhoods in the north Bronx.

"If it's too difficult to make one in Westchester, it would be good to go beyond our boundaries," said Keith,

who has considered office. "The import persons of color political process."

Keith made his hearing on the plan at the White Legislature's Task graphic Research ment is recarvin legislative and 31 tricts.

State Sen. De force's co-chairman draft plan would fall for review.

Black leader growing presence

Statement period — from 7/12/89 to 10/06/89
Date Date

MONETARY CONTRIBUTIONS

SCHEDULE 2A

DATE RECEIVED	Relative	Corp.	FULL NAME	MAILING ADDRESS	AMOUNT	PREVIOUS AMOUNTS - IF ANY
7/12/89			J.F. Shanklin	187 Havilands Lane White Plains, NY 10605	100.00	
7/12/89			Matthew L. Lifflander, Esq.	595 Madison Avenue New York, NY 10022	100.00	
7/21/89			Rosalind Riegelman	25 Platt Place White Plains, NY 10605	100.00	
7/13/89			Robert S. Starr, Esq.	21 E. 40th Street New York, NY	100.00	
7/13/89			Eugene Stern	319 Woodmere Blvd. Woodmere, NY 11598	100.00	
7/13/89			Lowell M. Schulman	925 Westchester Ave. White Plains, NY 10604	500.00	
7/14/89			Myron Marcus, Esq.	4 Cromwell Place White Plains, NY 10601	100.00	
7/17/89			Richard P. Neimark, Esq.	339 No. Main Street New City, NY 10956	1,000.00	
7/17/89		X	Bennett, Kielson and Co.	317 North Ave. New Rochelle, NY 10801	250.00	
7/17/89			Paula Walzer	344 S. Linden Dr. Beverly Hills, CA	100.00	
7/17/89			Kenneth D. Kemper, Esq.	45 E. 89th St. New York, NY 10128	100.00	
7/17/89			Robert S. Cohen	110 E. 59th St. New York, NY 10022	1,000.00	
7/18/89		X	Gubman Sitomer Gold stein & Edlitz, PC	230 Park Ave. New York, NY 10169	200.00	
7/19/89			Dean G. Braslow	10 Antony Road White Plains, NY 10605	100.00	
7/19/89			Alan D. Scheinkman, Esq.	3 Barker Ave. White Plains, NY 10601	500.00	
7/20/89			Dennis Mehiel	Box 428 Pleasantville, NY 10570	500.00	
7/20/89			Bender & Bodner 50% Joel C. Bender 50% Peter O. Bodner	11 Martine Avenue White Plains, NY 10606	500.00	
7/20/89		X	Young, Stern & Tannenbaum, P.A.	P.O. Box 600550 North Miami, FL 33160	100.00	
TOTAL					5,450	

SUMMARY (To be completed on last page of schedule 2A)

Total unitemized contributions this period

Total itemized contributions this period — all pages

Total contributions received this period

DO NOT COMPLETE UNLESS THIS IS LAST CONTRIBUTION PAGE

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #11 - 4/23/65 (11-64) Topic: Endorsement of Judicial Candidates

Digest: Lawyers may endorse judicial candidates, and such candidates may announce the support of certain attorneys so long as there is no appearance of impropriety.

Canons: Former Canons 2, 3.
Judicial Canons 30, 32

QUESTION

You inquire as to the propriety of

1. lawyers endorsing judicial candidates;
2. a judicial candidate announcing that he has the support of a number of former presidents of bar associations or of a specified number of attorneys; and
3. a judicial candidate soliciting a lawyer for his support and endorsement.

OPINION

1. It would normally be proper for lawyers to endorse judicial candidates. Members of the bar bear a special responsibility for the selection of qualified candidates for judicial office. It is "the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selections of Judges. It should protest earnestly and actively against the appointment and election of those who are unsuitable for the Bench . . ." (Canon 2 of the Canons of Professional Ethics of the American Bar Association.)

Opinion 189 of the Committee on Professional Ethics of the American Bar Association, with which this Committee concurs, concluded that:

"Lawyers are better able than laymen to appraise accurately the qualifications of candidates for judicial office. It is proper that they should make that appraisal known to the voters in a proper and dignified manner. A lawyer may with propriety endorse a candidate for judicial office and seek like endorsement from other lawyers."

The Committee would also point out, however, that an attorney has the obligation to refrain from endorsing a judicial candidate where it would appear that such endorsement is a "device or attempt to gain from a Judge special personal consideration or favor." (Canon 3 of the Canons of Professional Ethics.) Thus, the endorsement of a judge for reelection would be improper where the attorney has a matter pending before the judge or has a matter which has a clear present probability of being submitted to the judge in the immediate foreseeable future. (See Canon 32, Canons of Judicial Ethics.)

CODE OF JUDICIAL CONDUCT

Adopted by the New York State Bar Association, effective March 3, 1973

Note: The American Bar Association's Code of Judicial Conduct was adopted by the New York State Bar Association subject to the following amendments: Canon 7(B)(2) amended to read "six months before" and "six months after." In addition, if any applicable rule heretofore or hereafter issued by the Administrative Board of the Judicial Conference is inconsistent, the rules of the Board shall prevail. For "Rules Governing Judicial Conduct of the Judicial Conference," promulgated January 1, 1974, see GLS Court Rules.

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A Judge should avoid impropriety and the appearance of impropriety in all his activities.

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CANON 4

A Judge may engage in activities to improve the law, the legal system, and the administration of justice.

CANON 5

A Judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties.

CANON 6

A Judge should regularly file reports of compensation received for quasi-judicial and extra-judicial activities.

CANON 7

A Judge should refrain from political activity inappropriate to his judicial office.
Compliance with the Code of Judicial Conduct.
Effective date of Compliance.

CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or

judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Commentary: Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

CANON 3

A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford him a privilege against testifying in response to an official summons.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the

substance of the advice, and affords the parties reasonable opportunity to respond.

Commentary: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out his adjudicative responsibilities.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite him to file a brief *amicus curiae*.

(5) A judge should dispose promptly of the business of the court.

Commentary: Prompt disposition of the court's business requires a judge to devote adequate time to his duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with him to that end.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Commentary: "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR7-107 of the *Code of Professional Responsibility*.

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

Commentary: Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for

unprofessional conduct of which the judge may become aware.

Commentary: Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

Commentary: Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

C. Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

Commentary: A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "his impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii) may require his disqualification.

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

Commentary: According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if his or his spouse's father, grandfather, uncle, brother, or niece's husband were a

16 Lake Street, Apt. 2C
White Plains, New York 10603
January 31, 1990

Mr. Laurie Nikolski
Gannett Newspapers
1 Gannett Drive
White Plains, New York 10604

Dear Ms. Nikolski:

I would like to thank you for having listened to me and for expressing your concern in a professional way. I further appreciate your recognition that a newspaper has an obligation to set forth the facts fairly and completely -- rather than hastily rushing into print without concern for its effect on the people you write about.

Unfortunately, following our telephone conversation, my mother suffered a physical collapse and required several days' hospitalization. Consequently, I was unable to get a letter off to you as quickly as I would have liked.

You invited me to detail the inaccuracies and distortions connected with Ms. Pines' reporting relative to my mother. Time, however, does not permit me to do more than highlight a few of the more egregious examples which have made us lose confidence in Ms. Pines' objectivity. Naturally, at the time of a future interview, my mother will expand upon that subject--with appropriate documentation.

In the very first conversation Ms. Pines had with my mother, prior to her initial story, my mother told her that she had never, in her 35 years of practice, missed a scheduled Court hearing, and certainly would never have deliberately failed to attend a "hearing" where she, herself, was the subject of a contempt proceeding. Ms. Pines was told at that time that there was never a hearing of any kind scheduled for July 10th--and that in any case, no personal appearance by my mother was required on that date and that the non-appearance on the part of her office was inadvertant. End of story.

This notwithstanding, Ms. Pines' first article, which appeared on July 24, 1989, had as its headline "Lawyer who missed hearing..." and repeated in the text that Ms. Sassower "failed to show up July 10 for a hearing". Thereafter that headline and statement were repeated in various stories by Ms. Pines -- including the caption to a photograph, appearing August 31, 1989, to which my mother specifically objected in a later conversation with Ms. Pines. However, Ms. Pines never acknowledged this error with an appropriate correction. Instead, the error was compounded by later repetition.

Ms. Nikolski
January 31, 1990
Page Two

Had Ms. Pines done an appropriate investigation, she would have confirmed that there was no hearing scheduled for July 10th, and that it was only the original return date of a first-time on motion which did not require a personal appearance by my mother.

In her initial story, Ms. Pines also quoted from my mother's July 6th letter received by Judge Fredman that she would be "unavailable" on the July 10th date. Ms. Pines either neglected to review the letter for herself or else chose to ignore the contents wherein my mother made very clear that the adjournment was being requested for additional reasons relating to the discriminatory treatment she was being subjected to by Judge Fredman -- and for which reason, as she notified the Court, she was in the process of retaining counsel to represent her firm. None of this information was reported by Ms. Pines.

This omission by Ms. Pines is particularly significant in light of the fact that my mother had expressly told her that she and the recently-appointed Judge Fredman, when he was a matrimonial practitioner, had been adversaries and competitors and that she feared he was using his judicial position to gain political advantage at her expense. Indeed, Harvey Landau, my mother's adversary in the case before Judge Fredman, was the Chairman of the Scarsdale Democratic Committee, which was actively involved in Judge Fredman's re-election campaign. My mother directly informed Ms. Pines of that fact, but, strangely, none of this information was included in any story by Ms. Pines either.

Considering that the past summer was precisely the time when Judge Fredman was mounting his campaign for election and sought to gain the benefit of all publicity, was it not Ms. Pines' responsibility to report the pertinent facts raised by my mother, including the question of the propriety of Judge Fredman's sitting on a case in which he had a political interest in aiding her adversary. Ms. Pines had knowledge of the potentially disqualifying relationship between Judge Fredman and Mr. Landau, which, contrary to ethical standards, was never disclosed by either of them on the record. This is a story of legitimate public interest and media concern.

Ms. Nikolski
January 31, 1990
Page Three

Parenthetically, I would observe that this kind of selective and partisan reporting is illustrative of the whole manner in which your newspaper presented the cross-endorsement "deal" that resulted in Judge Fredman's election to a full fourteen year term. But that's yet another story.

Very truly yours,

ELENA RUTH SASSOWER

P.S. You might also ask Ms. Pines what she did to investigate a letter she received from Ms. Margaret Hall, a former Democratic district leader in White Plains, as to her own experience with Judge Fredman when he was a practitioner. According to Ms. Hall, Judge Fredman missed an actual court hearing, resulting in a default judgment against her, which was never vacated. She was caused irrevocable injury as a result.

6/25/90

Mr. Sherlock

Despite this letter, your paper continued its extensive coverage* of the contempt proceedings without any reference to the political relationship between Harvey Sandau & Jan Fredman, as to which this letter put it on notice.

see your 4/12/90, 4/14/90, 4/23/90 & 5/24/90 issues

Metro

COUNTY / REGION / STATE

A SECTION, PART II

Party Line A20
Traffic Map A21

22

Gannett Suburban Newspapers/Sunday, May 5, 1991

A Section, Part II

3 justices' own cross-endorsement questioned after decision

By David McKay Wilson
Staff Writer

ALBANY — Three of five appellate division justices who this week dismissed a challenge to the cross-endorsement of local judges were themselves cross-endorsed in their last races, according to a state elections official.

Doris Sassower, who argued the case for the Ninth Judicial Committee, charged yesterday that the justices violated the Code of Judicial Conduct by not disclosing the political arrangements that won them seats on the bench. She maintains they should have disqualified themselves from the case, a claim rejected by the clerk of the court.

Sassower said the justices may have been wary to rule that cross-endorsement was unconstitutional because that's how they won their jobs.

"It's easy for them to win when you're playing with a stacked deck," said the attorney from White Plains. "This decision is suspect. They had a personal stake in the decision."

On Thursday, the Appellate Division of the Supreme Court, Third Department in Albany, rejected Sassower's challenge to the cross-endorsement of three judges. She sought the removal of Surrogate Albert Emanuelli, and Supreme Court Justice Francis Nicolai, who serve in White Plains, and Howard Miller, a Rockland County Supreme

Court justice. All three were endorsed by both major parties last year. The Ninth District includes Westchester, Rockland, Putnam, Dutchess and Orange counties.

Dismissed in state Supreme Court in October, the appeal failed this week when the appeals panel ruled that Sassower had failed to name the proper parties in the case. The ruling did not address the constitutionality of the cross-endorsement process.

Writing the decision was Presiding Justice Franklin Mahoney, who was re-elected to a 14-year term in 1982 with the endorsement of the Democratic, Republican and Conservative parties, said state Board of Elections spokesman

David Flanagan. Justice Norman Harvey ran on those same lines in his reelection bid in 1981. Justice Ann Mikoll ran on the Democratic, Conservative and Liberal lines in 1985.

Sassower said the justices personal involvement in cross-endorsement would serve as the basis for a motion seeking to vacate the ruling.

According to the ethics code: "a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including instances where he has ... personal knowledge of disputed evidentiary facts concerning the proceeding."

None of the justices could be

reached for comment late Friday. But Michael Novack, clerk of courts, said Sassower was obliged to raise the issue earlier. * I did,

"This is something that should have been raised prior to the argument," Novack said. "There is nothing that requires them to come forward in the first instance." * NOT TRUE.

Guy Parisi, counsel to the Westchester County Republican Committee, who was named in the case, declined to give his opinion on what the justices should have done.

"It was a decision only they could make," he said.

LETTERS TO THE EDITOR

Cross-Endorsement:
Questions of Protection

The story on the highly controversial cross-endorsements case ["Lawyer to Pursue Suit on Cross-Endorsement," May 19] gives rise to serious questions: who is being protected, by whom and why? There are significant errors and omissions, even omission of the name of the case, *Castracan v. Colavita*, now headed for the Court of Appeals based on issues including constitutionally protected voting rights.

No information was given as to the genesis of the Ninth Judicial Committee, its purpose, the credentials of its chairman, Eli Vigliano, a lawyer of 40 years standing, or to my own exten-

sive credentials in law reform. No reference was made to the ethical mandates of the Code of Judicial Conduct, requiring a judge to disqualify himself "in a proceeding where his impartiality might reasonably be questioned" — clearly the situation where three of the five judges who decided the appeal failed to disclose their own cross-endorsements.

The Ninth Judicial Committee is a nonpartisan group of lawyers and other civic-minded citizens, concerned with improving the quality of the judiciary in Westchester and the four other counties of the Ninth Judicial District. The committee came into being in 1989 as a response to the "Three-Year Deal" between the Westchester Republican and Democratic party leaders and their judicial nominees, which effectively disenfranchised voters in all five counties and furthered political control of the judiciary. Your reporter failed to discuss the essential terms and criminal ramifications of the deal: the trading of seven judgeships over three years; the requirement that judicial candidates agree to early resignations to create and maintain protracted vacancies; divvying up judicial patronage along political lines.

There was no mention that the lower court's dismissal was without any hearing and ignored the uncontradicted documentary evidence of Election Law violations at both Republican and Democratic judicial nominating conventions. Nor was there any reference to the content or effect of the long-delayed appellate decision. By not ruling on the cross-endorsement issue but instead affirming the dismissal on technical objections by the public officials sued, the Appellate Division did not consider the public interest and the horrendous impact the deal has had on already backlogged court calendars.

Your reporter skewed the article by personalizing this major legal proceeding as if it were "Mis. Sassower's case." Overlooked were the petitioners: Dr. Mario Castracan, a registered Republican in New Castle, and Prof. Vincent Bonelli, a registered Democrat in New Rochelle who teaches government.

The New York Times has done its best to bury the story. In October 1990 it did not see fit to print that the New York State League of Women Voters had issued a statewide alert to voters, urging the Appellate court to review the case before Election Day; or that the statutory preference to which Election Law proceedings are entitled was denied after being vigorously opposed by the judicial nominees defending the case. The Times failed to report that in February the N.A.A.C.P. Legal Defense and Educational Fund was granted permission to file an amicus brief. Also ignored

was an extensive Associated Press story by a prize-winning journalist released nationally two weeks before last year's election, but which The Times did not see fit to print.

The article's reference to "a personal court case" in which I was involved before Justice Samuel G. Fredman two years ago suggested that my concern for the transcendent issues of *Castracan v. Colavita* was personally motivated and of recent origin. In fact, my concern with the method of selecting judges is longstanding. I began my legal career 35 years ago by working for New Jersey Chief Justice Arthur T. Vanderbilt, a leader in court reform. More than 20 years ago the New York Law Journal published my article about my experience on one of the first pre-nomination judicial screening panels. From 1972-1980 I served as the first woman appointed to the Judicial Selection Committee of the New York State Bar Association.

Justice Fredman — a former Democratic Party chairman — was identified only as having been cross-endorsed as part of the 1989 deal, without stating that he was *not* named as a party to the *Castracan v. Colavita* cross-endorsement challenge. The reporter's garbled version of the proceeding before Justice Fredman (still undecided more than one year after final submission to him) failed to reflect a true or accurate story. The reporter did not check her "facts" with me. Indeed, a proper report would depict what occurs when party bosses become judges.

The inaccurate, slanted, inadequate coverage shows that The Times has not met its journalistic responsibility to fully and fairly report the facts — or to make any independent investigation of its own.

It is shocking that your newspaper repeats the self-serving statements of politicians like Richard Weingarten and Anthony Colavita that political parties "do a better job of picking candidates" than merit-selection panels and that their handpicked candidates are a "major step toward nonpartisan election of judges," without giving the committee an opportunity to put the lie to these claims. The reporter, who had the relevant appellate records, should have exposed the hypocrisy of politicians who professed disappointment that "the substantial issues in the case were not reached," when they and the cross-endorsed sitting judges involved in the deal fought vigorously to prevent them from being addressed.

Unless the public is immediately apprised of what is taking place, the cross-endorsed judicial nominations representing the third phase of the deal will proceed as scheduled in the 1991 elections. DORIS L. SASSOWER

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Distinguished Alumna Award, Brooklyn College, 1973. Named Outstanding Young Woman of America, State of New York, 1969. Nominated as candidate for New York Court of Appeals, 1972. Columnist: ("Feminism and the Law") and Member, Editorial Board, *Woman's Life Magazine*, 1981. Author: Book Review, *Separation Agreements and Marital Contracts*, *Trial Magazine*, October, 1987; *Support Handbook*, *ABA Journal*, October, 1986; Anatomy of a Settlement Agreement Divorce Law Education Institute 1982 "Climax of a Custody Case," *Litigation*, Summer, 1982; "Finding a Divorce Lawyer you can Trust," *Scarsdale Inquirer*, May 20, 1982. "Is This Any Way To Run An Election?" *American Bar Association Journal*, August, 1980; "The Disposable Parent: The Case for Joint Custody," *Trial Magazine*, April, 1980. "Marriages in Turmoil: The Lawyer as Doctor," *Journal of Psychiatry and Law*, Fall, 1979. 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Director: New York University Law Alumni Association, 1974; International Institute of Women Studies, 1971; Institute on Women's Wrongs, 1973; Executive Woman, 1973. Co-organizer, National Conference of Professional and Academic Women, 1970. Founder and Special Consultant, Professional Women's Caucus, 1970. Trustee, Supreme Court Library, White Plains, New York, by appointment of Governor Carey, 1977-1986 (Chair, 1982-1986). Elected Delegate, White House Conference on Small Business, 1986. Member, Panel of Arbitrators, American Arbitration Association. Member: The Association of Trial Lawyers of America; The Association of the Bar of the City of New York; Westchester County, New York State (Member: Judicial Selection Committee; Legislative Committee, Family Law Section), Federal and American (ABA Chair; National Conference of Lawyers and Social Workers, 1973-1974; Member, Sections on: Family Law; Individual Rights and Responsibilities Committee on Rights of Women, 1982; Litigation) Bar Associations; New York State Trial Lawyers Association; American Judicature Society; National Association of Women Lawyers (Official Observer to the U.N., 1969-1970); Consular Law Society; Roscoe Pound-American Trial Lawyers' Foundation; American Association for the International Commission of Jurists; Association of Feminist Consultants; Westchester Association of Women Business Owners; American Womens' Economic Development Corp.; Womens' Forum. Fellow: American Academy of Matrimonial Lawyers; New York Bar Foundation.