CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 3002
Southampton, New York 11969

Tel. (631) 377-3583
Fax (631) 377-3582

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

BY HAND

January 5, 2011

Justice Peter Fox Cohalan
Supreme Court/Suffolk County
One Court Street
Riverhead, New York 11901

RE: *Elena Ruth Sassower, et al v. Gannett, et al.*, Index #10-12596
Plaintiffs' Opposition/Cross-Motion & Reply:
Rule 5.1 of New York Rules of Professional Conduct:
"Responsibilities of Law Firms, Managers and Supervisory Partners"

Dear Justice Cohalan,

Pursuant to my December 14, 2010 telephone conversation with your Calendar Clerk, Denise Podlewski, plaintiffs are today filing their November 29, 2010 opposition/cross-motion and December 15, 2010 reply, constituting their response to the dismissal motion of Satterlee, Stephens, Burke, & Burke, LLP, counsel to all defendants except defendant Keith Eddings and defendant DOES 1-10.

Because of the serious and substantial relief sought by plaintiffs' opposition/cross-motion, *to wit*, sanctions & costs against Satterlee, disciplinary referral of Satterlee, monetary damages against Satterlee, disqualification of Satterlee as a defendant DOE, a default judgment against the defendant DOES and defendant Eddings, and summary judgment against defendants – all fully documented – plaintiffs withheld filing their papers with the Court to afford Satterlee the opportunity to meet its duty to the Court and its professional responsibilities under New York's Rules of Professional Conduct by withdrawing the firm's fraudulent dismissal motion and initiating settlement discussions.

As reflected by the enclosed e-mail exchange, spanning from November 29, 2010 to December 30, 2010, Satterlee's response was as follows: the Satterlee attorneys handling the defense herein, Meghan H. Sullivan, Esq. and Mark A. Fowler, Esq., not only refused to withdraw the dismissal motion and initiate settlement discussions, but, by their response demonstrated such further disrespect for their professional obligations as to compel me to inquire whether it had

---

* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

been authorized by the firm's attorneys in supervisory and managerial positions pursuant to 5.1 of New York's Rules of Professional Conduct: "Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers" – the text of which I attached to three separate e-mails. Ms. Sullivan and Mr. Fowler refused to respond – and refused to give me the names of such supervisory, managerial attorneys at the firm so that I might contact them directly.

Satterlee's office manager, Helen Kelly, for whom I left a voice mail message on Thursday, December 30, 2010 and who I phoned again yesterday because she had not phoned me the day before, on Monday, January 3, 2011, also refused to give me the names of Satterlee attorneys with supervisory, managerial authority over Ms. Sullivan and Mr. Fowler – and hung up the phone on me while I was explaining Satterlee's disqualification as a defendant DOE. Ms. Kelly did state, however, that she would relay my requests for the firm's supervisory, managerial oversight.

Plaintiffs, therefore, respectfully request that absent Satterlee's prompt notification to the Court that it is withdrawing its dismissal motion, the Court deem the second branch of our cross-motion, which presently reads:

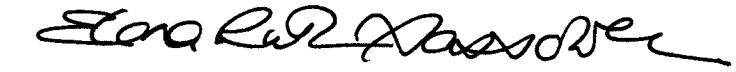
> "referring defense counsel to appropriate disciplinary authorities pursuant to this Court's mandatory 'Disciplinary Responsibilities' under the Chief Administrator's Rules Governing Judicial Conduct, 22 NYCRR §100.3D(2), for their knowing and deliberate violations of New York's Rules of Professional Conduct for Attorneys and, specifically, Rule 3.1 'Non-Meritorious Claims and Contentions', Rule 3.3 'Conduct Before A Tribunal', and Rule 8.4 'Misconduct'",

to also specifically include Satterlee's knowing and deliberate violation of Rule 5.1 "Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers".

Finally, as stated by my December 15, 2010 reply affidavit, plaintiffs' notice of cross-motion and two memoranda of law, signed only by me, acting *pro se* individually and *pro bono publico*, will be fully-executed by the signature of counsel to all other plaintiffs before the date of oral argument. "The delay is attributable directly to Satterlee's litigation misconduct, which has created unexpected problems and difficulties for Mr. DeFelice in his representation of multiple plaintiffs."

Thank you.

Very truly yours,



ELENA RUTH SASSOWER,
Pro Se Individually & Acting *Pro Bono Publico*

cc's & enclosures: see next page

cc: Satterlee, Stephens, Burke & Burke, LLP
Meghan H. Sullivan, Esq., Mark A. Fowler, Esq.
Helen Kelly, Office Manager
James DeFelice, Esq.

Enclosures:

(1) Elena Sassower's November 29, 2010 e-mail: 11:37 pm
(2) Elena Sassower's December 14, 2010 e-mail: 3:59 pm
(3) Elena Sassower's December 15, 2010 e-mail: 11:59 pm
(4) Elena Sassower's December 15, 2010 e-mail: 6:09 pm
(5) Meghan Sullivan's December 22, 2010 e-mail: 10:47 am
(6) Elena Sassower's December 22, 2010 e-mail: 12:43 pm (attaching Rule 5.1)
(7) Elena Sassower's December 27, 2010 e-mail: 12:21 pm (attaching Rule 5.1 – and 1/11/98 ltr)
(8) Mark Fowler's December 30, 2010 e-mail: 10:28 am
(9) Elena Sassower's December 30, 2010 e-mail: 11:00 am (attaching Rule 5.1)

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org]
Sent: Monday, November 29, 2010 11:37 PM
To: 'Meghan H. Sullivan'
Cc: 'jim_defelice@yahoo.com'; 'CJA'
Subject: Sassower v. Gannett: plaintiffs' opposition & cross-motion -- #1
Attachments: 11-29-10-x-motion-aff.pdf

Dear Ms. Sullivan,

Per our stipulation, I am e-mailing herewith plaintiffs' response to Satterlee's dismissal motion. So as not to exceed size limits, attached is plaintiffs' notice of cross-motion with my annexed affidavit. I will separately e-mail plaintiffs' memorandum of law, and then, also separately, the exhibits to my affidavit.

A hard copy will be mailed tomorrow.

In view of the substantial nature of plaintiffs' opposition/cross-motion – and the serious relief sought – we will hold off filing our papers with the court so as to afford Satterlee the opportunity to withdraw its dismissal motion and initiate settlement discussions.

Thank you.

Elena Sassower, Pro Se

cc: James DeFelice, Esq.
Doris L. Sassower

#1

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org]
Sent: Tuesday, December 14, 2010 3:59 PM
To: 'Meghan H. Sullivan'
Cc: 'Jim DeFelice'
Subject: Sassower v. Gannett: No oral argument tomorrow --

Dear Ms. Sullivan,

So that you do not make an unnecessary trip to Supreme Court in Riverhead tomorrow, this is to confirm my phone conversation this morning with Judge Cohalan's calendar clerk, Denise Podlewski.

Judge Cohalan will not be having oral argument on either your motion or our cross-motion tomorrow. It is his practice to notify counsel when he is ready for oral argument, which Ms. Podlewski indicated would be at least 2 months from now. The notification will be by mail and will give a date for oral argument roughly four weeks from the mail notification.

Ms. Podlewski further confirmed that our reply papers to your opposition to our cross-motion would be timely if served anytime tomorrow – and that I could thereafter either mail or deliver our papers to the Clerk's Office.

As in the past, I will e-mail you our papers before midnight tomorrow – with a hard copy sent by mail on Thursday.

Should you wish to confirm the foregoing, Ms. Podlewski's telephone number is 631-852-2919.

Elena Sassower, Plaintiff *Pro Se*

cc: James DeFelice

#2

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org]
Sent: Wednesday, December 15, 2010 11:59 PM
To: 'Meghan H. Sullivan'
Cc: 'Jim DeFelice'; 'CJA'
Subject: Plaintiffs' Reply Papers
Attachments: 12-15-10-reply-memo.pdf; 12-15-10-ers-aff.pdf

Dear Ms. Sullivan,

Attached herewith are plaintiffs' reply memorandum of law and my accompanying affidavit.

As previously stated, in view of the substantial nature of plaintiffs' papers – and the serious relief sought – we will hold off filing our papers with the court so as to afford Satterlee the opportunity to withdraw its dismissal motion and initiate settlement discussions.

Thank you.

Elena Sassower, Pro Se

cc: James DeFelice, Esq.
Doris L. Sassower

#3

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org]
Sent: Thursday, December 16, 2010 6:09 PM
To: 'Meghan H. Sullivan'
Cc: 'Jim DeFelice'; 'CJA'
Subject: Sassower v. Gannett: Plaintiffs' Reply Papers
Attachments: 12-15-10-ers-reply-affidavit.pdf; 12-15-10-reply-memo.pdf

Dear Ms. Sullivan,

Plaintiffs' reply papers have been mailed to you. The hard copy supersedes the e-mail I sent yesterday, as I noticed non-substantive errors, which I have corrected. The only two substantive changes:

(1) on page 20, I have identified that the accuracy of plaintiffs' analysis is undenied and undisputed; and

(2) footnote 8 (at pp. 24-35), which, for completeness now includes the two cases from the body of your Point IB, which had been omitted. The addition is as follows:

> *Immuno AG v. Moor-Janknowski*, 77 N.Y.2d 235, 245, 250, 252-3 (1991) ("We did not, and do not hold,...that there is a wholesale exemption for anything that might be labeled 'opinion.'"; "It has long been our standard in defamation actions to read published articles in context to test their effect on the average reader, not to isolate particular phrases but to consider the publication as a whole"; "Letters to the editor, unlike ordinary reporting, are not published on the authority of the newspaper or journal...Thus, any damage to reputation done by a letter to the editor depends on its inherent persuasiveness and the credibility of the writer, not on the belief that it is true because it appears in a particular publication.");
>
> *Zysk v. Fidelity Title Ins. Co.*, 14 A.D.3d 609 (2nd Dept. 2005) ("The statements at issue did not imply behavior that was incompatible with the proper conduct of the plaintiff's profession and made no reference to a matter of significance and importance to the plaintiff's ability to practice law.").

My affidavit has now been notarized -- & the only change I have made is to the first page title to reflect that it a "reply affidavit in support of cross-motion"

Attached, for your convenience, are the scanned documents.

Please advise by no later than next Wednesday, December 22nd whether Satterlee would prefer to initiate settlement discussions, rather than have us file our cross-motion and reply with the Court.

Thank you.

Elena Sassower, Pro Se

cc: James DeFelice, Esq.
Doris L. Sassower

#4

Center for Judicial Accountability, Inc. (CJA)

From: Meghan H. Sullivan [msullivan@ssbb.com]
Sent: Wednesday, December 22, 2010 10:47 AM
To: 'Center for Judicial Accountability, Inc. (CJA)'
Cc: 'Jim DeFelice'; 'CJA'
Subject: RE: Sassower v. Gannett: Plaintiffs' Reply Papers

Ms. Sassower-

If you wish to immediately discontinue this action in its entirety with prejudice, our client would consider not seeking costs and attorneys' fees. If you are not agreeable to this resolution, we expect Plaintiffs to comply with their obligation to file those papers that were timely served.

-Meghan Sullivan

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Thursday, December 16, 2010 6:09 PM
To: Meghan H. Sullivan
Cc: 'Jim DeFelice'; 'CJA'
Subject: Sassower v. Gannett: Plaintiffs' Reply Papers

Dear Ms. Sullivan,

Plaintiffs' reply papers have been mailed to you. The hard copy supersedes the e-mail I sent yesterday, as I noticed non-substantive errors, which I have corrected. The only two substantive changes:

(1) on page 20, I have identified that the accuracy of plaintiffs' analysis is undenied and undisputed; and

(2) footnote 8 (at pp. 24-35), which, for completeness now includes the two cases from the body of your Point IB, which had been omitted. The addition is as follows:

> *Immuno AG v. Moor-Janknowski*, 77 N.Y.2d 235, 245, 250, 252-3 (1991) ("We did not, and do not hold,...that there is a wholesale exemption for anything that might be labeled 'opinion.'"; "It has long been our standard in defamation actions to read published articles in context to test their effect on the average reader, not to isolate particular phrases but to consider the publication as a whole"; "Letters to the editor, unlike ordinary reporting, are not published on the authority of the newspaper or journal...Thus, any damage to reputation done by a letter to the editor depends on its inherent persuasiveness and the credibility of the writer, not on the belief that it is true because it appears in a particular publication.");
>
> *Zysk v. Fidelity Title Ins. Co.*, 14 A.D.3d 609 (2nd Dept. 2005) ("The statements at issue did not imply behavior that was incompatible with the proper conduct of the plaintiff's profession and made no reference to a matter of

#5

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org]
Sent: Wednesday, December 22, 2010 12:43 PM
To: 'Meghan H. Sullivan'
Cc: 'Jim DeFelice'; 'CJA'
Subject: Supervisory/Management Attorneys at Satterlee: Sassower v. Gannett
Attachments: prof-conduct--5-1-and-5-2.pdf *

Dear Ms. Sullivan,

Please advise as to whether your bad-faith, abusive response was authorized by supervisory & managing attorneys at Satterlee, Stephens, Burke & Burke, LLP, based on their review of plaintiffs' cross-motion & reply papers – and the names of those attorneys.

Better still, please have such supervisory & managing attorneys at Satterlee – and Satterlee partner Mark Fowler, Esq., who has not signed the dismissal motion & reply that bear his name -- e-mail us directly to confirm that this is the manner in which they have discharged their responsibilities under Rule 5.1 of New York Rules of Professional Conduct, entitled "Responsibilities of Law Firms, Partners, Managers & Supervisory Lawyers".

For your convenience, a copy of Rule 5.1 is attached herewith, together with a copy of Rule 5.2, entitled "Responsibilities of a Subordinate Lawyer" – which, needless to say, pertains to you.

We will await such confirmation from you & them before filing our cross-motion & reply.

Thank you.

Elena Sassower, Plaintiff *Pro Se*

cc: James DeFelice, Esq.
Doris L. Sassower

From: Meghan H. Sullivan [mailto:msullivan@ssbb.com]
Sent: Wednesday, December 22, 2010 10:47 AM
To: 'Center for Judicial Accountability, Inc. (CJA)'
Cc: 'Jim DeFelice'; 'CJA'
Subject: RE: Sassower v. Gannett: Plaintiffs' Reply Papers

Ms. Sassower-

#6

New York Rules of Professional Conduct
effective April 1, 2009
as amended May 4, 2010

RULE 5.1:
RESPONSIBILITIES OF LAW FIRMS, PARTNERS, MANAGERS AND SUPERVISORY LAWYERS

(a) A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to these Rules.

(b) (1) A lawyer with management responsibility in a law firm shall make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules.

(2) A lawyer with direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the supervised lawyer conforms to these Rules.

(c) A law firm shall ensure that the work of partners and associates is adequately supervised, as appropriate. A lawyer with direct supervisory authority over another lawyer shall adequately supervise the work of the other lawyer, as appropriate. In either case, the degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter, and the likelihood that ethical problems might arise in the course of working on the matter.

(d) A lawyer shall be responsible for a violation of these Rules by another lawyer if:

(1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or

(2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the other lawyer practices or is a lawyer who has supervisory authority over the other lawyer; and

(i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or

(ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.

Comment

[1] Paragraph (a) applies to law firms; paragraph (b) applies to lawyers with management responsibility in a law firm or a lawyer with direct supervisory authority over another lawyer.

Attachment to #6 e-mail +
thereafter emails #7 + #9

[2] Paragraph (b) requires lawyers with management authority within a firm or those having direct supervisory authority over other lawyers to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to these Rules. Such policies and procedures include those designed (i) to detect and resolve conflicts of interest (*see* Rule 1.10(e)), (ii) to identify dates by which actions must be taken in pending matters, (iii) to account for client funds and property, and (iv) to ensure that inexperienced lawyers are appropriately supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (b) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. *See* Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and lawyers with management authority may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (d) expresses a general principle of personal responsibility for acts of other lawyers in the law firm. *See also* Rule 8.4(a).

[5] Paragraph (d) imposes such responsibility on a lawyer who orders, directs or ratifies wrongful conduct and on lawyers who are partners or who have comparable managerial authority in a law firm who know or reasonably should know of the conduct. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Partners and lawyers with comparable authority, as well as those who supervise other lawyers, are indirectly responsible for improper conduct of which they know or should have known in the exercise of reasonable managerial or supervisory authority. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent misconduct or to prevent or mitigate avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (a), (b) or (c) on the part of a law firm, partner or supervisory lawyer even though it does not entail a violation of paragraph (d) because there was no direction, ratification or knowledge of the violation or no violation occurred.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of another lawyer. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by these Rules. *See* Rule 5.2(a).

RULE 5.2:
RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) A lawyer is bound by these Rules notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate these Rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Comment

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of these Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise, a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear, and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. To evaluate the supervisor's conclusion that the question is arguable and the supervisor's resolution of it is reasonable in light of applicable law, it is advisable that the subordinate lawyer undertake research, consult with a designated senior partner or special committee, if any (*see* Rule 5.1, Comment [3]), or use other appropriate means. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org]
Sent: Monday, December 27, 2010 12:21 PM
To: 'mfowler@ssbb.com'
Cc: 'Meghan H. Sullivan'; 'Jim DeFelice'; 'CJA'
Subject: Rule 5.1 of NY Rules of Professional Conduct: Sassower v. Gannett
Attachments: prof-conduct--5-1-and-5-2.pdf; 1-11-98-ltr-to-patafio.pdf *

Dear Mr. Fowler,

I have received no response from Ms. Sullivan to my December 22nd e-mail, requesting that you and other supervisory & managing attorneys at Satterlee, Stephens, Burke & Burke confirm that her bad-faith, abusive December 22nd e-mail to me was approved and authorized by you and other Satterlee attorneys with supervisory/management responsibilities.

Please either confirm or deny your approval/authorization of her December 22nd e-mail – and, if the former, please advise as to the names of other supervisory & managing attorneys at Satterlee so that I may contact them directly as to their obligations pursuant to Rule 5.1 of New York Rules of Professional Conduct: "Responsibilities of Law Firms, Partners, Managers & Supervisory Lawyers".

I would appreciate your response by this Wednesday, December 29th.

Finally, with respect to the 4th branch of plaintiffs' November 29th cross-motion to disqualify Satterlee for conflict of interest because it is a party, being among the defendant DOES – entitlement to which is reinforced by plaintiffs' December 15th reply – I have come across a January 11, 1998 letter from CJA to The Journal News which would appear to be quite germane to the issue. Indeed, its last sentence expressly inquired as to the identity of attorney(s) then advising The Journal News. A copy is enclosed.

Although I do not believe The Journal News answered this last sentence of CJA's January 11, 1998 letter, you surely can, either from your own direct, experience (as evidenced by your December 21, 1995 letter to me – Exhibit 3d of the Verified Complaint) or based on your review of Satterlee's relevant files.

Please, therefore, state whether you, in particular, or the Satterlee firm were the unidentified attorney(s) advising The Journal News.

Thank you.

Elena Sassower, Plaintiff *Pro Se*

cc: James DeFelice, Esq.
Doris L. Sassower

#7

12/27/2010

CENTER for JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Tel (914) 421-1200
Fax (914) 428-4994

E-Mail: judgewatch@aol.com
Web site: www.judgewatch.org

Doris L. Sassower, Director
Direct Tel: 914-997-1677; Direct Fax: 914-684-6554

BY FAX: 696-8396: AND MAIL

January 11, 1998

Gannett Suburban Newspapers
One Gannett Drive
White Plains, New York 10604

ATT: Ron Patafio, Editorial Page Editor

Dear Mr. Patafio:

This is to protest Gannett's unjustified failure to publish my Reply to its defamatory and otherwise inaccurate December 27th story, "*Judicial Reform Group Challenges O'Rourke Judgeship*", which you told me in our phone conversation before 5:00 p.m. on Friday, January 9th would appear in today's Sunday newspaper, the highest circulation of the week. Such agreed-to publication came about after I had worked long and hard to cut down my Reply to half its original length and had accepted your excision of appropriate and essential information, i.e., my third paragraph statement that our 1992 critique "documented that O'Rourke repeatedly lied about his credentials and that he had been an 'incompetent and unethical practitioner' when he practiced law", as well as my concluding paragraph statement that Gannett's article had "gratuitously defamed me" in twice stating I am "a disbarred lawyer".

So that the record is clear, when you came over to my home before 8:00 a.m. on Friday, January 9th to return the photo of me that you had picked up on Thursday to be "scanned in" for publication with my Reply, you, at the same time, received from me a "hard copy" of the fax I sent to you the day before. As to that fax, you had raised three objections in the late afternoon of the preceding day: two as to the above language of my proposed Reply and the third relating to Gannett's lawsuit to unseal Mr. O'Rourke's divorce files. As soon as I received your faxed objections, I immediately called you to review them. After I read to you from published articles about Gannett's lawsuit, you withdrew that objection, acknowledging you had been mistaken when you stated that Gannett had "never said it filed suit because the divorce files were relevant to Mr. O'Rourke's judicial qualifications." As to the other two objections, we left off the conversation with your statement that you would consult with Gannett's attorney.

On that Friday morning, you promised that as soon as you heard back from your attorney as to those objections you would let me know. In the following hours, I called several times. When I finally got you on the line at about 11:30 a.m., you stated that you still had no word from your attorney. At that point, I proposed compromise language, in the event your attorney sustained your refusal to accept my original

attachment to #7 e-mail

language. Specifically, in such event, I asked that you use the same language it accepted when it published Eli Vigliano's Letter to the Editor, "*O'Rourke Not Qualified to Serve as Judge*, on December 3, 1997. That Letter highlighted our critique's conclusion that:

> "practitioner O'Rourke committed *unethical conduct* in connection with those [three] cases [which he had identified for the Senate Judiciary Committee as his 'most significant'] and that he was *less than honest* in his Senate judiciary questionnaire responses." (emphasis added).

You agreed that you would "consider" that modifying language and get back to me. Throughout the afternoon, when I was away from my desk, I called my answering machine to see if you had gotten back to me. Additionally, I called my daughter several times to see if you had called her, since I had told you I would be out after 1:00 p.m. and that you should speak with her. You finally called my daughter told me that you called her at approximately 3:30 p.m., telling her that your attorney insisted on the two above-indicated deletions as a condition to printing the Reply in Sunday's newspaper. My daughter, likewise, asked that Eli Vigliano's language be accepted as a compromise, which you rejected. According to her, you stated that the language in Mr. Vigliano's Letter to the Editor was erroneously allowed and you would not print it again. You would not explain to her why the independently-verifiable fact that O'Rourke lied and misrepresented his credentials to the U.S. Senate Judiciary Committee could not be identified as such to the public -- and you acknowledged to her that you had reviewed the critique.. Nor would you explain why the critique's documented findings as to Mr. O'Rourke's "multitudinous misrepresentations" of his credentials -- language which appears in the critique itself -- could not be identified in quotes. You also would not explain to her why the explicit language appearing in CJA's December 26th letter to O'Rourke, i.e., that his description of the cases -- and [his] participation therein -- was over and again, false and misleading and that the true facts exposed [him] as an 'incompetent and unethical practitioner'" -- could not be used, when Mr. O'Rourke had not challenged such conclusion, although expressly invited by that letter to do so.

According to my daughter, you told her that you were then already past deadline and needed a go-ahead from me for publication of my Reply in the Sunday edition. She stated that she was expecting to hear from me within the next half hour or 45 minutes and would have me immediately call you. However, on my behalf, she unequivocally gave consent to publication of the expurgated version, if you did not hear from me in time. This consent was without prejudice to her stated view that the expurgation suppressed what the critique fully documented, i.e., that Mr. O'Rourke had lied about his qualifications.

I did call you within the time frame my daughter indicated to you and I personally consented to publication after you likewise rejected from me essentially the same arguments my daughter had made to you. We both separately stated that the public interest in knowing the contents of the expurgated version was too important to let your deletions stand in the way of Sunday's publication. Indeed, it appears that even as we were speaking together by phone, my daughter called you and repeated a message on your voice mail to that same effect.

There was no doubt when we left off speaking, that my Reply -- as already approved by Gannett counsel -- would be printed in today's newspaper, together with my photo. I so informed CJA members, as well as others. You can, therefore, imagine my shock when, after waking up at 6:00 a.m. this morning to get

the Gannett newspaper that arrives at that hour. I discovered that the Reply appeared nowhere in the newspaper. This shock was all the greater because neither you nor anyone else at Gannett had the decency to notify me that it would not be appearing today, as promised.

It must be emphasized that unlike my Reply -- which is especially time-sensitive because, as you are aware, Mr. O'Rourke's confirmation may be as early as this Tuesday, January 13th -- there is nothing printed on today's Editorial Page that could not have been deferred for publication. That you should print, as your lead Letter to the Editor, the self-serving letter of Harvey Landau, Esq., praising former Democratic party bosses, Justice Samuel G. Fredman, former Judge Richard Weingarten, and Dennis Mehiel, all responsible for the ultimate politicization of the Ninth Judicial bench, as exposed by me in the *Castracan v. Colavita* lawsuit, is part of Gannett's continuing cover-up of the corrupting 1989 three-year, seven-judge judicial cross-endorsement deal that such party "leaders" orchestrated and implemented at illegally-conducted judicial nominating conventions.

Your publication of the Landau letter can only be seen as a deliberate affront to me personally, in view of your knowledge that Mr. Landau, in collusion with Justice Fredman, fabricated the phony *Breslaw* contempt proceeding against me. That proceeding, involving a minor fee dispute between private parties, Gannett elevated to front-page banner headlines and unrelentingly defamatory press coverage[1] . In so doing,. Gannett refused to print any of the facts showing the disqualifying political and personal relationship between Mr. Landau and Justice Fredman, which neither of them disclosed.. This includes the active endorsement of Justice Fredman for a full 14-year term in the fall 1989 elections by Mr. Landau, then Chairman of the Scarsdale Democratic Club. Justice Fredman refused to disqualify himself by reason thereof, as well as by reason of his directly adversarial and fiercely vindictive relationship to me when he was a practitioner immediately prior to Governor Cuomo's interim appointment of him to the bench in May 1989. Gannett was well aware of these disqualifying relationships because it was repeatedly informed of it, as reflected by my daughter's unresponded-to January 31, 1990 letter and in my October 24, 1991 letter to then Governor Cuomo, receipted for Gannett by its then Executive Editor, Lawrence Beaupre's secretary. Copies of both letters are separately transmitted.

My October 24, 1991 letter to Governor Cuomo reflected Alan Sheinkman's complicitous role in defending the Castracan v. Colavita challenge. Over these past several weeks, Gannett has steadfastly refused to write any story about Mr. Sheinkman, whom Gannett reported in a November 21st article to have been appointed as Westchester County Attorney by incoming Westchester County Executive Andrew Spa no. Nor has it published any story about Jay Hashmall, Esq., whom that same article reported he had been appointed as Deputy County Executive. You will recall that when you came to my home on Friday, I showed you the document Mr. Hashmall signed as Chairman at the 1990 Democratic judicial nominating convention presided over by him, in which he, along with its Secretary, Mark Oxman, Esq., identified in Gannett's January 1, 1998 article as Mr. Spano's personal attorney, both perjuriously certified to due compliance with Election Law requirements.

---

[1] Gannett never bothered to report Gannett never bothered to report that, on my appeal from Justice Fredman's abusive, egregiously erroneous final decision against me was REVERSED for his failure to accord me fundamental due process. Parenthetically, Gannett was long ago given a copy of my Appellant's Brief on the Breslaw appeal.

All three of these lawyers were involved in criminal wrongdoing. Yet, I was told by you, Editor/Vice-President Robert W. Ritter, Bruce Golding, who verified same with his editor, Phil Reisman, as well, impliedly, by David McKay Wilson, who did not bother to speak to me despite my several calls, that Gannett was "not interested in the story."

It deserves note that repeated messages have been left for Mr. Ritter by my daughter and myself as to Gannett's suppression of CJA's citizen opposition to Mr. O'Rourke's state court nomination and the basis of that opposition. He has failed to return a single one. Apparently, he is too busy trying to unseal Mr. O'Rourke's divorce files on the pretense that the public has a right to know about what they contain At least two of the telephone messages left for Mr. Ritter informed him that Gannett could better be spending its time and money by suing the Governor to vindicate the public's right to know the contents of the written report of the State Judicial Screening Committee concerning Mr. O'Rourke's judicial qualifications that, by law, is supposed to be "publicly available".

On the subject of Gannett's hypocrisy, which is not of recent vintage, I enclose my daughter's Letter to the Editor, transmitted by hand and by fax under cover letter dated March 22, 1993. That Letter to the Editor, which Gannett refused to print, makes evident that Gannett itself uses words like "lying", which word you stated I could not use in referring to O'Rourke's repeated misrepresentations of his credentials, as documented by our critique. As to that critique and Gannett's suppression of it, my daughter had submitted a Guest Column five months earlier, on November 11, 1992, also unpublished.

Let there be no doubt about it. Mr. O'Rourke owes his state court nomination to Gannett's suppression five years ago of the true facts about our critique of his judicial qualifications. If he is confirmed by the State Senate, it will be due to Gannett's continuing suppression of the critique and information about the extraordinary citizen opposition we have once again mounted.

Finally, on the subject of Gannett's suppression, Gannett has decided that even a mention in its "Our Town" column of my winning a Giraffe Award reflects too favorably on me to be included. Originally, Bruce Golding was doing a feature story on it and spent a substantial amount of time on it. The story, I was thereafter told, was whittled down to what was going to be a brief item in "Our Town", which was to appear on New Year's Day. True to form, it never appeared.

A copy of this letter will be sent to the management of Gannett Company Inc., at it's headquarters, which as you know was previously informed of Gannett Suburban's suppression, particularly in the context of our O'Rourke critique. A copy of my daughter's July 6, 1992 letter to Gannett Management will be separately transmitted to you. Please circulate this letter to all those in charge at Gannett Suburban, including Mr. Sherlock, Mr. Ritter, Mr. Hoffman, and Mr. Reisman, as well as the reporters involved in the suppression and defamation of me. Please also identify for me the attorney (s) you consulted so that I can contact him (them) directly

Very truly yours,

DORIS L. SASSOWER, Director

Enclosures: (5), to follow by separate transmittal.

Center for Judicial Accountability, Inc. (CJA)

From: Mark A. Fowler [mfowler@ssbb.com]
Sent: Thursday, December 30, 2010 10:28 AM
To: 'elena@judgewatch.org'
Cc: Meghan H. Sullivan
Subject: Your inquiry

Dear Ms. Sassower,

Thank you for your call this morning.

In reviewing my outbox, I see that I did not correctly address my email to you, which I attempted to send on Monday. My apologies.

Ms. Sullivan has at all times conducted herself in a thoroughly professional manner in connection with this case. There was nothing in the least improper about her two-sentence email message to you; it accurately reflected the fact that our client would consider not seeking costs if plaintiffs promptly discontinued this action, and she was authorized to send it. I take it from your subsequent messages, and our call this morning, that plaintiffs are not interested in a settlement on that basis.

We will not, of course, disclose to you whether we have given advice to a client on any subject.

Very truly yours,

MARK A. FOWLER || *Satterlee Stephens Burke & Burke LLP*
230 Park Avenue
New York, NY 10169
Direct Telephone: (212) 404-8787
General Telephone: (212) 818-9200
General Fax: 212-818-9606

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org]
Sent: Thursday, December 30, 2010 11:00 AM
To: 'Mark A. Fowler'
Cc: 'Meghan H. Sullivan'; 'Jim DeFelice'; 'CJA'
Subject: Rule 5.1 of NY Rules of Professional Conduct: "Responsibilities of Law Firms, Partners, Managers & Supervisory Lawyers"
Attachments: prof-conduct--5-1-and-5-2.pdf *

Dear Mr. Fowler,

This is to confirm that when I promptly called you back upon receipt of your e-mail, you hung up on me when I requested the names of other partners at Satterlee, Stephens, Burke & Burke having supervisory/management responsibilities, with whom I might speak about how you and Ms. Sullivan have defended against plaintiffs' lawsuit against Gannett – as documented by our November 29th cross-motion and December 15th reply.

Immediately thereafter, I left a voice mail message for Helen Kelly, who I understand is office manager at Satterlee, Stephens, Burke & Burke, requesting that she call me on Monday, January 3rd, upon her return from the holiday she is already enjoying.

Please have our cross-motion & reply papers available for review by your fellow partners at Satterlee, Stephens, Burke & Burke in discharge of their responsibilities under Rule 5.1 of New York's Rules of Professional Conduct.

Thank you.

Elena Sassower, Plaintiff *Pro Se*

cc: James DeFelice, Esq.
Doris L. Sassower

From: Mark A. Fowler [mailto:mfowler@ssbb.com]
Sent: Thursday, December 30, 2010 10:28 AM
To: 'elena@judgewatch.org'
Cc: Meghan H. Sullivan
Subject: Your inquiry

Dear Ms. Sassower,

Thank you for your call this morning.

In reviewing my outbox, I see that I did not correctly address my email to you, which I attempted to send on Monday. My apologies.

Ms. Sullivan has at all times conducted herself in a thoroughly professional manner in connection with this case. There was nothing in the least improper about her two-sentence email message to you; it accurately reflected the fact that our client would consider not seeking costs if plaintiffs promptly discontinued this action, and she was authorized to send it. I take it