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October 14, 1991

Hon. Guy Mangano, Presiding Judge
Appellate Division, Second Dept.
45 Monroe Place
Brooklyn, New York 11201

Re: Ninth Judicial District Grievance Committee
File Nos. 8059/91 and 8047/91

Honorable Sir:

Please consider this letter request for transfer of the two above-numbered complaints arising out of the Breslaw matter to another Department in lieu of a formal motion.

In discharge of my professional obligations under DR-1-103 of the Code of Professional Responsibility, I filed a verified complaint with the Grievance Committee of the Ninth Judicial District against Harvey Landau, Esq. on June 11, 1991, detailing acts of professional misconduct seriously affecting me in connection with his representation of Mrs. Breslaw in the proceeding he brought against me before Justice Fredman in the case of Breslaw v. Breslaw. Such misconduct included, inter alia, his undisclosed on-going political relationship with Justice Fredman during the pendency of that proceeding. My transmittal letter of that date requested that my said complaint be referred to another Grievance Committee outside this Department. That request was based on my conflict of interest objection raising a reasonable question as to Mr. Casella's ability to fairly evaluate my complaint against Mr. Landau in light of my detailed criticism of Mr. Casella for not observing the requirements of the Judiciary Law and the Rules of this Court in connection with his motion to suspend me for matters arising out of the Breslaw case (see Affirmation of Eli Vigliano, Esq., dated February 12, 1991, in further support of Respondent's Order to Show Cause and in opposition to Petitioner's Order to Show Cause).

On July 3, 1991, I received notification from Mr. Casella that he had assigned my complaint against Mr. Landau the number # 8059/91 and forwarded it to the Grievance Committee for the Tenth Judicial District, rather than outside the Second Department.

The justification for my request for referral outside the Department was thereafter evidenced by the action of the Chief Counsel of the Grievance Committee for the Tenth District, Frank Finnerty, Esq., who little more than two weeks later, notified me by letter dated July 22, 1991 that my complaint against Mr. Landau was dismissed. Upon receipt of that letter on July 25, 1991, I telephoned Mr. Finnerty. Mr. Finnerty admitted to me that he himself had dismissed the complaint, sua sponte, without even requiring a response from Mr. Landau, and without even submitting it to his Committee for their authorization or consideration pursuant to Sec. 691.4(c) and (e) of the Rules of the Appellate Division, Second Department.

I have today resubmitted my complaint against Mr. Landau to Mr. Casella, together with my request, once again, that it be transferred out of this Department. A copy of my letter to him dated today is enclosed.

Such transfer is particularly essential because after Mr. Casella's receipt of my June 11, 1991 complaint against Mr. Landau, and immediately following the June 24, 1991 Decision of Justice Fredman in the Breslaw case, Mr. Casella informed me by letter dated June 28, 1991 of a sua sponte initiation of a complaint against me (#8047/91) in that Breslaw case. Under the circumstances, there is more than an "appearance of impropriety", since Mr. Casella has repeatedly demonstrated that he is more interested in finding me guilty of some professional misconduct than in investigating the true facts that would establish my innocence.

As you know, this Court's aforesaid Order dated June 14, 1991, suspended me immediately, unconditionally, and indefinitely, albeit I never had any evidentiary hearing before either the Grievance Committee or before this Court on Mr. Casella's accusations in a suspension proceeding improperly initiated by him by ordinary motion, rather than by a plenary petition--as required. Mr. Casella rested his suspension application on certain medical testimony compelled by Justice Fredman in my absence, over objection of my counsel, in total disregard of the physician-patient privilege protected by CPLR 4504--and without my ever being granted an opportunity by Justice Fredman to address such testimony--all in violation of my due process rights.

Until I was served with the suspension Order, I was counsel to the Petitioners in the case of Castracan v. Colavita, the predecessor to the Sady v. Murphy case (#91-07706) which came before your Court in August 1991. Both cases challenged as illegal, unconstitutional, and against public policy, the 1989 Three-Year Deal between Republican and Democratic party leaders in the Ninth Judicial District and seven now sitting judges (copy enclosed).

Justice Fredman was one of the judges named in the Three-Year Deal and Mr. Landau was Chairman of the Scarsdale Democratic Club at the time the Deal was negotiated and adopted. I believe that the enormous power of these individuals--and their political connections--accounts for my without due process suspension by this Court. With all due respect, the public perception is that such behind-the-scene political influence may also account for this Court's otherwise inexplicable dismissal of Sady v. Murphy, on the grounds set forth in its August 21, 1991 Decision/Order. In view of the fact that no evidentiary hearing had ever been afforded the Sady Petitioners by the lower court, this Court's dismissal for lack of evidentiary proof is difficult to comprehend. Indeed, the legal issue was squarely before this Court by the lower court's dismissal for "failure to state a cause of action".

I was present at the oral argument of the Sady case on August 20, 1991 and personally heard the remarks of the highly verbal panel, which included Judges Thompson, Sullivan and your Honor--signifying that a reversal might be forthcoming of the lower court's Decision--or at very least that an evidentiary hearing would be held on a remand. Annexed hereto are the pertinent pages of my Affidavit now before the Appellate Division, Third Department, based on a contemporaneous record of what transpired at the oral argument before this Court.

The forthright comments on that occasion by the aforesaid panel members of this Court concerning the illegality and unethical nature of the Deal lead me to believe that this Court may now be more sensitive to the political dimension of the Grievance Committee's prosecution of me. In my Order to Show Cause to this Court, signed on June 20, 1991, I asked this Court for an interim stay of my suspension and to disqualify itself from deciding my application to vacate its suspension order. I contended that the impartiality of judges in the Second Department was "reasonably open to question" within the proscription of Canon 3 C.(1) of the Code of Judicial Conduct, relative to deciding issues concerning the misconduct of other judges of this Department.

Your Honor will note that I annexed as Exhibit "C" to my June 20, 1991 Order to Show Cause a copy of my grievance complaint against Harvey Landau. As set forth therein, at the time Mr. Landau was appearing in the proceeding he purposefully initiated before Justice Fredman, who had not tried the matter out of which the alleged contempt arose, Mr. Landau was Chairman of the Scarsdale Democratic Club, actively endorsing and promoting Justice Fredman's candidacy for a full 14 year term on the Supreme Court, the pivotal purpose and a key term of the cross-endorsements bartering deal attacked in the Sady and Castracan cases.

Although this Court already has my complaint against Mr. Landau in its possession as part of my June 20, 1991 Order to Show Cause, for the Court's convenience, a duplicate copy is annexed hereto.

Since both my complaint against Mr. Landau (#8059/91) and the sua sponte complaint against me (#8047/91) involve common questions of law and fact, in the interests of legal and judicial economy, they clearly should be investigated and adjudicated by one and the same body. For all the reasons set forth hereinabove, as well as those evident from a reading of both complaints, it is respectfully requested that they both be transferred to a committee outside this Department for such investigation and adjudication as may be deemed appropriate by this Court. Only a committee unconnected to the political leaders in this Department can avoid the proscribed "appearance of impropriety"--let alone its reality.

Most Respectfully,

DORIS L. SASSOWER

DLS/er
Enclosures:

(1) my June 11, 1991 grievance complaint against Harvey Landau, with covering letter

(2) my October 14, 1991 letter-response to Mr. Casella

(3) 1989 "Three Year Deal" (Exhibit "G" to Petition, Castracan v. Colavita)

(4) pages 7-11 of Doris L. Sassower's "Omnibus Affidavit in Opposition to Respndents' Cross-Motion for Sanctions", sworn to September 6, 1991, Castracan v. Colavita, Appellate Division, 3rd Dept., # 62134

cc: Edward I. Sumber, Chairman
Gary Casella, Chief Counsel
Grievance Committee
Ninth Judicial District

In furtherance of a mutual interest to promote a non-partisan judiciary populated by lawyers with universally acclaimed litigation skills, unblemished reputations for character and judicial temperament and distinguished civic careers, and to enable sitting judges of universally acclaimed merit to attain re-election to their judicial office without the need to participate in a partisan contest, the Westchester County (Republican) (Democratic) Committee joins with the Westchester County (Republican) (Democratic) Committee to Resolve:

That for the General Election of 1989, we hereby pledge our support, endorse and nominate Supreme Court Justice Joseph Jiudice, Supreme Court Justice Samuel G. Fredman and Albert J. Emanuelli, Esq. of White Plains, New York for election to the Supreme Court of the State of New York, Ninth Judicial District, and to call upon and obtain from our counterparts in Rockland, Orange, Dutchess and Putnam Counties similar resolutions; and

For the general election of 1990, assuming that the then Justice Albert J. Emanuelli will resign from the Supreme Court Bench to run for Surrogate of Westchester County and thereby create a vacancy in the Supreme Court, Ninth Judicial District to be filled in the 1990 general election, we hereby pledge our support, endorse and nominate County Court Judge Francis A. Nicolai as our candidate for the Supreme Court vacancy created by Judge Emanuelli's resignation, and to call upon and obtain

EXHIBIT G

from our counterparts in Rockland, Orange, Dutchess and Putnam counties resolutions and commitments to support Judge Francis A. Nicolai as their candidate to fill the vacancy created by the resignation of Judge Emanuelli; and we hereby pledge our support, endorse and nominate Albert J. Emanuelli as our candidate for Westchester County Surrogate in the 1990 general election.

For the general election of 1991, we hereby pledge our support, endorse and nominate Judge J. Emmet Murphy, Administrative Judge of the City Court of Yonkers, for election to the County Court of Westchester County to fill the vacancy anticipated to be created by the election of Judge Francis A. Nicolai to the Supreme Court and Judge Adrienne Hofmann Scancarelli, Administrative Judge of the Family Court, Westchester County, for re-election to the Family Court, Westchester County; and

To require each of the above-named persons to pledge that, once nominated for the stated judicial office by both of the major political parties, he or she will refrain from partisan political endorsements during the ensuing election campaign and, thereafter, will provide equal access and consideration, if any, to the recommendations of the leaders of each major political party in connection with proposed judicial appointments.

We are resolved and agreed that the foregoing Resolution and pledges are intended to and shall be binding upon the respective Committees of the two major political parties during the years 1989, 1990 and 1991 and shall not be affected by any action or proposed action or court merger or court unification.

court judiciary."[2]

14. This Court, without explanation, denied Appellants the preference to which the Election Law entitled them as a matter of right and the Court's own rule 800.16, and refused to grant the extra week required to permit the NAACP Legal and Educational Defense Fund to present constitutional arguments as amici in support of Appellants' position that the voting rights of Blacks and other minorities outside the political power structure were violated by the Three-Year Deal--and the fraud at the judicial nominating conventions that implemented it, as pleaded in the Petition--which were not addressed by either Justice Kahn or this Court.

15. In the related case of Sady v. Murphy, relied on by Mr. Parisi and Mr. Vitagliano in their cross-motion papers as "additional evidence of abuse of process and misuse of these courts by Eli Vigliano and those associated with him," Mr. Parisi attempted to argue, as counsel therein for Respondent Colavita, that there had, in fact, been an adjudication on the merits of the cross-endorsements Deal in the Castracan case.

16. The Sady case is the 1991 counterpart of Castracan v. Colavita, challenging Judge Murphy's cross-endorsed nomination to the County Court under the Three-Year Deal, and raising some of the issues raised by Castracan. Mr. Vigliano, on behalf of the Sady Appellants, appealed the Decision of Westchester Justice

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[2] NAACP-LDF shortly thereafter won favorable decisions from the U.S. Supreme Court on both cases--with important implications for Castracan v. Colavita.

From: Doris C Sassower's 7
Omnibus Affidavit in opposition to Respondents' Cross-motion for sanctions, sworn to Sept 6, 1991
Castracan v. Colavita, Appellate Division, 3rd Dept (#62134)

Gurahian in that case. Justice Gurahian, in his August 13, 1991 Decision, (Exhibit "A") squarely ruled not only that the Three-Year Deal was legal and constitutional, but that the penal proscription of Section 17-158 of the Election Law requires that the "valuable consideration" offered and received for the public office involved be a monetary one.

17. I was present in court when Mr. Vigliano orally argued Sady before the Appellate Division, Second Department on August 20, 1991. In open court, I heard members of the panel of the Appellate Division, Second Department, assigned to hear the appeal, consisting of Justices Mangano, P.J., Thompson, Sullivan and Lawrence, voice their sharp disagreement with Justice Gurahian's aforesaid ruling. Herein follow a few illustrative comments:

(a) When Alan Scheinkman, Esq., arguing on behalf of both Democratic and Republican Respondents therein, who filed a joint brief, said that the parties to the Three-Year Deal were "proud of it", Justice William Thompson stated from the bench:

> "If those people involved in this deal were proud of it, they should have their heads examined".

(b) Referring to the contracted-for resignations that the Deal required of Respondents Emanuelli and Nicholai, Judge Thompson further stated:

> "these resignations are violations of ethical rules and would not be approved by the Commission on Judicial Conduct"

and still further said: "a judge can be censured for that".

(c) When Mr. Scheinkman sought to argue that the Deal embodied in the resolution was merely a "statement of intent", Presiding Justice Guy Mangano ripped the copy of the Resolution embodying the Deal out of Appellants' Brief, held it up in his hand and said:

> "this is more than a statement of intent, it's a deal"

and that:

> "Judge Emanuelli and the others will have a lot more to worry about than this lawsuit when this case is over".

(d) In response to Mr. Scheinkman's attempt to claim that the Decisions rendered in the Castracan case by Justice Kahn and this Court were on the merits of the cross-endorsement Deal and that the Appellants in the Sady case were collaterally estopped, Justice Thomas R. Sullivan pointed out the difference in the parties and the causes of action, and further stated:

> "what the Third Department does is not persuasive in the Second Department, we do what we believe is right, irrespective of whether the Third Department agrees with us".

18. The above-quoted forthright views were not expressed in the written Decision issued by the Appellate Division, Second Department, the very next day. Instead, overnight, the Appellate Division, Second Department's quoted sentiments were submerged into the Decision dated August 21, 1991, annexed hereto as Exhibit "B", wherein it affirmed, but on other grounds, Justice Gurahian's dismissal of the Sady case, in a one line opinion stating that:

"The petitioners failed to adduce evidence sufficient to warrant invalidating the petitions designating the respondent Murphy."

19. Such holding not only ignored the focal issues dealt with so dramatically at the oral argument the day before, but also ignored another critical aspect presented as part of Mr. Vigliano's oral argument, i.e., that the Petitioners in Sady, just as the Petitioners in Castracan, had been deprived of a hearing at which they could have "adduced evidence" or "presented proof". In both cases, the motions to dismiss were summarily granted, as a matter of law, without any hearing having been held.

20. On August 28, 1991, I was also present at the oral argument on Sady before the two judges of the Court of Appeals[3] assigned to hear applications for leave to appeal to that Court. Again, the verbal comments by Judge Simon at oral argument show the considerable merit of the Sady case and repudiate the preposterous contention that such case was "an abuse of process and misuse of these courts by Eli Vigliano and those associated with him", as Mr. Parisi and the never-seen Mr. Vitagliano brazenly contend in the identical papers on behalf of Mr. Colavita and Mr. Parisi respectively.

(a) Judge Simon expressly stated:

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[3] Despite my suspension by Order of the Appellate Division, Second Department, the Court of Appeals, in an extraordinary, if not unprecedented, dispensation, temporarily lifted my suspension to permit me to participate in the oral argument for leave to appeal in Sady v. Murphy. A copy of the application therefore made by Eli Vigliano, Esq. is annexed hereto as Exhibit "C".

"we know this is "an important case".

(b) Referring to the Three-Year Deal common to both the Sady and Castracan cases, Judge Simon unhesitatingly commented:

> "it is a disgusting deal". (emphasis added to reflect the way Judge Simon emphasized it)

(c) The following interchange between Judge Simon and Mr. Scheinkman was similarly revealing:

> " A promise for a promise is consideration under basic law of contracts. Why, then, wouldn't a promise by the Democrats to nominate a Republican for a judgeship in exchange for a promise by the Republicans to nominate a Democrat for a judgeship constitute 'valuable consideration' under the Election Law?"

In response, Mr. Scheinkman fell back on the same argument given short shrift the preceding week at the oral argument in the Appellate Division, Second Department, i.e., that the Resolution was merely a "statement of intent" and not a binding contract--with the same negative response from Judge Simon as was given by Justice Mangano. At that point, Mr. Scheinkman requested that all Respondents' counsel involved in the Castracan case be notified and given a chance to be heard before any decision was made, to which Mr. Vigliano stated he had no objection and joined in making.

21. Pursuant to Judge Simon's instructions, we waited while the Court was conferencing all leave applications. However, instead of the Court setting another date and time when all counsel on both cases could appear, as had been consented to