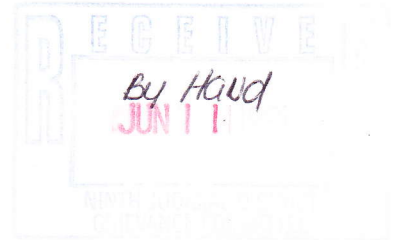


By Hand

June 11, 1991

Gary Casella, Esq.  
Chief Counsel, Grievance Committee  
Ninth Judicial District  
399 Knollwood Road, Suite 200  
White Plains, New York 10603



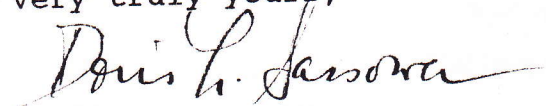
Re: HARVEY LANDAU, Esq.

Dear Mr. Casella:

Herewith enclosed is my sworn complaint relative to the above-named attorney. Even if the Committee believes it could fair, notwithstanding its members' own political connections with party leaders in this county who are the subject of a legal proceeding, brought by me as pro bono counsel for the Ninth Judicial Committee--challenging the leaders' Three-Year Cross-Endorsements Deal--now headed for the Court of Appeals, I respectfully request that this complaint be referred to another disciplinary committee outside this Department.

In view of the fact that I have a complaint pending before the Appellate Division, Second Department, based on your own improper conduct, there would be an appearance of impropriety for the Committee to rule on this complaint, since any decision it might make adverse to the complaint would be suspect.

Very truly yours,

  
DORIS L. SASSOWER

DLS/er  
Enclosures

STATE OF NEW YORK  
GRIEVANCE COMMITTEE  
FOR THE NINTH JUDICIAL DISTRICT  
200 Bloomingdale Road  
White Plains, New York 10605

By Hand  
JUN 11

Date: 6/10/91

PLEASE USE INK

A. COMPLAINANT:

(your full name): DORIS L. SASSOWER  
(signature): Doris L. Sassower  
(address): 283 Soundview Avenue, White Plains  
10606  
(phone): 914/997-1677

B. ATTORNEY COMPLAINED OF:

(full name): Harvey G. Landau Esq.  
(address): 40 Bender + Bodner 11 Martine Ave  
White Plains NY 10606  
(phone): \_\_\_\_\_ (County): 914/997 Westchester

C. COMPLAINTS TO OTHER AGENCIES:

Have you filed a complaint concerning this attorney with another Bar Association, District Attorney's Office, or any other Agency?  Yes  No

If so, name of Agency and action taken: \_\_\_\_\_

D. COURT ACTION AGAINST ATTORNEY COMPLAINED OF:

Have you brought a Civil or Criminal action against this attorney? no

If so, name Court and status: \_\_\_\_\_

E. NATURE OF COMPLAINT (for example—neglect, quality of representation, fee dispute, etc.):

See my ~~statement~~ affirmation annexed

F) DETAILS OF COMPLAINT (In your statement, be sure to include all the details of your complaint, including the specific misconduct of the attorney. Please attach copies of any papers you may have).

(over)



PRIVILEGED AND CONFIDENTIAL

DORIS L. SASSOWER, an attorney duly licensed to practice law in the State of New York, hereby affirms the following under penalty of perjury:

1. This Affirmation is submitted in support of my complaint to the Grievance Committee for the Ninth Judicial District against Harvey Landau, Esq., Based on my direct personal knowledge and experience with him, as set forth hereinbelow, I would characterize Mr. Landau as one of the most unethical, dishonest and dangerous practitioners I have encountered in my thirty-five years at the bar. His unprofessional conduct and perversion of the legal process is illustrated by his despicable behavior in connection with the case of Breslaw v. Breslaw. The facts hereinafter referred to are confirmed by documents and records in the Court files of the matter, including stenographic transcripts of the various hearings and proceedings referred to herein, too voluminous for me to copy, but incorporated by reference. I will furnish all materials in my possession for reproduction by the Committee by mutual arrangement.

2. My complaints against Mr. Landau are based on his engaging in conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice. The aforesaid acts included, inter alia,: (a) stealing my client by advising her to discharge me and retain his firm; (b) accepting employment from my client before I was

properly discharged; (c) advising my client not to pay a debt legally due; (d) asserting frivolous legal positions; (e) initiating and continuing unnecessary and costly litigation; (f) knowingly and maliciously filing perjurious and legally insufficient papers making false accusations against me; (g) failing to disclose a political relationship with the Court bearing on its impartiality; (h) engaging in ex parte conversations with the Court; (i) refusing to accede to reasonable requests for adjournment.

3. The facts concerning the specific misconduct complained of are hereinafter set forth:

4. In June 1987, my firm was retained by Evelyn Breslaw to take over the representation of her interests as the defendant in a divorce action, in which she had theretofore been represented by Raoul Felder, Esq.. After successfully negotiating with Mr. Felder a fee balance disputed by Mrs. Breslaw--thereby avoiding a lien hearing--a stipulation as to Mr. Felder's unpaid fees and consent to substitution were achieved by my office in less than 30 days. Thereafter, my office actively represented Mrs. Breslaw for about six months. In or about February 1988, Mr. Landau wrongfully caused Mrs. Breslaw to discharge my office and retain the law firm of Bender & Bodner, P.C., with which he had recently become affiliated.

5. Prior to the Breslaw case, Mr. Landau and I had had no adversarial contact. So far as I knew, he had no reason to bear any animosity toward me or to believe I harbored any



toward him. He knew my credentials as a senior Fellow of the Academy of Matrimonial Lawyers, comprised of the leading matrimonial specialists in the country. It was, therefore, particularly shocking to learn by letter from Mr. Landau dated February 1, 1988 that, even without ever having received any written notification of discharge, Mr. Landau not only consulted with, but had been retained by Mrs. Breslaw, and further that he expected a turnover of files, without making appropriate arrangements for payment of unpaid fees due my office. This was a departure from normal and customary practice, which Mr. Landau well knew, as a seasoned litigator and, like myself, a Fellow of the Academy of Matrimonial Lawyers.

6. Indeed, Mr. Landau also knew, or should have known, that his actions violated the Code of Professional Responsibility, inter alia, EC2-30:

"If a lawyer knows that a client has previously obtained counsel, the lawyer should not accept employment in the matter unless the other counsel approves or withdraws, or the client terminates the prior employment".

and DR 1-102, proscribing conduct reflecting dishonesty, fraud, deceit, or misrepresentation.

7. Upon my receipt of the aforesaid communication from Mr. Landau, reflecting his unwarranted encroachment on my professional relationship with my client, I immediately telephoned him to discuss the serious ethical breach evidenced by his letter, as well as the fees due my office. Mr. Landau was not at all concerned.

8. Likewise, Mr. Landau was not interested in either the status of the case or the possible prejudice to Mrs. Breslaw or in reviewing the files with me so that he could better evaluate the situation and the work that had been done for Mrs. Breslaw--including the work-product of experts I had retained on Mrs. Breslaw's behalf. Mr. Landau rejected my invitation for him to review same with me, and repudiated any obligation on Mrs. Breslaw's part to pay or secure fees due my office or the \$3,650 owed for the experts fees, asserting--without any basis other than to justify his unethical retention--that I was being discharged for cause.

9. Instead, Mr. Landau thereafter initiated by Order to Show Cause a proceeding under CPLR 321(b) to obtain a court-ordered substitution and turnover of my files. The ensuing litigation between Mr. Landau and myself was the direct result of Mr. Landau's high-handed and cavalier disregard for ethical standards, and in derogation of DR2-109, proscribing positions interposed for harassing or malicious purposes. This is documented over and over again in correspondence between us, as well as in the various court submissions and transcripts of the lien hearings and other proceedings thereafter held.

10. The heart of the ensuing dispute was Mr. Landau's aforesaid completely baseless positions that (a) despite my written retainer expressly authorizing the retention of experts, Mrs. Breslaw was not obligated to pay the charges of experts I had retained on her behalf, amounting to \$3,650; and (b) that my

discharge was "for cause", and, therefore, that I was disentitled to any fees. Mr. Landau maintained these frivolous positions, even while using the work product of my real estate appraiser during his representation of Mrs. Breslaw to support an interim application he was making in the divorce action.

11. In fact, because Mr. Landau would not stipulate to any reasonable arrangement concerning the unpaid experts fees, he required me to bring my real estate appraiser to Court to spend an entire day testifying as to the value of his services. Even then, however, Mr. Landau would still not agree to any stipulation. Nonetheless, I learned subsequently that following the testimony of my real estate appraiser, Mr. Landau recommended that his office, Bender & Bodner, P.C. use that real estate appraiser for an independent, unrelated matter--which they did while the lien hearings were still pending before the Judicial Hearing Officer assigned to the case--a further impropriety.

12. It should be noted that my real estate appraiser's evaluation of the real estate holdings of Mr. Breslaw determined that Mr. Breslaw's net worth at that time was many millions of dollars.

13. In view of the substantial nature of the marital estate and Mrs. Breslaw's anticipated equitable distribution and maintenance entitlement, my reiterated willingness from the outset to sign a Consent to Substitution and turn over the files--without actual payment being required--was an offer that no



experienced, ethical practitioner could, or would, have refused. Mr. Landau knew I was willing to accept an assurance of the agreed payment at the conclusion of the case--a trifling, insignificant sum--apart from it being tax-deductible.

14. It should be emphasized that in choosing to litigate, rather than to negotiate, Mr. Landau plainly was acting in bad faith, since he knew he would be (a) delaying the divorce action, wherein Mrs. Breslaw was already under a court order to complete discovery; (b) diverting his and Mrs. Breslaw's time and energy from resolution of the essential issues in the divorce case; (c) increasing the legal fees Mrs. Breslaw would be required to pay his office; (d) exposing Mrs. Breslaw to the risk of collection fees for my legal time and expenses, as provided by my written Retainer Agreement, as well as to additional fees due me, which, initially, I was willing to forego.

15. Indeed, the resolution of the divorce action was, in fact, delayed--a delay Mr. Landau repeatedly and falsely ascribed and continued to maintain was due to my "failure to turn over Mrs. Breslaw's files". It should further be noted that Mr. Landau's baseless intransigence allegedly cost Mrs. Breslaw approximately \$40,000<sup>1</sup>.

16. As a result of Mr. Landau's bringing on by Order to Show Cause a proceeding for a court-ordered substitution and turnover, time-consuming and costly lien hearings were held in

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<sup>1</sup> That figure was presented by Mr. Landau to Justice Fredman in the final session of the contempt hearing, held on May 21, 1990 as evidence against me.

the matter, taking up seven (7) days of legal and court time over a five (5) month period from April to October 1988, it was established that my firm was entitled to be paid the expert fees in question and that there was no legal cause for my discharge.

17. Mrs. Breslaw was directed to pay the disputed \$3,650 for expert fees in or about April 1989. Although this adjudicated obligation was subsequently embodied in a Judgment against her, Mrs. Breslaw has not satisfied that obligation to this date<sup>2</sup>. Mr. Landau further knew, or should have known, when he instituted contempt proceedings against me in June 1989 that Mrs. Breslaw's failure to meet her own court-ordered obligation to me with respect to the expert fees, was (by his reasoning) a contempt of Court against me, which did not permit her to seek enforcement of any court-ordered obligation on my part to turn over the file<sup>3</sup>.

18. On June 22, 1989, Mr. Landau obtained an Order to Show Cause in the divorce action, signed by Justice Samuel G. Fredman (at that time sitting for approximately six weeks, filling an interim vacancy, by appointment of the Governor)

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<sup>2</sup> Mr. Landau--with knowledge of the still unsatisfied Judgment against Mrs. Breslaw--and despite a Restraining Order served on him in enforcement thereof--saw fit to obtain a \$50,000 fund from Mr. Breslaw to cover his own legal fees in June 1990--without providing for reimbursement of the \$3,650 expert fees reflected in that Judgment, still outstanding.

<sup>3</sup> In making such direction, the JHO ignored my firm's right to have payment of the expert fees made simultaneously with the turnover, as well as the minimum, non-refundable aspect of my written retainer agreement.



seeking to hold Doris L. Sassower, Esq. and Doris L. Sassower, P.C., non-parties to the action, in contempt of court.

19. Mr. Landau knew, or should have known, that his papers did not include requisite factual allegations entitling him to commence the aforesaid contempt proceedings in that manner and, further, as a matter of law, were legally and factually insufficient. The legal deficiencies of Mr. Landau's Order to Show Cause are pointed out in the Memorandum of Law in Support of my motion to dismiss, annexed hereto as Exhibit "A".

18. It is submitted that Mr. Landau's ability to obtain the signature of Justice Fredman to such improperly supported and jurisdictionally defective Order to Show Cause calling for such draconian relief did not rest on the "merits" of his application, but on the personal bias of the judge, both (a) in his favor and (b) against Doris L. Sassower<sup>4</sup>

19. Throughout the summer of 1989, while various court appearances were being made in connection with the improperly and deliberately publicized contempt proceedings before Justice Fredman<sup>5</sup>, Mr. Landau "concealed or knowingly failed to disclose"

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<sup>4</sup> transcripts of the various proceedings before Justice Fredman and decisions by him are replete with expressions of such bias.

<sup>5</sup> The contempt proceeding is still unadjudicated, although submitted to Justice Fredman a year ago. Annexed hereto as Exhibit "B" is my Affidavit in Support of an Offer of Proof submitted to Justice Fredman--since he sua sponte, over objection of my counsel, concluded the hearings without permitting presentation of my counsel to complete his cross-examination of Mr. Landau or to present my direct case. Mr. Landau supported such shocking disposition by the Court.



(in violation of DR 7-102 A(3)) that he was the Chairman of the Scarsdale Democratic Club, and that he was actively promoting the judicial candidacy of Hon. Samuel G. Fredman to secure his nomination by the Democratic Party, as well as a cross-endorsement by the Republican Party, then the subject of intense negotiation between the Westchester party leadership.

20. Mr. Landau's support at that critical juncture in Justice Fredman's judicial campaign was of considerable importance. Canon 2B of the Code of Judicial Ethics limits such judicial connections:

"a judge should not allow his...relationships to influence his judicial conduct or judgment...; nor should he convey or permit others to convey the impression that they are in a special position to influence him."

21. Clearly, Mr. Landau had a professional obligation to make his partisan political activity on behalf of Justice Fredman known, particularly since Justice Fredman had failed to disclose such information or to disqualify himself. Mr. Landau, a former law secretary to a Supreme Court judge, knew that under the Code of Judicial Conduct, Canon 2, a judge is required "to avoid the appearance of impropriety" and under Canon 3C, to "...disqualify himself in a proceeding where his impartiality might reasonably be questioned...". Yet, notwithstanding that a recusal motion was made on my behalf and publicized in the local press, Mr. Landau did not come forward with such information--unknown to me or my counsel--even when Justice Fredman, in his denial of my recusal motion, stated (with later understandable

care in his phraseology): "...I have not found in the papers before me" any "legally compelling reason" for recusal.

22. As Mr. Landau knew, "endorsement of a judge for re-election would be improper where the attorney has a matter pending before the judge" (see Opinion 11 of the Ethics Committee of the New York State Bar Association, a copy of which is annexed as Exhibit "C"). No less impermissible was Mr. Landau's undisclosed role as Chairman of a political club endorsing Justice Fredman's candidacy.

23. Mr. Landau also failed to disclose that just a few days before my scheduled, July 27, 1989 court appearance in the aforesaid contempt proceeding initiated by him, his law firm donated a monetary contribution of \$500 to Justice Fredman's election campaign. (see the annexed copy of the pertinent page of Justice Fredman's filed financial report for the period 7/12/89 as Exhibit "D"). Such contribution at that stage of the proceedings shows insensitivity to, and flagrant disregard of EC 7-36, requiring a lawyer to abstain from conduct "calculated to gain special consideration".

24. Mr. Landau's unethical conduct was further reflected in his refusal to accede to reasonable requests for an adjournment. My letter dated July 5, 1989 (Exhibit "E"), hand-delivered to Chambers, referred to Mr. Landau's refusal to accommodate my request for an adjournment from Mr. Landau of his first-time-on motion brought on by Order to Show Cause, returnable on July 10, 1989, and the good and sufficient reasons

therefor, including my stated intention to obtain counsel to represent me in the contempt proceeding.

25. My aforesaid July 5, 1989 letter refers to an ex parte conversation between the Court and Mr. Landau, over my objection, on June 30, 1989, on which date I personally appeared in Court relative to my reargument motion on the calendar that day. Mr. Landau did not appear. His office, nonetheless, submitted his opposing papers--two days late. I requested an adjournment to permit me to reply to Mr. Landau's untimely papers, as well as the related contempt motion returnable on July 10th--by which time the contempt motion might be moot depending on the decision on reargument. Justice Fredman's Law Secretary, Jack Schachner, Esq., agreed that my request was a reasonable one. However, he instructed me to telephone Mr. Landau to see if he would consent, which I did. Mr. Landau's secretary stated he would not take my telephone call, even after Mr. Landau was informed by her that I was calling from Chambers, on direction of the Court. Mr. Schachner stated he would telephone Mr. Landau and had me wait outside the robing room in which Justice Fredman was seated, while an ex parte conversation took place--over my vehement objection.

26. Following same, I was denied any right to be heard in open court by Justice Fredman relative thereto, and was informed, with no reason stated, that Mr. Landau's untimely opposing papers would, nonetheless, be accepted, and that my requested adjournment of both motions was denied. From such



blatant denial of fundamental due process and discriminatory treatment by the Court, the ethically prohibited ex parte conversation with Mr. Landau suggests more than an "appearance of impropriety".

27. Mr. Landau knew that the aforesaid conduct and ex parte conversation with the Court was improper, violated DR 1-102(5), and likewise constituted a violation by Justice Fredman of the Code of Judicial Conduct, Canon 3(4).

28. Contrary to the normal practice in our Courthouse<sup>6</sup>, on July 10, 1989, no telephone call was made to my office to ensure that it was known that my requested adjournment to obtain counsel for this serious first-time-on motion would not be honored. Mr. Landau knew I did not deliberately intend to default in making a required court appearance (something that had never occurred, before or since, in my 35 years in practice) and took deliberate advantage of my absence by failing to see to it that my office was notified.

29. Time does not permit further amplification of Mr. Landau's equally egregious conduct thereafter. I am prepared to supplement with details and documentation as to same with the assistance of the Committee at the appropriate time. The foregoing is clearly sufficient for the Committee to commence its investigation.

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<sup>6</sup> In my years of experience in Westchester Supreme Court, when an attorney who is required to appear inexplicably fails to appear, a telephone call is invariably made by the Clerk or directed to be made by adverse counsel to such attorney so as to prevent unintended defaults.

30. In the interests of expedition, I am forwarding a duplicate copy of this communication to Mr. Landau directly by certified mail, return receipt requested.

Dated: White Plains, New York  
June 10, 1991

  
DORIS L. SASSOWER

**SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1.  Show to whom delivered, date, and addressee's address. (Extra charge)      2.  Restricted Delivery (Extra charge)

3. Article Addressed to: Harvey Landau, Esq. Bender + Bodner, P.C. 11 Martine Avenue White Plains, N.Y. 10606		4. Article Number P-608 518 944	
		Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise	
5. Signature - Addressee X <i>Harvey Landau</i>		Always obtain signature of addressee or agent and <u>DATE DELIVERED</u> .	
6. Signature - Agent X		8. Addressee's Address (ONLY if requested and fee paid)	
7. Date of Delivery 6/12/91			

PS Form 3811, Apr. 1989

\*U.S.G.P.O. 1989-238-815

DOMESTIC RETURN RECEIPT

P-608 518 944

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 153-506

PS Form 3800, June 1985

Sent to	Harvey Landau Esq. Bender + Bodner, P.C.	
Street and No.	11 Martine Ave	
P.O., State and ZIP Code	White Plains NY 10606	
Postage	\$	1.21
Certified Fee		1.00
Special Delivery Fee		
Restricted Delivery Fee		
Return Receipt showing to whom, Date and Date Delivered		1.00
Return Receipt showing to whom, Date, and Address of Delivery		
TOTAL Postage and Fees	\$	3.21
Postmark or Date		