COURT OF APPEALS
STATE OF NEW YORK

In the Matter of DORIS L. SASSOWER, An Attorney and Counselor-at-Law GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT Petitioner-Respondent, - against - DORIS L. SASSOWER, Admitted Under the Name of DORIS LIPSON SASSOWER Respondent-Appellant.	**AFFIRMATION IN FURTHER SUPPORT OF APPELLANT'S MOTION FOR LEAVE TO APPEAL**

David B. Goldstein, an attorney duly admitted to practice in the courts of the State of New York, affirms under penalty of perjury:

1. I am an associate at the law firm of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., attorneys for appellant Doris L. Sassower in the above-captioned matter. I am fully familiar with the facts and prior proceedings, and submit this affirmation, pursuant to New York Rules of Court § 500.12, in further support of appellant's motion for leave to appeal from a suspension order of the Appellate Division, Second Department, dated June 14, 1991, served on Ms. Sassower on June 19, 1991 (a copy of which is annexed as Exhibit 1 to appellant's Notice of Motion and Affirmation dated July 19, 1991).

2. This affirmation is directed primarily at material improperly included in the Affirmation in Opposition to Motion for Leave to Appeal of Gary Casella, Chief Counsel for peti-

tioner-respondent (hereinafter "Casella Aff."), dated July 24, 1991, which was not in the record before the Appellate Division, and which therefore provides no support for that court's decision to suspend Ms. Sassower immediately, indefinitely and unconditionally from the practice of law, and which appellant consequently did not address. This affirmation also briefly addresses certain statements in the Casella affirmation that are so misleading and prejudicial as to necessitate a response. Pursuant to New York Rules of Court § 500.11(c), this affirmation will not reply to the substantial legal errors in the opposition, which will be dispositively addressed on appeal should this motion be granted; appellant otherwise relies at this time on her previously filed papers, which amply demonstrate the merits of her motion for leave to appeal.

3. Annexed as Exhibit 1 to the Casella Affirmation is a decision and order dated June 24, 1991, issued by Justice Samuel G. Fredman in Breslaw v. Breslaw, Index No. 22587/86 (Sup. Ct. Westchester Co.). Justice Fredman's decision and order was issued ten days after the Appellate Division suspended Ms. Sassower, formed no part of the record below and provided no possible basis for the order appealed herein. Moreover, respondent's only reference to that decision and order, Casella Aff. ¶ 7, is wholly irrelevant to the action taken by the Appellate Division and the issues raised in appellant's motion to this Court. The only possible purpose for including this wholly irrelevant, highly inflammatory, and egregiously erroneous decision and order (which currently is under appeal) is to attempt to

prejudice this Court against appellant. While this is no place to address the egregious errors of Justice Fredman's decision, suffice it to say that the injudicious and intemperate tone and content of that decision raises, at the least, serious questions as to that judge's bias and personal animus toward appellant.

4. Because Justice Fredman's decision was issued after the decision and order being appealed herein, because it is wholly irrelevant, and because the only purpose for its inclusion would be to prejudice this Court, Justice Fredman's decision and all references thereto should be stricken and ignored by this Court in its consideration of appellant's motion.

5. Respondent makes much of the purported "failure" to include in appellant's papers filed with this Court the letter of Gary Casella to the undersigned, dated July 18, 1991, annexed as Exhibit 3 to the Casella Aff. See Casella Aff. ¶ 19. This letter, however, had not even been received when the papers were served on July 19, the following day. Mr. Casella knew appellant would be filing an appeal in this Court; he knew the appeal time ran on July 19; if he wanted his response in the record, he could have telephoned the undersigned or sent a copy by facsimile on July 18.

6. In any event, a review of Mr. Casella's letter of July 18 and the undersigned's letter of July 15 (annexed as Exhibit 5 to the Affirmation of David B. Goldstein, dated July 19, 1991 (hereinafter "Goldstein Aff.")) demonstrates no inconsistencies in the two letters, with one possible exception. The July 18 letter, at 2, states, "No definitive representation has

been made as to how this Committee will proceed in the future." Whether or not Mr. Casella's representation to the undersigned was "definitive," he nowhere denies that he in fact made the representation attributed to him and accurately set forth in the undersigned's July 15 letter, at 2:

> You also stated that even if Ms. Sassower submitted to an examination by Dr. Scher, and that there was no finding of incapacity, you would recommend to the Second Department that Ms. Sassower remain suspended because of her alleged noncompliance with the court's October 18, 1990 Order and alleged noncooperation with the Committee.

Otherwise, Mr. Casella's letter merely provides his purported reasons for his positions, which are accurately set forth in the undersigned's July 15 letter.

7. More bizarre is respondent's accusation that the July 15 letter makes no reference to Mr. Casella's representation that appellant would be provided with a copy of any report prepared by Dr. Scher. Significantly, Mr. Casella's July 18 letter also makes no mention of this representation. Thus, it is difficult to discern the basis for Mr. Casella's complaint.

8. The July 22, 1991, affidavit of Mark A. Scher, M.D., Exhibit 2 to Casella Aff., written more than a month after the Appellate Division's decision, formed no part of the record below, and therefore the affidavit and any references thereto in Mr. Casella's affirmation should be stricken or ignored by this Court. Dr. Scher's willingness to provide such an adversarial, argumentative affidavit to Mr. Casella -- e.g., his statement regarding the "usual custom in the profession" for forensic psychiatric examinations is directly at odds with prevailing law

in this State, see Goldstein Aff. ¶ 58; he misleadingly implies he was appointed by the Court, not the prosecuting attorney; and as set forth in the annexed affirmation of Ms. Sassower, Dr. Scher's affidavit is grossly inaccurate concerning appointments made with Ms. Sassower -- only highlights the impropriety of the Second Department's delegation of a neutral psychiatric expert to the prosecuting attorney, in violation of its own rules. See 22 NYCRR § 691.13(b)(1).

9. Appellant's right to have an attorney or other third party present at a psychiatric interview is not an issue on appeal to this Court, but rather is relevant to the issue of the lower court's improper delegation of appointment of a psychiatric expert to the adverse prosecuting attorney. See Goldstein Aff. ¶¶ 52-60. In any event, any resolution of the issue of an attorney's presence, of course, does not turn on the preference of the prosecutor's designated expert, but on the rights of the examined party, as explicitly held by the Second Department. See Goldstein Aff. ¶ 58 (cases cited therein).

10. Respondent gratuitously and inexcusably makes reference to twenty-two (22) complaints against Ms. Sassower, in clear violation of the spirit and letter of Jud. Law § 90(10). Casella Aff. ¶ 34. This assertion is highly misleading, prejudicial, and wholly improper. As appellant pointed out when Mr. Casella previously made this misleading accusation, see Record Exhibit D, ¶¶ 8-10, and exhibits A and B, annexed thereto, respondent had brought twenty (20) charges against appellant in 1980, consideration of which was transferred to the First Depart-

ment. These charges were so frivolous that the First Department dismissed seventeen (17) of them on Ms. Sassower's motion for summary judgment, and dismissed the remaining three following a hearing before a referee. See Record Exhibit D, Exhibit B annexed thereto. In 1990, respondent brought two charges against appellant, which remain pending and vigorously contested. Far from disproving appellant's claim of selective prosecution and bias, respondent's highly inflammatory, prejudicial, and improper reference to twenty-two complaints against appellant, without informing this Court that all complaints prior to 1990 have been dismissed, and that the two 1990 charges brought by respondent have not been resolved, further buttresses appellant's claims.

11. Respondent's baseless assertions that the order of the Appellate Division immediately, indefinitely and unconditionally suspending appellant is somehow nonfinal completely fails to address how the interim suspension in Matter of Padilla, 65 N.Y.2d 848, 493 N.Y.S.2d 306 (1985), 67 N.Y.2d 434, 503 N.Y.S.2d 548 (1986), was a final order within the meaning of CPLR §§ 5602(a)(1)(i), 5611, but that the order appealed from herein is nonfinal. See Goldstein Aff. ¶¶ 29-34. The reason for the absence of any attempt to distinguish Padilla from this case is obvious; because the order in Padilla was final, the order herein must also be final.

12. While respondent persists in mischaracterizing the wholly separate proceeding alleging two acts of misconduct against appellant as an "underlying" disciplinary proceeding, Casella Aff. ¶ 3, nothing in the existence of this separate pro-

ceeding, however characterized, alters the finality of the Appellate Division's suspension order. Indeed, in Padilla, unlike here, the attorney was suspended for precisely the acts alleged in the unresolved disciplinary proceeding itself, yet this Court found the immediate interim suspension order in Padilla to be final. Were respondent's position on finality to prevail, it could continue to postpone indefinitely the separate disciplinary proceeding, as it has already done, see Exhibit 4 to Goldstein Aff., thereby depriving appellant of any opportunity for review by this Court.

13. Contrary to respondent's misrepresentations, Casella Aff. ¶ 6, the proceedings before Justice Fredman in Breslaw, including the transcript of Dr. Cherbuliez' testimony, are not a matter of public record. Only the parties and their counsel can obtain such records from the County Clerk's office, absent a court order, pursuant to Dom. Rel. Law § 235(1). By its silence, respondent concedes that there is no such order authorizing its access to the transcript. The hearings were reported upon in the New York Law Journal and other newspapers only because certain decisions were improperly released in violation of section 235(1). However, the file in that case, including Dr. Cherbuliez' testimony, and the decision of Justice Fredman, upon which Mr. Casella relied in initiating this proceeding, have not been published or made a part of any public court record. See Goldstein Aff. ¶¶ 68-73.

14. Mr. Casella does not deny, and indeed, he now concedes that there never was a majority vote of the full Committee authorizing the May 8, 1990 Order to Show Cause, as required under 22 N.Y.C.R.R. §§ 691.4(h), 691.13(b)(1), which requires "a majority vote of the full committee" for the initiation of a "petition" against an attorney. Nothing in that rule permits the Chief Counsel or the Chairman, acting separately from the Committee, to authorize initiation of a proceeding, motion, or order to show cause seeking an attorney's suspension. Casella Aff. ¶ 9.

15. Finally, the undersigned must take strong exception to the unfounded, intemperate, and highly inflammatory allegations of respondent's counsel. The immediate, indefinite, unconditional suspension of an attorney without any evidentiary hearing is a very serious matter, permitted by this Court only under the most extraordinary circumstances, see Padilla, 67 N.Y.2d at 447, 503 N.Y.S.2d at 554; Goldstein Aff. ¶¶ 35-37, which should be addressed and resolved on the merits. Repeated accusations by the Chief Counsel of the Grievance Committee for the Ninth judicial District, of "flouting" or "flagrant" disregard of court orders,[1/] Casella Aff. ¶¶ 13, 14, 24, 27, unspecified and unsubstantiated accusations that appellant attempts to intimidate "virtually every adversary, judge, and even client,"

[1/] Respondent never does explain how appellant can be so grievously mentally incapacitated that her immediate suspension without any evidentiary hearing is necessary to protect the public interest, and yet, how she can be guilty of the intentional, willful, flagrant flouting of the court order of October 18, 1990.

id. ¶ 18, unsupported suggestions that Dr. Scher will be subjected to harassing litigation, id., and overheated rhetoric about the collapse of our system of justice, id. ¶ 27, do nothing to advance consideration of the merits of this case. Not only are the ad hominem attacks and personal invective hurled at appellant disturbing and intimidating (as they are obviously intended to be), coming from an attorney in Mr. Casella's powerful position, this intemperate language only substantiates appellant's contentions of deep-seated personal animus, bias, and selective prosecution against her.

WHEREFORE, for the reasons stated herein, and the papers previously filed in this matter, appellant respectfully urges this Court to grant appellant's motion for leave to appeal, and for a stay of the Appellate Division's suspension order of June 14, 1991, so that Ms. Sassower is reinstated nunc pro tunc as an attorney in the State of New York pending determination of this motion, and the ultimate resolution of this appeal.

Dated: New York, New York
August 23, 1991

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