

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: SECOND JUDICIAL DEPT.

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In the Matter of Doris L. Sassower,  
An Attorney and Counselor-at-Law,

Oral Argument  
Requested

GRIEVANCE COMMITTEE FOR THE NINTH  
JUDICIAL DISTRICT,

Petitioner<sup>1</sup>,

ORDER TO SHOW CAUSE  
With Interim Stay

DORIS L. SASSOWER,

Docket #90-00315<sup>2</sup>

Respondent.  
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S I R:

UPON READING AND FILING the annexed Affidavit of DORIS L. SASSOWER, duly sworn to on the 15th day of June, 1992, the exhibits annexed thereto and incorporated by reference, the Decision/Order of this Court, entered on June 14, 1991, the underlying Decision/Orders of June 12, 1991 and October 18, 1990, the subsequent Decision/Order of July 15, 1991, as well as the Decision/Orders of April 1, 1992 and June 4, 1992, and upon all the papers and proceedings heretofore had herein,

LET Petitioner or its counsel, Show Cause at a Stated Term of this Court, held at the Courthouse thereof, 45 Monroe Place, Brooklyn, New York 11201, on the 22<sup>nd</sup> day of June, 1992, at

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<sup>1</sup> See footnote #1 to the annexed Supporting Affidavit.

<sup>2</sup> See footnote #2 to the annexed Supporting Affidavit.

10:00 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard for an Order:

(1) granting renewal of this Court's June 20, 1991 Order to Show Cause seeking to vacate this Court's interim Suspension Order, entered on June 14, 1991, and served upon Respondent on June 19, 1991, purportedly pursuant to §691.4(1)(1)(i) of this Court's Rules; and, on such renewal;

(2) granting Respondent's motion to vacate said Suspension Order, nunc pro tunc, as well as all Orders based thereon, by reason of the Court of Appeals' mandate in In re Russakoff, N.Y.L.J., 5/11/92, p. 27, col. 1-2M, col. 3T, inter alia, for this Court's failure to make required findings or to state reasons supporting its Suspension Order, and for denial of a pre or post suspension hearing;

(3) vacating the underlying Decision/Orders of June 12, 1991 and October 18, 1990, as well as subsequent Decision/Orders of this Court based thereon, for lack of jurisdiction, pursuant to CPLR 5015(a)4, and for the misconduct of Petitioner's Chief Counsel, Gary Casella, Esq., pursuant to CPLR 5015(a)3;

(4) directing an immediate disciplinary investigation of Petitioner's Chief Counsel for his knowingly false and fraudulent representations and omissions of material facts and applicable law, as well as his other unethical practices;

(5) staying all pending disciplinary matters and proceedings pending the outcome of this motion, as well as of

appeals in unrelated litigation which is the subject of such matters and proceedings; and

(6) granting leave to appeal to the Court of Appeals, if this motion is denied, together with such other, further, and/or different relief as to this Court may seem just and proper in the premises.

Sufficient cause having been shown, let a copy of this Order and the papers upon which it is based be served upon Petitioner by Gary Casella, Esq., its Chief Counsel, on or before the day of June be deemed good and sufficient service, and it is further

9M ORDERED, that pending the hearing and determination of this motion, the interim Suspension Order of this Court entered on June 14, 1991 shall be stayed, and it is further

9M ORDERED, that pending the hearing and determination of this motion Petitioner shall be stayed from proceeding against Respondent as to all pending disciplinary action and investigation; and it is further

9M ORDERED, that pending the hearing and determination of this motion, ~~Petitioner shall be stayed from proceeding against Respondent as to all disciplinary action and investigation involving matters which are the subject of pending litigation before this Court.~~

Dated: June 16, 1992  
Brooklyn, New York

SO ORDERED

*Presidy* s/ Guy James Mangano  
Justice of the Supreme Court  
Appellate Division, 2nd Dept.



SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: SECOND JUDICIAL DEPT.

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In the Matter of Doris L. Sassower,  
An Attorney and Counselor-at-Law,

GRIEVANCE COMMITTEE FOR THE NINTH  
JUDICIAL DISTRICT,

Petitioner<sup>1</sup>,

Docket #90-00315<sup>2</sup>

SUPPORTING AFFIDAVIT  
TO VACATE SUSPENSION  
ORDER WITH STAY

DORIS L. SASSOWER,

Respondent.

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<sup>1</sup> The term "Petitioner" implies that there was a petition underlying this suspension proceeding brought pursuant to 22 NYCRR §691.4(1)(1)(i) for alleged "non-cooperation". There never was any "petition" either in that proceeding or in the suspension proceeding purportedly brought pursuant to 22 NYCRR §691.13(b)(1), which resulted in the October 18, 1990 Decision/Order of this Court with which I was accused of not cooperating. See my 1/29/91 Order to Show Cause and Supporting Affirmation of Eli Vigliano, Esq., pp. 1-4; my 2/11/91 Memorandum of Law, pp. 1-5; the 2/12/91 Affirmation of Eli Vigliano, Esq., pp. 2-6.; and the 2/20/91 Opposing Affirmation of Eli Vigliano, Esq., p. 7.

<sup>2</sup> As pointed out, inter alia, at p. 1 of the 2/21/91 Affirmation of Eli Vigliano, Esq., Mr. Casella's use of this docket number has allowed him to mask the jurisdictional deficiency of his 5/8/90 Order to Show Cause and his 1/25/91 Order to Show Cause and foster the misimpression that they are related to the completely separate and unrelated disciplinary proceedings under that identical number--which is how it erroneously appears on the Court's jacket (Exhibit "A"). As set forth in Mr. Vigliano's Affirmation in support of my 1/29/91 Order to Show Cause:

"It should be emphasized that this is not a situation under Rule 691.13(c) where a medical examination is sought in connection with a pending disciplinary proceeding in which a respondent contends he is suffering from a disability, making an adequate defense impossible." (p. 2) (emphasis in the original)

See, also, Exhibit "L-2" herein, para. "A".

STATE OF NEW YORK            )  
  )    ss:  
COUNTY OF WESTCHESTER    )

DORIS L. SASSOWER, being duly sworn, deposes and says:

1. I am the Respondent, pro se, in the above proceeding, fully familiar with all the facts, papers and proceedings heretofore had herein.

2. This Affidavit is submitted in support of the relief requested in the annexed Order to Show Cause, seeking, inter alia, vacatur nunc pro tunc of this Court's June 14, 1991 interim Suspension Order (Exhibit "B-1")<sup>3</sup>, herein referred to as the "Suspension Order", as well as the underlying Decision/Orders of June 12, 1991 (Exhibits "C-1" and "C-2") October 18, 1990 (Exhibit "D"). All such Orders have violated my rights of due process and equal protection of the law, as guaranteed under the Constitution of the State of New York and of the United States.

**STAY APPLICATION**

**A. Stay of Suspension Order Pending the Outcome of This Motion:**

3. An immediate stay of this Court's interim Suspension Order is called for on grounds articulated as a basis for vacatur of the Order in the recent decision of our Court of Appeals in In re Russakoff, N.Y.L.J., 5/11/92, p. 27, col. 1-2M, col. 3T, (Exhibit "E"):

(i) This Court's failure to make any findings to

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<sup>3</sup> A motion to vacate the Suspension Order was made by Order to Show Cause, dated June 20, 1991, incorporated herein by reference. That motion was denied by this Court's Decision/Order of July 15, 1991, with no findings made or reasons stated (B-2).

support its aforesaid suspension;

(ii) The failure to afford me a pre-suspension hearing as to any of the disputed factual issues relative to the charge of "non-cooperation"--for which I was allegedly suspended; and

(iii) The failure to grant me any post-suspension hearing in the entire one year since my so-called interim suspension.

**B. Stay of all Disciplinary Matters Pending the Outcome of This Motion:**

4. By ex parte Order dated April 1, 1992 (Exhibit "F"), this Court, sua sponte, directed that disciplinary proceedings proceed against me.

(a) It is patently inconsistent and improper for this Court to require me to defend myself in disciplinary proceedings when this Court's underlying October 18, 1990 Order (Exhibit "D") rests on the alleged need for a determination "as to whether respondent has the capacity to adequately defend herself in a disciplinary proceeding" (Petitioner's Letter to this Court, dated 3/6/92, Exhibit "G", p.4).

(b) As shown by Exhibit "G", Petitioner itself recognized the inherent inconsistency of going forward with disciplinary proceedings while the Suspension Order is still extant. Petitioner's Chief Counsel, Gary Casella, Esq., expressly requested a stay of the pending disciplinary proceedings, stating:



"At its meeting held on February 27, 1992 the Grievance Committee for the Ninth Judicial District unanimously voted that application be made to this Court to hold in abeyance a disciplinary proceeding pending against Doris L. Sassower." (at p. 1) (emphasis added)

(c) Mr. Casella should not now be heard to oppose, as is his confirmed stated intention, (Exhibit "H-2"), the Grievance Committee's unanimously-authorized instructions, simply because this Court's April 1, 1992 Order denied its request.

(d) It may be noted that from the outset of the Suspension Order (Exhibit "B-1"), Mr. Casella took the view that such suspension, "of course result[s] in the disciplinary proceeding continuing to be held in abeyance". (Exhibit "I": Mr. Casella's 6/21//91 letter). Petitioner should, therefore, be estopped from arguing otherwise before this Court.

C. Stay of all Disciplinary Matters Pending Outcome of Pending Litigation Which is the Subject of those Disciplinary Matters:

5. It is respectfully submitted that it is a needless waste of taxpayers' money and mine to require me to defend myself twice--before this Court, as well as the Petitioner--and doubly unfair to require me to do so simultaneously.

(a) This Court's Order, dated June 4, 1992 (Exhibit "J") requires me to respond by June 18, 1992--three (3) days from now--to a Supplemental Petition encompassing three additional sua sponte charges--all as baseless as those which preceded them. As will be shown by separate motion to be made as soon as time permits, Petitioner's Chief Counsel has once again



not complied with the procedures and substantive requirements prescribed by this Court to invoke its jurisdiction. Two of the charges arise out of the Suspension Order and the underlying October 18, 1990 Decision/Order directing me to be mentally examined, the third involves the Breslaw matter, presently under appeal (Docket #92-00562).

(b) None of the disciplinary charges are supported by proof rising to the level of "probable cause"<sup>4</sup>, rendering same dismissible as a matter of law. Such unsubstantiated charges plainly did not warrant Petitioner's failure to first afford me a hearing<sup>5</sup>--even assuming, arguendo, the matters were not to be dismissed after preliminary investigation. In fact, the slightest investigation would have disclosed to any objective attorney that there is no basis for anything but a dismissal as to all charges. In any case, all three of the sua sponte charges would be affected and may be rendered moot, by reason of the outcome of this motion and litigation before this Court.

(c) This Court's ruling on the instant motion, as well as on the Wolstencroft litigation before this Court

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<sup>4</sup> None of the charges--even those which were not initiated by Petitioner, sua sponte--rest on a sworn statement by a party with personal knowledge of the facts. This is documented by Mr. Casella's June 11, 1992 letter to me (Exhibit "K-1") in response to my letter request to him (Exhibit "K-2").

<sup>5</sup> The procedures presently being employed by Mr. Casella are on par with the outrageous manner in which the underlying suspension was brought about, which denied me all chance to be "heard" at any level prior thereto--and despite Petitioner's failure to observe the requirements laid down by §691.4, as well as §691.13 of the disciplinary Rules of this Department.

(under Docket #92-03928, #92-03929, #92-03248, and #92-01093), would affect the disposition of present sua sponte inquiries by Petitioner.

6. Orderly procedure and the interests of economy and justice require the requested stay to avoid burdensome duplication of effort and needless cost and expense for all concerned--particularly where, as here, the sua sponte disciplinary proceedings are themselves suspect by reason of the misconduct of Mr. Casella, as hereinafter detailed. Indeed, the decision on this motion would require Mr. Casella's disqualification since, inter alia, he is a prospective witness in the proceedings.

7. Such stay is further appropriate since there is no prejudice to anyone--as shown by the fact that there is no complainant on any of the aforesaid sua sponte charges.

#### VACATUR OF THE SUSPENSION ORDER

A. The Interim Suspension Order Must Be Vacated Because of this Court's Failure to Make Findings

8. This Court's failure to make findings is dispositive of my entitlement to vacatur of the interim Suspension Order.

B. This Court Failed to Make a Threshold Finding as to Jurisdiction

9. The first essential finding which this Court was required to make--but did not--was a determination as to whether its jurisdiction had been properly invoked, since such jurisdiction was sharply in issue.



10. Without such threshold determination, this Court could not make a dispositive ruling on the ultimate relief sought by Mr. Casella. That is the well-settled mandate this Court has laid down to lower courts in this department, Mayers v. Cadman Towers, Inc., 89 A.D.2d 844, 453 N.Y.S.2d 25 (2d Dept., 1982).

11. Without a jurisdictional predicate, this Court could not lawfully render the Suspension Order (Exhibit "B-1")-- or the October 18, 1990 Order on which it was based (Exhibit "D").

12. Had this Court ruled on my jurisdictional objections preliminarily--as it was constitutionally required, but failed, to do--no Suspension Order would have ensued, since the Court would doubtless have recognized it had no jurisdiction:

(a) Neither the suspension proceeding commenced on May 8, 1990 to determine my mental capacity nor the suspension proceeding commenced on January 25, 1991 for my alleged "non-cooperation" were initiated by the required "petition", but solely by a motion, supported only by an affirmation of Mr. Casella<sup>6</sup>.

(b) Neither proceeding was commenced by the required "personal service" upon me--contrary to:

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<sup>6</sup> As my underlying papers discussed, Rule 691.13(b)(1) requires the committee to use the "petition" vehicle to initiate a suspension proceeding based on a determination of mental capacity. See, (a) my 1/29/91 Order to Show Cause and Supporting Affirmation of Eli Vigliano, Esq., pp. 1-4; (b) my 2/11/91 Memorandum of Law, pp. 1-5; (c) 2/12/91 Affirmation of Eli Vigliano, Esq., pp. 2-6; (d) 2/20/91 Opposing Affirmation, p. 7.

(i) The service provisions of the May 8, 1990 Order to Show Cause<sup>7</sup> and the Order to Show Cause of January 25, 1991<sup>8</sup>, both of which explicitly directed personal service<sup>9</sup>;

(ii) the personal service required for suspension proceedings commenced by petition, as called for under Rule 691.13(b)(1) pursuant to which Mr. Casella was purportedly proceeding;

(iii) the personal service requirement of Judiciary Law 90(6), which states that before an

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<sup>7</sup> Mr. Casella's improper service of his May 8, 1990 Order to Show Cause was the subject of my cross-motion, dated 6/7/90. This Court denied that cross-motion by its October 18, 1990 Decision/Order (Exhibit "D"), without any findings or reasons stated. That Decision/Order is erroneous on its face wherein it states that my cross-motion was addressed to:

"the disciplinary proceeding authorized against respondent by order of this court dated December 6, 1989, by reason, inter alia, of lack of personal service".

My cross-motion was not addressed to that totally unrelated and separate proceeding. As shown by my cross-motion and supporting papers, my jurisdictional objections were solely addressed to Mr. Casella's **May 8, 1990** Order to Show Cause (see: (i) my 6/7/90 Supporting Affidavit, pp. 2-3; (ii) my 6/25/90 Reply Affidavit, pp. 1-4; (iii) my 2/20/91 Sur-Reply Affidavit, pp. 2-3).

<sup>8</sup> Mr. Casella's improper service of his 1/25/91 Order to Show Cause was objected to by me in the following documents: the 2/12/91 Affirmation of Eli Vigliano, Esq., pp.1, 17-18; the 2/20/90 Sur-Reply Affirmation of Eli Vigliano, Esq., pp. 1-2; my 2/20/91 Sur-Reply Affidavit.

<sup>9</sup> Judiciary Law, §90(10) calls for service of "the charges" personally upon the accused attorney in any proceeding calling for the attorney's suspension.



attorney is suspended:

"a copy of the charges must be  
d e l i v e r e d   t o   h i m  
personally..."

**VACATUR IS MANDATED UNDER CPLR 5015(a)(4) FOR  
LACK OF JURISDICTION**

13. As shown by the underlying papers, incorporated herein by reference, the jurisdictional objections as to Petitioner's failure to serve me personally and failure to proceed by "petition" were repeatedly asserted by me and undenied by Mr. Casella. Nevertheless, this Court not only failed to summarily rule in my favor, but failed to afford me any hearing with respect thereto, and failed to rule on them specifically, prior to making its Suspension Order (Exhibit "B-1"), or its underlying Decision/Orders of June 12, 1991 (Exhibits "C-1", "C-2") and October 18, 1990 (Exhibit "D").

**C. This Court Failed to Adhere to Its Own Rules Requiring Specific Findings Before Interim Suspensions Can Be Ordered**

14. This Court's power to order an immediate interim suspension is explicitly to be exercised only:

"...upon a finding that the attorney is guilty of professional misconduct immediately threatening the public interest."  
§691.4(1)(1)(i).

However, such two-fold sine qua non allegation was not even asserted in Mr. Casella's Affirmation supporting his January 25, 1991 Order to Show Cause seeking my indefinite, interim suspension. Nor was any such finding ever made by this Court.

15. The Russakoff Court recognized that such finding is essential to comport with due process, and reiterated the

standard set by the Court of Appeals in Matter of Padilla, 65 N.Y.2d 434 (1985), requiring that such finding be:

"...clearly established either by the attorney's own admissions or by other uncontroverted evidence..." (emphasis added).

Virtually identical language appears in subdivisions (i), (ii) and (iii) of rule 691.4(1)(1), which--along with the Court of Appeals' Padilla decision--this Court simply disregarded in rendering the interim Suspension Order (Exhibit "B-1").

16. Those absolute requirements were not met by any standard of proof. The unassailable record before this Court shows they were not met because they could not be met:

(a) Mr. Casella did not even claim that the alleged "non-cooperation" posed "an immediate threat to the public interest"<sup>10</sup>; and

(b) there was no admitted or uncontroverted evidence by me of facts alleged to constitute the professional misconduct charged, i.e., "non-cooperation"<sup>11</sup>, or that there was an underlying need to determine my mental capacity. Indeed, there was not even a complainant, and both such alleged charges, in fact, were bitterly and strenuously controverted.

**THE CASE AT BAR IS A FORTIORI TO RUSSAKOFF**

17. By reason of the foregoing, this case compels vacatur far more strongly than Russakoff did. In Russakoff, the

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<sup>10</sup> See, my 2/11/91 Memorandum of Law, pp. 7-8

<sup>11</sup> Detailed refutation of Mr. Casella's baseless charge is set forth in the 2/12/91 Affirmation of Eli Vigliano, Esq., pp. 7-20, as well as Mr. Vigliano's 2/20/91 Affirmation, pp. 3-4.

Court of Appeals vacated Mr. Russakoff's interim suspension, saying:

"... Since the Appellate Division did not state the reason for the interim suspension order, there is no way of knowing whether its decision was predicated on the uncontroverted allegations..."

18. In the instant case, it is definitely known that this Court did not rely on any admitted or uncontroverted allegations--because there were none. Thus, as a matter of law, this Court had no factual or legal basis for its Suspension Order predicated on the alleged "non-cooperation". And, indeed and in fact, there was no "non-cooperation" by me as a matter of law--as the record before this Court shows.

19. As noted, the Suspension Order not only transgressed this Court's own rules, but the fundamental requirements laid down by the Court of Appeals in In re Padilla, 67 N.Y.2d 440, as well as in its recent decision in Russakoff, supra. Both those cases involved charges of alleged moral turpitude by the suspended attorney. The subject suspension did not involve any moral turpitude. Hence, the case at bar is an a fortiori one for that reason, as well.

20. Since the Suspension Order failed to meet the findings requirement enunciated in Padilla, supra, and reaffirmed in Russakoff, supra, it is void ab initio. As with Mr. Russakoff's interim suspension Order wherein "[s]ignificantly the court did not set forth the reasons for its decision to suspend respondent", this Court failed to state its reasons for my



interim suspension--also violating §691.4(1)(2) of this Court Rules, specifically requiring that:

"...The court shall briefly state its reasons for its order of suspension..."

Significantly, that provision of this Court's rules was added after the Court of Appeals had decided Padilla.

**VACATUR IS MANDATED UNDER CPLR §5015(a)(3)  
FOR MISCONDUCT OF ADVERSE COUNSEL**

21. It is fundamental to the integrity of our justice system that misconduct of an adverse party or his counsel vitiates any order or judgment obtained thereby. Indeed, this principle is deemed of such sacrosanct importance that once misconduct is shown, the moving party seeking to vacate an order or judgment is not even required to demonstrate the merit of his defense or cause of action. This Court has stated its views on the subject most forcefully to make clear that judgments resulting from such wrongful behavior are "nullities irrespective of any issue of merit". Shaw v Shaw, 97 A.D.2d 403, 467 N.Y.S.2d 231 (2d Dept. 1983).

22. This Court is respectfully referred to Respondent's January 28, 1991 Order to Show Cause, incorporated herein by reference. By that motion, I sought:

(a) to vacate this Court's October 18, 1990 Order (Exhibit "D") for lack of jurisdiction<sup>12</sup>, inter alia, because under the rule invoked by Mr. Casella, the relief granted could

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<sup>12</sup> See, (i) Supporting Affirmation of Eli Vigliano, Esq., pp. 1-4; (ii) 2/11/91 Memorandum of Law, pp. 1-6.



not be obtained by motion, but only by formal petition; and

(b) to discipline Mr. Casella for:

"bringing on an unauthorized and void motion by Order to Show Cause, dated May 8, 1990, resulting in this Court's jurisdictionally defective order, dated October 18, 1990"

directing an examination into my mental capacity. As shown by the record before this Court<sup>13</sup>, Mr. Casella's May 8, 1990 sua sponte motion rested entirely on a transcript of judicially compelled testimony by my doctor, which he knew was given in my absence, without my consent and over my counsel's objection, in violation of my doctor-patient privilege under CPLR 4504. Mr. Casella further knew that his acquisition of such transcript without a court order, and without my consent or even notice to me of his intentions, further violated the statutory right of confidentiality afforded under Domestic Relations Law §235 to records which are part of a matrimonial file as was the matter in which that testimony was given<sup>14</sup>. Such misuse of prosecutorial power is precluded by Matter of Dondi, 63 N.Y.2d 331 (1984),

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<sup>13</sup> See, Mr. Vigliano's 2/28/91 Affirmation in Support of Order to Show Cause, pp. 5-6; my 6/20/91 Affidavit in Support of Reargument, pp. 2-4. It may be further noted that Judge Fredman's direction that my doctor give such testimony in my absence, without my consent and over the objection of counsel, is one of the multitudinous errors committed by him in the case of Breslaw v. Breslaw, the subject of my pending appeal under Docket #92-00562. As hereinabove stated, the outcome of that appeal will affect matters which are the subject of the Supplemental Petition.

<sup>14</sup> See, my 6/21/91 Affidavit in Support of Reargument, pp. 6-7; Eli Vigliano's 2/12/91 Affidavit, pp. 21-22; my 6/7/90 Affidavit in support of cross-motion, pp. 4-5; and my 6/25/90 Reply Affidavit, pp. 5-6.

additionally requiring vacatur of the October 18, 1990 Order (Exhibit "D") and the Suspension Order (Exhibit "B-1").

23. As hereinabove noted, the June 12, 1991 Decision/Order of this Court (Exhibit "C-1") denying my said motion made no findings and directed no hearing as to the disputed factual issues. The evidentiary proof set forth by me in my motion and the law cited in my February 11, 1991 Memorandum mandated a summary decision in my favor--as to both branches of my motion, since the October 18, 1990 Order was jurisdictionally and legally insupportable and there was documented evidence of frivolous conduct by Mr. Casella sufficient to warrant a disciplinary investigation, at very least.

24. As my motion substantiated, Mr. Casella adhered to his position<sup>15</sup> long after it was demonstrated to be legally and factually unfounded and deliberately and repeatedly misled this Court into accepting his unsubstantiated claims. As set forth in my February 11, 1991 Memorandum of Law:

"...in the absence of a duly filed Report by the Chairman of the Committee or a petition signed by him, Mr. Casella's own statement that he was 'authorized' by the Grievance Committee is not conclusive upon Respondent or this Court (Steuerwald v. Jackson, 123 App. Div. 569, 108 NY Supp. 41 [2nd Dept. 1908]. It is hornbook law that the authority of an agent cannot be proved by the agent's statement or conduct (Lillibridge v. Johnson Bronze, 247 NY 548 [1928]; Leary v. Albany

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<sup>15</sup> As pointed in out at pp. 2-3 of Mr. Vigliano's 2/20/91 Opposing Affirmation, Mr. Casella failed to submit any Memorandum of Law to sustain his bad-faith contentions.



Brewing, 77 App. Div 6, 79 NY Supp. 130 [4th Dept.]])

... The simple unalterable fact is that there is no "petition" from the Grievance Committee, as mandated by the...Rule of this Court, but only an affirmation by Mr. Casella in support of his Order to Show Cause of May 8, 1990.

In consequence, said [October 18, 1990] Order is absolutely null and void, and could not constitute a basis of suspension or of lawful direction to Respondent on which he could base a claim of 'non-cooperation' under Rule 691.4(1)(1)(i)." (2/11/91 Memo of Law, pp. 4-6)

25. As fully detailed by my papers in support of my motion, the purpose of Mr. Casella's January 25, 1991 Order to Show Cause seeking my immediate suspension for "non-cooperation" with this Court's October 18, 1990 Order was to thwart my stated intention to seek appellate review of his ultra vires actions<sup>16</sup>-- including the high-handed fashion in which he was implementing this Court's October 18, 1990 Order<sup>17</sup>.

26. Mr. Casella's attempt to use a bogus charge of "non-compliance" to block such rightful review of his actions,

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<sup>16</sup> See, 2/12/91 Affirmation of Eli Vigliano, Esq, pp. 10-12; 19-20; 2/20/91 Opposing Affirmation of Eli Vigliano, Esq., pp. 7-8.

<sup>17</sup> Contrary to this Court's own rules requiring appointment of impartial expert(s) by the Court, this Court's October 18, 1990 Order (Exhibit "D") gave Mr. Casella authority to designate a single "expert" to conduct the mental examination of me. Mr. Casella's selected expert explicitly identified himself as "work[ing] for the Grievance Committee", and, after his "check with Mr. Casella", refused to provide my counsel with a copy of his credentials to establish that he was, in fact, a qualified expert; and also refused to agree to minimal safeguards requested by my counsel, including access to a copy of his medical report. (See, Eli Vigliano's 1/28/91 Affirmation in support of Order to Show Cause, p. 4; Eli Vigliano's 2/12/91 Affirmation, p. 9)

was highlighted by his threatening January 15, 1991 mailed-response (Exhibit "L-1") to my counsel's January 10, 1991 faxed letter (Exhibit "L-2"). My counsel's letter represented a careful point-by-point analysis of the jurisdictional, procedural and substantive nullity of his proceeding to determine my mental capacity and my legitimate concerns, inter alia, as to the unilateral manner by which the single medical expert was appointed, with no safeguards afforded, Mr. Casella's response was to threaten to bring an immediate suspension motion for "non-cooperation". Mr. Casella, in fact, made such motion within 24 hours after the agreed deadline expired--with full knowledge that my counsel had already prepared an Order to Show Cause with a stay application. Indeed, Mr. Casella knew further--but did not disclose in his factual chronology--that an earlier appointment by my counsel for its presentment to Justice Miller at her Chambers in White Plains for signature had been cancelled only because the judge in question had unexpectedly recused herself after Mr. Casella himself had discussed the matter with her law secretary<sup>18</sup>.

27. The abuse of prosecutorial power represented by Mr. Casella's "rush to beat" my counsel's Order to Show Cause and stay request was detailed and documented by my papers supporting

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<sup>18</sup> Mr. Casella's "sharp practice", which prevented my Order to Show Cause from being signed before his, again included his breach of my confidentiality rights. The chronology of that period is set forth at pp. 12-17 of Eli Vigliano's 2/12/91 Affirmation. (see, also, pp. 18-19)



that motion<sup>19</sup>. The documented falsity, misrepresentation and concealment of material facts<sup>20</sup> by Mr. Casella's Order to Show Cause enabled him to procure an interim Suspension Order violative of every standard of due process.

28. This Court's "blind eye" and failure to direct any

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<sup>19</sup> Such abuse by Mr. Casella was further evidenced by his February 5, 1991 motion to sanction my counsel, Eli Vigliano, Esq., for "frivolous conduct" for having raised wholly proper jurisdictional and legal objections to Mr. Casella's ultra vires actions. As set forth in Mr. Vigliano's 2/20/90 Opposing Affirmation:

"...Mr. Casella's sanctions motion is an obviously retaliatory attempt to camouflage the fact that: (a) the Grievance Committee did not file the required Report, with this Court, establishing his authority, a precondition for institution of his proceeding under Rule 691.13(b)(1); (b) this Court likewise did not, pursuant to the required Petition, which Mr. Casella failed to file, authorize Mr. Casella, the District Attorney, or anyone else to institute such proceeding; and that (c) in many other respects the aforesaid proceeding is jurisdictionally infirm, all as extensively set forth in the aforesaid prior submissions in support of Respondent's motion to vacate the October 18, 1990 Order of this Court, incorporated by reference, the granting of which renders the instant motion moot." (at p. 7)

<sup>20</sup> Mr. Vigliano's 2/12/91 Affirmation meticulously documented the pattern of Mr. Casella's misrepresentation to this Court, including (at pp. 4-5) Mr. Casella's improper RJI statement (Ex. "C" to that Affirmation) on May 10, 1990 which masked the jurisdictional deficiency of his proceeding by falsely identifying Mr. Vigliano as my then counsel, so as to make it appear that there was an underlying proceeding in which I already had counsel representing me. This implicitly misled the Court to believe that Mr. Casella was proceeding under Rule 691.13(c)(1) which would permit a motion, rather than the required "petition", to be made. In fact, as shown by Mr. Casella's May 8, 1990 Order to Show Cause, he was proceeding under Rule 691.13(b)(1), and as shown by Mr. Vigliano's aforesaid Affirmation, he had not yet filed any Notice of Appearance for me in that proceeding. (See, Mr. Vigliano's 2/12/91 Affirmation, at pp. 4-5; for discussion of other critical misrepresentations, see, pp. 7-8, and pp. 10-12)

investigation into my serious allegations against Petitioner's Chief Counsel or even to direct a hearing so that I could substantiate and prove the serious misconduct documented has denied me my constitutionally-protected rights of due process and equal protection. Mr. Casella was effectively been given exemption from prosecution for his own unethical acts. As will be shown by separate motion in due course, Mr. Casella has continued to prosecute me in the same egregious, irresponsible and baseless manner with complete impunity.

29. This Court has a duty not only to protect complainants, but also accused attorneys. Here, the absence of any complainants should cause this Court to look even more carefully into my claims of selective and invidious prosecution, which are being fostered by the wrongful and tainted conduct of Mr. Casella in deprivation of my rights under the Constitutions of the United States and of the State of New York.

**SANCTIONS SHOULD BE IMPOSED AGAINST  
PETITIONER AND ITS CHIEF COUNSEL**

30. I have attempted on a number of occasions to obtain Mr. Casella's voluntary consent to the vacatur relief sought herein based on the Court of Appeals Decision in the Russakoff case, as well as to the stay of all disciplinary proceedings and inquiries pending the outcome of this motion. Notwithstanding that the stay of such proceedings had already been authorized by his Committee (Exhibit "G"), Mr. Casella has refused to consent to the relief requested by me, which would



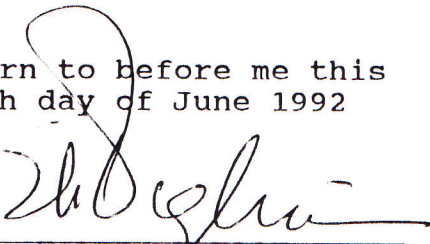
have obviated the need for a motion (Exhibit "H-2")<sup>21</sup>.

31. In light of Mr. Casella's knowledge that the Suspension Order must be vacated as a matter of law, as shown hereinabove, his refusal is sanctionable within the meaning of 22 NYCRR §130-1.1 et seq.

WHEREFORE, it is respectfully prayed that the instant Order to Show Cause be granted in all respects to rectify the horrendous miscarriage of justice that has taken place, depriving me of my livelihood and irreparably injuring my life and professional career for no good reason.

  
DORIS L. SASSOWER

Sworn to before me this  
15th day of June 1992

  
Notary Public

ELI VIGLIANO  
Notary Public, State of New York  
No. 4967383  
Qualified in Westchester County  
Commission Expires June 4, 1994

---

<sup>21</sup> As shown by Exhibit "H-3", Mr. Casella continues to engage in unsupported claims and insinuations.



(3rd Proceeding) 251  
8/2/89 - Confidential report of G. C. 9th J. D. filed.  
to Lou G.

12/14/89 - Order 2nd Dept. auth G. C. 9th J. D. to  
institute and prosecute a disciplinary proc  
Casella appointed.

2/16/90 - Petr's motion to discipline ret 2/23/90  
**#649** (resp's address on service of above motion:  
283 Soundview Ave., White Plains, NY) 10006

3/9/90 - Resp's answer filed - Atty on answer  
ELI VIGLIANO, 1250 Central Park Ave, Yonkers  
NY 10704

5/9/90 - GC's motion (OSC), ret 5/23/90, (1) to take or  
direct such action as the Court deems necessary  
or proper to determine whether the resp is in-  
capacitated from practicing law by reason of  
mental infirmity or illness, etc., and (2) to  
suspend the resp from the practice of law for an  
indefinite period, etc.

see - 80-00315

SASSOWER, DORIS LIPSON

134 5 2 1 (300,000)  
Adm. 1st Dept. Card No. 4  
Dec. 5, 1955

165 128  
- 1 B. 4 25 22  
CPIS # 90-00315

6/14/91 - Order 2nd Dept., Immediately SUSPENDED until the  
further order of this court., eff. 6/14/91.

Ex "A"

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

7404T  
B/kr

GUY JAMES MANGANO, P.J.  
WILLIAM C. THOMPSON  
LAWRENCE J. BRACKEN  
JOSEPH J. KUNZEMAN  
THOMAS R. SULLIVAN, JJ.

---

90-00315 Atty.

DECISION & ORDER ON MOTION

In the Matter of Doris L. Sassower,  
an attorney and counselor-at-law.

Grievance Committee for the Ninth  
Judicial District, petitioner;

Doris L. Sassower, respondent.

---

By decision and order of this court dated October 18, 1990, the petitioner's motion to suspend the respondent from the practice of law for an indefinite period and until the further order of this court based upon the respondent's incapacity and for an order directing that the respondent be examined by a qualified medical expert to determine whether the respondent is incapacitated from continuing to practice law was granted to the extent that the respondent was directed to be examined by a qualified medical expert, to be arranged for by Chief Counsel for the Grievance Committee for the Ninth Judicial District, to determine whether the respondent is incapacitated from continuing to practice law pursuant to § 691.13(b)(1) of the Rules of this Court [22 NYCRR § 691.13(b)(1)], and the motion to suspend the respondent from the practice of law was held in abeyance pending the receipt and consideration of the report of the medical expert.

The petitioner now moves to suspend the respondent from the practice of law for an indefinite period and until further order of this court based upon the respondent's failure to comply with the October 18, 1990 order of this court.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

June 14, 1991

MATTER OF SASSOWER; GRIEVANCE COMMITTEE FOR THE NINTH  
JUDICIAL DISTRICT

Page 1.

*Ex "B-1"*

ORDERED that the motion is granted; and it is further,

ORDERED that the respondent, Doris L. Sassower, pursuant to Section 691.4(1) of the Rules Governing the Conduct of Attorneys (22 NYCRR 691.4[1]) is immediately suspended from the practice of law in the State of New York, until the further order of this court; and it is further,

ORDERED that Doris L. Sassower shall promptly comply with this court's rules governing the conduct of disbarred, suspended and resigned attorneys (22 NYCRR 691.10); and it is further,

ORDERED that pursuant Judiciary Law § 90, during the period of suspension and until the further order of this court, the respondent, Doris L. Sassower, is commanded to desist and refrain (1) from practicing law in any form, either as principal or as agent, clerk or employee of another, (2) from appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission or other public authority, (3) from giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) from holding herself out in any way as an attorney and counselor-at-law.

MANGANO, P.J., THOMPSON, BRACKEN, KUNZEMAN and SULLIVAN, JJ., concur.

SUPREME COURT, STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPT.

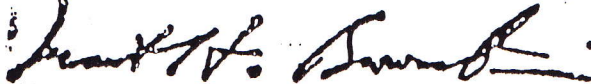
ENTER:

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on JUN 14 1991 and that this copy is a correct transcription of said original.

MARTIN H. BROWNSTEIN

Martin H. Brownstein  
Clerk

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Court on JUN 14 1991



Clerk



SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

8234T  
B/nl

(NOT TO BE PUBLISHED)

GUY JAMES MANGANO, P.J.  
WILLIAM C. THOMPSON  
LAWRENCE J. BRACKEN  
JOSEPH J. KUNZEMAN  
THOMAS R. SULLIVAN, JJ.

90-00315 Atty.

In the Matter of Doris L. Sassower,  
a suspended attorney.

Grievance Committe for the Ninth Judicial  
District, petitioner;

Doris L. Sassower, respondent.

DECISION & ORDER ON MOTION

RECEIVED  
JUL 15 12 05 PM '91  
APPELLATE DIVISION  
SECOND JUDICIAL DEPARTMENT

Motion by the respondent to vacate and/or modify this court's decision and order of June 14, 1991, suspending her from the practice of law until further order of this court.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied.


MANGANO, P.J., THOMPSON, BRACKEN, KUNZEMAN and SULLIVAN, JJ., concur.  
SUPREME COURT, STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPT.

MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court,  
Second Judicial Department, do hereby certify that I have compared this copy with  
the original filed in my office on JUL 15 1991 and that  
this copy is a correct transcription of said original.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of  
the Court on JUL 15 1991

ENTER:

MARTIN H. BROWNSTEIN

  
Clerk

Martin H. Brownstein  
Clerk

July 15, 1991

MATTER OF SASSOWER, DORIS L.

Ex "B-2"

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

7320T  
B/kr

(NOT TO BE PUBLISHED)

GUY JAMES MANGANO, P.J.  
WILLIAM C. THOMPSON  
LAWRENCE J. BRACKEN  
JOSEPH J. KUNZEMAN  
THOMAS R. SULLIVAN, JJ.

90-00315 Atty.

DECISION & ORDER ON MOTION

In the Matter of Doris L. Sassower,  
an attorney and counselor-at-law,  
admitted under the name Doris Lipson  
Sassower.

Grievance Committee for the Ninth  
Judicial District, petitioner;

Doris L. Sassower, respondent.

Motion by the respondent (1) to vacate the order of this court dated October 18,  
1990, directing the respondent to be examined by a qualified medical expert pursuant to §  
691.13(b)(1) of the Rules of this court and (2) to discipline Gary Casella, Esq.

Upon the papers filed in support of the motion and the papers filed in opposition  
thereto, it is

ORDERED that the motion is denied.

MANGANO, P.J., THOMPSON, BRACKEN, KUNZEMAN and SULLIVAN, JJ., concur.  
SUPREME COURT, STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPT.

ENTER:

MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court,  
Second Judicial Department, do hereby certify that I have compared this copy with  
the original filed in my office on **JUN 12 1991** and that  
this copy is a correct transcription of said original.

MARTIN H. BROWNSTEIN

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of  
this Court on **JUN 12 1991**

Martin H. Brownstein  
Clerk



Clerk

June 12, 1991

MATTER OF SASSOWER; GRIEVANCE COMMITTEE FOR THE NINTH  
JUDICIAL DISTRICT

EX "C-1"



RECEIVED  
JUN 17 1991

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

7322T  
B/kr

(NOT TO BE PUBLISHED)

GUY JAMES MANGANO, P.J.  
WILLIAM C. THOMPSON  
LAWRENCE J. BRACKEN  
JOSEPH J. KUNZEMAN  
THOMAS R. SULLIVAN, JJ.

90-00315 Atty.

DECISION & ORDER ON MOTION

In the Matter of Doris L. Sassower,  
an attorney and counselor-at-law,  
admitted under the name Doris Lipson  
Sassower.

Grievance Committee for the Ninth  
Judicial District, petitioner;

Doris L. Sassower, respondent.

Motion by the petitioner Grievance Committee for an order imposing financial sanctions and costs against Eli Vigliano, Esq., counsel to the respondent Doris L. Sassower, pursuant to Part 130, Subpart 130-1 of the Uniform Rules for the New York State Trial Courts, for engaging in frivolous conduct.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied with leave to renew upon a showing of continued frivolous conduct as defined by § 130-1.1(c) of the Rules of the Chief Administrator of the Courts (22 NYCRR 130-1.1[c]).

MANGANO, P.J., THOMPSON, BRACKEN, KUNZEMAN and SULLIVAN, JJ., concur.  
SUPREME COURT, STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPT.

ENTER:

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court,  
Second Judicial Department, do hereby certify that I have compared this copy with  
the original filed in my office on JUN 12 1991  
and that this copy is a correct transcription of said original.

MARTIN H. BROWNSTEIN

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of  
the Court on JUN 12 1991

Martin H. Brownstein  
Clerk



June 12, 1991

Clerk

MATTER OF SASSOWER; GRIEVANCE COMMITTEE FOR THE  
NINTH JUDICIAL DISTRICT

Ex "C-2"



SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

0597T  
B/nl

(NOT TO BE PUBLISHED)

GUY JAMES MANGANO, P.J.  
WILLIAM C. THOMPSON  
LAWRENCE J. BRACKEN  
RICHARD A. BROWN  
THOMAS R. SULLIVAN, JJ.

---

90-00315 Atty.

DECISION & ORDER ON MOTION

In the Matter of Doris L. Sassower,  
an attorney and counselor at law.

Grievance Committee for the Ninth  
Judicial District, petitioner;

Doris L. Sassower, respondent.

---

Motion by petitioner to suspend respondent from the practice of law for an indefinite period and until the further order of this court based upon respondent's incapacity and for an order directing that respondent be examined by a qualified medical expert to determine whether respondent is incapacitated from continuing to practice law pursuant to § 691.13(b)(1) of the Rules of this Court [22 NYCRR § 691.13(b)(1)].

Respondent cross-moves for an order dismissing the disciplinary proceeding authorized against respondent by order of this court dated December 6, 1989, by reason, *inter alia*, of lack of personal jurisdiction.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the respondent is directed to be examined by a qualified medical expert, to be arranged for by Chief Counsel for the Grievance Committee for the Ninth Judicial District, to determine whether the respondent is incapacitated from continuing to practice law pursuant to § 691.13(b)(1) of the Rules of this Court [22 NYCRR § 691.13(b)(1)]; and it is further,

ORDERED that petitioner's motion to suspend respondent is held in abeyance, and upon receipt of and consideration of the report of the medical expert, the court will determine whether to suspend respondent from the practice of law based upon her incapacity; and it is further,

ORDERED that respondent's cross-motion to dismiss the underlying disciplinary proceeding based upon, *inter alia*, lack of personal jurisdiction is denied.

MANGANO, P.J., THOMPSON, BRACKEN, BROWN and SULLIVAN, JJ., concur.

SUPREME COURT, STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPT.

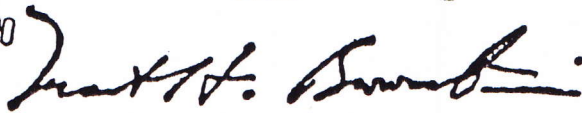
I, MARTIN H. BROWNSTEIN, Acting Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on **OCT 10 1990** and that this copy is a correct transcription of said original.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on **OCT 18 1990**

ENTER:

**MARTIN H. BROWNSTEIN**

Martin H. Brownstein  
Clerk



Clerk



No. 93 In the Matter of Norman E. Russakoff,  
an attorney and counselor-at-law.  
Grievance Committee for the Second and Eleventh  
Judicial Districts, Respondent, Norman E. Russakoff,  
Appellant.

Decided May 5, 1992

Nicholas C. Cooper, for appellant.  
Robert H. Straus, for respondent.  
Departmental Disciplinary Committee for the First  
Judicial Department, amicus curiae.

Ny  
cdw journal  
May 11, 1992  
p. 27

**P**ER CURIAM — Respondent attorney was suspended from the practice of law pending final disposition of charges that he had mishandled clients' funds. The issue in this appeal is whether the Appellate Division order of suspension complied with the requirements of *Matter of Padilla* (67 NY2d 440).

In the fall of 1989, in response to a client complaint, the Grievance Committee for the Second and Eleventh Judicial Districts initiated an inquiry into respondent's handling of his client bank accounts. The inquiry, which included an inspection of certain bank records furnished by respondent, revealed a number of unexplained withdrawals from several escrow accounts containing client and estate funds. This discovery prompted the Committee to direct respondent to appear and to give testimony regarding his "apparent conversion" of clients' funds.

After learning that the Committee intended to use any admissions he might make against him, respondent declined to appear in person and elected instead to submit an affirmation in which he "categorically denied" that he had engaged in conduct "involving 'fraud, deceit or misrepresentation.'" With regard to any specific questions about his handling of client funds, respondent affirmed that he had "no alternative but to exercise [his] constitutional right against self-incrimination."

Following the submission of this affirmation, the Committee moved by order to show cause for authorization to commence formal disciplinary proceedings against respondent. The Committee also sought an order suspending respondent during the pendency of the proceedings on the grounds that there was "uncontroverted evidence of his professional misconduct" and that respondent was

"guilty of professional misconduct immediately threatening the public interest." Submitted in support of this request for relief were the bank statements the Committee had inspected, as well as other documentary evidence demonstrating respondent's unexplained use of client funds. Also submitted was a copy of the Committee's proposed petition, which alleged that respondent had violated DR 9-102 and DR 1-102(A)(1), (A)(4), and (A)(7). Once again, respondent's only reply was that he had not engaged in "any intentional or wilful misconduct."

By order dated October 31, 1991, the Appellate Division granted the Committee's motion and ordered respondent temporarily suspended immediately. The court also authorized the initiation of formal disciplinary proceedings, referring the matter to a Special Referee and directing service of the Committee's petition within 90 days. The order, however, did not include any other provisions regarding the timing of either the hearing or the final disposition of the charges against respondent. Significantly, the court did not set forth the reasons for its decision to suspend respondent. On respondent's subsequent application, this Court granted him leave to appeal to the Court of Appeals. We now conclude that the Appellate Division order of temporary suspension cannot stand.

In *Matter of Padilla* (*supra*, at 448-449), we held that in certain narrow circumstances the Appellate Division has the power to suspend attorneys charged with misconduct even though the disciplinary proceedings against them remain pending. Specifically, we held that interim suspensions are permissible where the misconduct in question poses an immediate threat to the public interest and is clearly established either by the attorney's own

Ex "E"



## NEW YORK LAW JOURNAL

admissions or by other uncontroverted evidence (*id.*). We further stated in *Padilla* that when the Appellate Division decides to issue an interim suspension order, it should articulate the reasons for its decision. While the failure to articulate the basis of an interim suspension decision may not be fatal in all cases, it is a defect that cannot be overlooked where the papers on which the decision was based leave room for doubt or ambiguity (*see, id.*).

Here, respondent had made no admissions. In fact, he affirmatively denied any "intentional or wilful" misconduct. While that denial may not have been sufficient to controvert charges that he had violated DR 9-102, which concerns attorneys' fiduciary and record-keeping responsibilities (*see, Matter of Harris*, 124 AD2d 126; *Matter of Iverson*, 51 AD2d 422), it did give rise to a question as to whether respondent violated DR 1-102(A)(4), which was cited by the Committee and has been held to require a showing of intent to defraud, deceive or misrepresent (*Matter of Altomertanos*, 160 AD2d 96). Accordingly, it cannot be said that the Committee's charges of misconduct were completely "uncontroverted."

Further, because the Appellate Division did not state the reason for its interim suspension order, there is no way of knowing whether its decision was predicated on the uncontroverted allegations that DR 9-102 had been violated or was instead premised on the claimed violation of DR 1-102(A)(4), as to which there was considerable dispute. Thus, we cannot now determine whether the suspension order was issued in compliance with *Matter of Padilla* (*supra*).

Because it is impossible to deter-

mine whether the Appellate Division acted within the guidelines set forth in *Padilla*, we conclude that the court's temporary suspension order must be reversed and the matter remitted to that court for further proceedings consistent with this opinion. In view of this disposition, we do not reach respondent's alternative argument that the Appellate Division's interim suspension order was improper because no provision was made for a reasonably prompt post-suspension hearing. However, inasmuch as the matter is to be remitted, it is worthwhile to note that neither the Appellate Division Rules governing interim suspensions (22 NYCRR 603.4[e], 691.4[1], 806.4[f], 1022.19[f]) nor the specific order issued in this case provide for a prompt post-suspension hearing. Some action to correct this omission seems warranted (*see, Barry v Barchi*, 443 US 66-68; *Gershenfeld v. Justice of the Supreme Court*, 641 F Supp 1419).

Accordingly, the order of the Appellate Division should be modified, without costs, by vacating so much of the order as suspended petitioner from the practice of law pending the outcome of disciplinary proceedings, and the matter remitted to the Appellate Division, Second Department, for further proceedings in accordance with the opinion herein.



**Order modified, without costs, and matter remitted to the Appellate Division, Second Department, for further proceedings in accordance with the opinion herein. Opinion Per Curiam. Chief Judge Wachtler and Judges Kaye, Tiltone, Hancock, Bellacosa and Yesawich concur. Judge Simon took no part.**

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

6153N  
B/nl

(NOT TO BE PUBLISHED)

GUY JAMES MANGANO, P.J.  
WILLIAM C. THOMPSON  
LAWRENCE J. BRACKEN  
THOMAS R. SULLIVAN  
STANLEY HARWOOD, JJ.

---

90-00315 Atty.

In the Matter of Doris L. Sassower,  
a suspended attorney.

Grievance Committee for the Ninth  
Judicial District, petitioner;

Doris L. Sassower, respondent.

---

DECISION & ORDER  
ON APPLICATION

By decision and order of this court dated December 14, 1989, the petitioner was ordered to institute and prosecute a disciplinary proceeding against the respondent. By further order of this court dated October 18, 1990, the petitioner's motion to direct the respondent to submit to an examination by a qualified medical expert in order to ascertain whether the respondent is incapacitated from the practice of law by reason of mental infirmity or illness, was granted. By order of this court dated June 14, 1991, the respondent was immediately suspended until further order of this court, resulting from her failure to comply with this court's order directing her to submit to a psychiatric examination.

The petitioner now applies *ex parte* for an order holding the pending disciplinary proceeding in abeyance based upon the respondent's failure to submit to the court ordered psychiatric evaluation.

Upon the papers filed in support of the application, it is

ORDERED that the application is denied; and it is further,

April 1, 1992

MATTER OF SASSOWER, DORIS L.

Page 1.

Ex "F"

ORDERED that the petitioner Grievance Committee is directed to proceed with the pending disciplinary proceeding during the course of which the respondent, should she be so inclined, may raise the issue of her alleged incapacity as a potential defense.

MANGANO, P.J., THOMPSON, BRACKEN, SULLIVAN and HARWOOD, JJ., concur.

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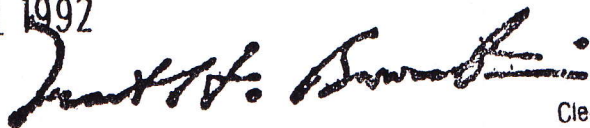
MARTIN H. BROWNSTEIN

Martin H. Brownstein  
Clerk

SUPREME COURT, STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPT

I MARTIN H BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court  
Second Judicial Department do hereby certify that I have compared this copy with  
the original filed in my office on APR 1 1992 and that  
this copy is a correct transcription of said original

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of  
Court on APR 1 1992



Clerk



EDWARD I SUMBER  
CHAIRMAN

State of New York  
Grievance Committee for the  
Ninth Judicial District

CROSSWEST OFFICE CENTER  
399 KNOLLWOOD ROAD - SUITE 200  
WHITE PLAINS, N. Y. 10603  
914-949-4540

GARY L CASELLA  
CHIEF COUNSEL  
ETTA M BILOON  
DEPUTY COUNSEL  
GARY D EGERMAN  
MARYANN YANARELLA  
SONDRA S HOLT  
ASSOCIATE COUNSEL

March 6, 1992

CONFIDENTIAL

Honorable Guy James Mangano  
Presiding Justice  
Appellate Division  
Second Department  
45 Monroe Place  
Brooklyn, NY 11201

RE: Matter of Doris L. Sassower  
A Suspended Attorney

Dear Presiding Justice Mangano:

At its meeting held on February 27, 1992 the Grievance Committee for the Ninth Judicial District unanimously voted that application be made to this Court to hold in abeyance a disciplinary proceeding pending against Doris L. Sassower.

The background of this matter is as follows:

By Order of this Court, dated June 14, 1991, respondent, Doris L. Sassower, was suspended from the practice of law for an indefinite period. The suspension resulted from respondent's failure to comply with an earlier order of the Appellate Division dated October 18, 1990, that she submit to a psychiatric examination to determine if she is incapacitated from practicing law, by reason of mental infirmity pursuant to Section 691.13(b)(1) of the Rules Governing the Conduct of Attorneys [22 NYCRR 691.13(b)(1)].

The motion to have respondent examined had been brought on by Order to Show Cause by the Grievance Committee for the Ninth Judicial District as a result of testimony given by respondent's own psychiatrist, Theodore Cherbuliez, M.D., in a proceeding before Honorable Samuel Fredman, Justice of the Supreme Court for the Ninth Judicial District. The purpose of such proceeding was to determine whether respondent should be held in contempt and/or have sanctions imposed against her for refusing to turn over a file in a matrimonial action Breslaw v. Breslaw, the direction of the Court notwithstanding, in an action in which substitute counsel had been retained.

Ex "G"

March 6, 1992

In the summer of 1989, respondent had been voluntarily confined to Silver Hill Foundation, an institution in Connecticut for treatment of a condition which, Dr. Cherbuliez testified before Justice Fredman in April 1990, resulted in Sassower's suffering from "major depression." He also testified, among other things, that at times her reasoning was substantially abnormal and that he had seen her extremely unstable and variable in her state of mind and mood.

At the time of his testimony, Dr. Cherbuliez recommended that any legal matters in which respondent was involved be adjourned for another sixty days "to safeguard her convalescence and avoid a relapse."

Justice Fredman proceeded and ultimately, by Decision and Order dated June 24, 1991, sanctioned respondent in the sum of \$9,042.00, directing that she pay such amount to her former client, Mrs. Breslaw, whose matrimonial file respondent kept for months after the Court directed that she return it. In June 1991, the Grievance Committee for the Ninth Judicial District Committee authorized a sua sponte complaint against respondent based upon the imposition of sanctions by Justice Fredman. The complaint is pending.

With respect to the suspension imposed against respondent by the Appellate Division (Order of June 14, 1991), this Court thereafter by further Order dated July 15, 1991, denied respondent's motion to vacate and/or modify its Decision and Order of June 14, 1991. The Court of Appeals of the State of New York by order dated September 10, 1991, denied Leave to Appeal to Doris L. Sassower.

Respondent, Doris L. Sassower, has failed to comply with the Order of the Appellate Division that she submit to the psychiatric examination, the Order of Suspension notwithstanding.

By Order of the Appellate Division dated December 14, 1989, the Grievance Committee for the Ninth Judicial District had been authorized to institute a disciplinary proceeding against respondent. Charges were served pursuant thereto in February 1990, alleging in essence:



March 6, 1992

- 1) A failure to promptly deliver a deed which she was holding as an escrow agent which her client was entitled to receive, due to the existence of a fee dispute.
2. Dishonesty, fraud, deceit or misrepresentation in improperly serving a document on a bank purporting to be a "charging lien."
3. Overreaching and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation concerning the recording of a Confession of Judgment against a client.
4. Improper serving of what purported to be a Charging Lien with respect to the allegations in Charge Three.
5. Overreaching in the billing of a client.

By Order of this Court dated and entered on November 1, 1990, Honorable Max H. Galfunt was appointed Special Referee with respect to the disciplinary proceeding authorized against Doris L. Sassower.

In addition, the Grievance Committee for the Ninth Judicial District has two pending sua sponte complaints. The first, as set forth above, authorized in June 1991, is based on the sanctions imposed by Justice Fredman. The second complaint, which was sent to respondent by letter dated July 5, 1991, alleges that respondent has been guilty of violating the Order of Suspension dated June 14, 1991, personally served on her on June 19, 1991, by permitting a Notice of Appeal to be filed on or about June 20, 1991, in the appeal of an election law suit in which she was appearing pro bono, to go out with the name Doris L. Sassower, P.C. on the blueback.

This Committee brought on the original Motion to have respondent examined by a psychiatrist to determine if she is incapacitated by reason of mental infirmity. In view of the fact that there has been no determination with respect thereto based on respondent's failure to comply, the Grievance Committee for the Ninth Judicial District requests that the underlying disciplinary proceeding be held in abeyance if and



Honorable Guy James Mangano 4

March 26, 1992

until respondent complies with the Order of the Appellate Division dated October 18, 1990 that she submit to the psychiatric examination and it is determined that she is not incapacitated.

Since it has not been resolved as to whether respondent has the capacity to adequately defend herself in a disciplinary proceeding, the Grievance Committee for the Ninth Judicial District does not believe that she can be compelled to go forward. Nor in the Committee's view, would it be appropriate under the circumstances to do so.

Accordingly, the Committee requests that the Appellate Division, Second Department hold the disciplinary proceeding in abeyance on the conditions proposed herein. Further, subject to the Court holding in abeyance the disciplinary proceeding against Doris L. Sassower, on the conditions proposed, the Grievance Committee for the Ninth Judicial District will close the two additional pending files it has against respondent. These files would be reopened if and when the Court is satisfied that the disciplinary proceeding can go forward.

Respectfully submitted,



Gary L. Casella

GLC/meh

cc: Edward I. Sumber, Esq.  
Chairman

DORIS L. SASSOWER

283 SOUNDVIEW AVENUE • WHITE PLAINS, N.Y. 10606 • 914/997-1677 • FAX: 914/684-6554

BY FAX: 914-949-0997

June 15, 1992

Gary L. Casella, Chief Counsel  
Grievance Committee, 9th Judicial District  
399 Knollwood Road  
White Plains, New York 10603

RE: All Pending Disciplinary Matters

Dear Mr. Casella:

This is to confirm that over the past weeks since the Russakoff case was decided by the Court of Appeals, I discussed with you in several conversations my request that you consent to voluntary vacatur of my interim suspension order--in effect now more than one year.

All such requests were rejected by you out of hand, with the statement that I would "have to make a motion". Additionally, in connection with such motion as you stated I would "have to make", you have also refused to consent to my request for an immediate interim stay of my suspension for reasons set forth in the Russakoff Court of Appeals' decision pending the motion.

You further refused my request for a stay of all pending disciplinary matters, notwithstanding such refusal was inconsistent with the position you yourself only recently presented to the Appellate Division asking the Court to hold in abeyance disciplinary proceedings against me by reason of the extant suspension Order.

You further refused to consent to a stay of such disciplinary matters to permit the disposition of litigation before the Appellate Division (inter alia, Breslaw and Wolstencroft--which matters would be directly affected by decisions in those cases. You also refused to consent to a stay by reason of my present time constraints occasioned by my personal engagement in the presentation of such matters before the Appellate Division. As to all such requests, you stated you would not only refuse to consent, but would also not agree not to oppose.

Ex "H-1"

Gary Casella, Chief Counsel

Page Two

June 15, 1992

I ask you to confirm the foregoing as a true and correct statement. If I do not hear from you to the contrary by return fax, it will be understood that you do not in any way disagree with the above statement, and I shall proceed accordingly.

~~Very truly yours,~~

  
DORIS L. SASSOWER

DLS/er



FAX: 914(949-0997

EDWARD I. SUMBER  
CHAIRMAN

State of New York  
Grievance Committee for the  
Ninth Judicial District

CROSSWEST OFFICE CENTER  
399 KNOLLWOOD ROAD - SUITE 200  
WHITE PLAINS, N. Y. 10603  
914 949 4540

GARY L. CASELLA  
CHIEF COUNSEL  
ETTA M. BILOON  
DEPUTY COUNSEL  
GARY D. EGERMAN  
MARYANN YANARELLA  
SONDRA S. HOLT  
ASSOCIATE COUNSEL

BY FAX AND MAIL

June 15, 1992

CONFIDENTIAL

Ms. Doris L. Sassower  
283 Soundview Avenue  
White Plains, New York 10606

Dear Ms. Sassower:

We are in receipt by FAX of your letter dated June 15, 1992.

As you are aware, the Order of the Appellate Division, Second Department dated June 4, 1992 has directed that you submit responsive papers within fourteen (14) days of the date of such Order or move with respect to the charges within such period.

Accordingly, there is no basis to your request for a stay. Further, Russakoff involves a set of circumstances quite different than yours.

In conclusion, I do not agree with your portrayal of events and see no basis to your requests.

Very truly yours,

*Gary L. Casella*  
Gary L. Casella  
Chief Counsel

*Mr. Casella:*

GLC/meh

Please be specific as to what events you are talking about.

*DUG*

Ex "H-2"

DORIS L. SASSOWER

283 SOUNDVIEW AVENUE • WHITE PLAINS, N.Y. 10606 • 914/997-1677 • FAX: 914/684-6554

By Fax: 949-0997

June 15, 1992

Gary Casella, Chief Counsel  
Grievance Committee  
399 Knollwood Road  
White Plains, New York 10603

Dear Mr. Casella:

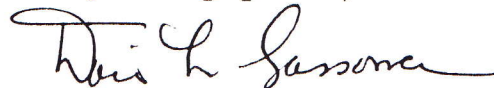
This is to confirm that you have refused to identify specifically in what way you disagree with my "portrayal of events", as referred to in your letter of June 15, 1992. Your office personnel, "Ginny" and "Janet", both confirmed that you received my faxed request for such detail, but that you would not elaborate on it.

When I asked for confirmation that (a) you had, in fact, received my request; and that (b) you would not respond to it, each one initially stated she would fax such confirmation to me. After waiting sufficient time, I finally learned from "Janet" that she had been told by you that she was not authorized to provide me with the requested confirmation.

I consider the bald statement contained in your June 15, 1992 fax-letter to be thoroughly unprofessional--and evidence that your desire to mislead the Court continues unabated.

In view of all that has transpired in connection with your unethical procurement of a void suspension order against me, I believe your unsubstantiated claim to be further proof of your unfitness for the important public office you hold.

Very truly yours,

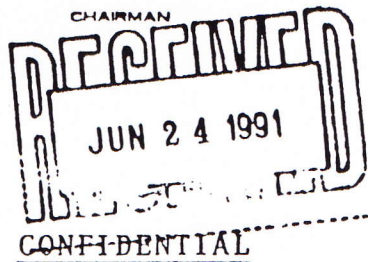


DORIS L. SASSOWER

DLS/er

Ex "H-3"

EDWARD I. SUMBER  
CHAIRMAN



State of New York  
Grievance Committee for the  
Ninth Judicial District

CROSSWEST OFFICE CENTER  
399 KNOLLWOOD ROAD - SUITE 200  
WHITE PLAINS, N. Y. 10603

914-949-4540

GARY L. CASELLA  
CHIEF COUNSEL

ETTA M. BILOON  
DEPUTY COUNSEL

GARY D. EGERMAN  
MARYANN YANARELLA  
BONDRA B. HOLT  
ASSOCIATE COUNSEL

June 21, 1991

Hon. Mark H. Galfunt  
216 Beach 143rd Street  
Neponsit, New York 11694

Re: Matter of Doris L. Sassower

Dear Judge Galfunt:

Enclosed is a copy of an Order of the Appellate Division, Second Department dated June 14, 1991 suspending respondent, Doris L. Sassower from the practice of law based on her failure to comply with an earlier Order of the Court dated October 18, 1990 directing that she submit to a medical examination to determine if she is incapacitated.

This matter is brought to your attention since it will of course result in the underlying disciplinary proceeding continuing to be held in abeyance.

Respectfully,

Gary L. Casella  
Chief Counsel

GLC/lr  
cc: Eli Vigliano, Esq.  
Attorney for Respondent  
Enclosure

Ex "I"



SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

8047N  
B/nl

(NOT TO BE PUBLISHED)

GUY JAMES MANGANO, P.J.  
WILLIAM C. THOMPSON  
LAWRENCE J. BRACKEN  
THOMAS R. SULLIVAN  
STANLEY HARWOOD, JJ.

90-00315 Atty.

DECISION & ORDER ON MOTION

In the Matter of Doris L. Sassower, a  
suspended attorney.

Grievance Committe for the Ninth Judicial  
District, petitioner;

Doris L. Sassower, respondent.

Applications by the respondent for an order, *inter alia*, extending her time to answer or move with respect to the petition and supplemental petitions pending against her; transferring all matters pending against her in this court to the Appellate Division, First Department; and directing the Clerk of this Court to mail her copies of certain designated papers which gave rise to this court's *ex parte* order of April 1, 1992, denying the Grievance Committee's application to hold in abeyance the disciplinary proceeding pending against her and for copies of the papers submitted by the Grievance Committee in support of the "original Petition" calling for her suspension.

Upon the papers filed in support of the motion and the papers submitted in reply thereto, it is

ORDERED that the applications are granted only to the extent that the respondent's time to answer or move with respect to the charges contained in the petition and supplemental petition pending against her is extended for a period of 14 days from the date of this order, with no further extensions; and it is further,

ORDERED that the applications are denied in all other respects.

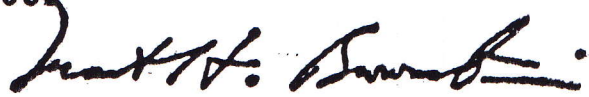
MANGANO, THOMPSON, BRACKEN, SULLIVAN and HARWOOD, JJ., concur.

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on JUN 4 1992 and that this copy is a correct transcription of said original.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on JUN 4 1992

MARTIN H. BROWNSTEIN

Martin H. Brownstein  
Clerk



June 4, 1992

MATTER OF SASSOWER, DORIS L.

Ex "J"

EDWARD I. SUMBER  
CHAIRMAN

State of New York  
Grievance Committee for the  
Ninth Judicial District

CROSSWEST OFFICE CENTER  
399 KNOLLWOOD ROAD - SUITE 200  
WHITE PLAINS, N. Y. 10603  
914-949-4540

GARY L. CASELLA  
CHIEF COUNSEL  
ETTA M. BLOON  
DEPUTY COUNSEL  
GARY D. EGERMAN  
MARYANN YANARELLA  
SONDRA S. HOLT  
ASSOCIATE COUNSEL

June 11, 1992

CONFIDENTIAL

Ms. Doris L. Sassower  
283 Soundview Avenue  
White Plains, New York 10606

Dear Ms. Sassower:

This will confirm that we received today your transmission by FAX.

We have not taken any sworn statements or made any tape recordings of any potential witnesses who will testify in the disciplinary proceeding. Any informal notes taken of an interview are not available to you.

You are not entitled to information concerning the internal workings of the Committee in these matters.

Very truly yours,



Gary L. Casella  
Chief Counsel

GLC::mjm

Ex "K-1"



DORIS L. SASSOWER

283 SOUNDVIEW AVENUE • WHITE PLAINS, N.Y. 10606 • 914/997-1677 • FAX: 914/684-6554

By Fax: 949-0997

June 11, 1992

Gary Casella, Chief Counsel  
Grievance Committee  
399 Knollwood Road  
White Plains, New York 10603

Dear Mr. Casella:

Without prejudice to any and all objections, jurisdictional and otherwise, I hereby confirm my telephone request for copies of:

1. Any and all exculpatory information in the custody, possession or control of your office concerning me or any of the pending charges or complaints initiated against me by you as Chief Counsel on behalf of the Committee, sua sponte or otherwise, which may aid in my defense or might materially affect its outcome.

2. Any and all statements made by prospective witnesses, relative thereto concerning each and every pending charge or complaint made against me, whether such statements were made under oath or otherwise, whether signed by them or not, whether in written form or in the form of tape recordings, transcripts, notes or memoranda, including notes or memoranda thereof as to interviews of such persons, whether such interviews were conducted in person, by telephone or other electronic device, or otherwise, by you or any other person connected with your office or in its employ or associated in any other way therewith.

3. As to each of the foregoing items, please identify whether same was submitted to the Committee, if so, the date thereof, the date on which action was taken by the Committee, and the specific action taken on that date.

Please further advise whether all of the materials I supplied to you were presented and reviewed by the members of your Committee, the dates of such presentment and review, and the names of Committee members on such occasions, if any.

Your prompt response and cooperation would be appreciated.

Very truly yours,



DORIS L. SASSOWER

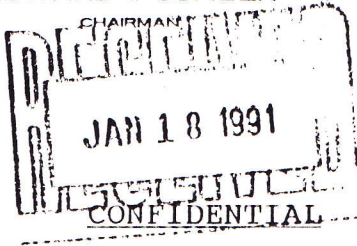
DLS/er

Ex "K-2"



⑤

EDWARD I. SUMBER



State of New York  
Grievance Committee for the  
Ninth Judicial District

CROSSWEST OFFICE CENTER  
399 KNOLLWOOD ROAD - SUITE 200  
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GARY L. CASELLA  
CHIEF COUNSEL

ETTA M. BILOON  
DEPUTY COUNSEL

GARY D. EGERMAN  
MARYANN YANARELLA  
SONDRA S. HOLT  
ASSOCIATE COUNSEL

January 15, 1991

Eli Vigliano, Esq.  
1250 Central Park Avenue  
P.O. Box 310  
Yonkers, New York 10704

Re: Matter of Doris Sassower,  
an Attorney

Dear Mr. Vigliano:

We are in receipt of your letter dated January 10, 1991.

As you know, the order of the Appellate Division, Second Department, directing that your client, Doris Sassower, be examined is dated October 10, 1990.

On December 17, 1990, in a telephone conversation you advised that you might have a problem with the Appellate Division's Order. However, on January 3, 1991, you further stated, in a phone conversation that you were waiting to hear from Dr. Scher to set a date for your client, Doris Sassower, to be examined. This chronology is contrary to that which you set forth in your January 10, 1991, letter.

The Grievance Committee does not and will not agree to your request for a vacatur of the Appellate Division's Order and dismissal of the proceeding.

In a letter dated December 17, 1990, which I sent to you December 31, 1990, was set forth as the date by which your arrangements were to have been made for your client to be examined by Dr. Scher.

Ex "L-1"

⑤

Eli Vigliano, Esq.  
Page 2  
January 15, 1991

It appears at this time that you are attempting to delay and obstruct the Appellate Division's Order.

Since you have not secured a stay of the Appellate Division's Order, unless arrangements are made by January 23, 1991, for your client to be examined by Dr. Scher, we will move her immediate suspension, based on her failure to cooperate and to comply with the Court's order.

Very truly yours,



Gary L. Casella

GLC/vem  
CERTIFIED MAIL - R.R.R.  
# P 163 221 054 and Ordinary Mail

ELI VIGLIANO

*Attorney at Law*

CENTRAL PARK PROFESSIONAL BLDG.  
1250 CENTRAL PARK AVENUE  
P.O. BOX 310  
YONKERS, NEW YORK 10704  
(914) 423-0732  
FAX (914) 423-8964

BY FAX to 914/949-0997 and MAIL

PRIVILEGED AND CONFIDENTIAL

January 10, 1991

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

Re: 90-00315

Dear Mr. Casella:

Following up our recent conversation, I discussed with Dr. Mark Scher his scheduling of respondent's examination sometime next week so as to render the psychiatric evaluation called for under the Order of the Appellate Division dated October 18, 1990.

After that discussion, however, I further reviewed the Decision and Order of the Appellate Division directing said examination, which Order rests on Section 691.13(b)(1) of the Rules of the Appellate Division, Second Dept.

I have concluded that there are serious jurisdictional, substantive and procedural grounds, which, as a courtesy to you and the Committee, I am bringing to your attention before making a motion addressed thereto. I believe you may agree to a voluntary vacatur of said Order and dismissal of this proceeding for the following reasons:

A. This is a proceeding under paragraph (b)(1) where it is the Grievance Committee that is seeking suspension by reason of the attorney's alleged disability unrelated to any such claim by the respondent attorney in a pending disciplinary proceeding. Clearly, you have not followed the procedure called for under the operative provision contemplating that the Grievance Committee will institute an independent plenary

Ex "L-2"



proceeding by petition to determine the attorney's alleged incapacity. That procedure assures adequate input by the attorney involved and appropriate opportunity to contest the charges. Indeed, in the interest of fairness to the allegedly disabled attorney, he is even assured of appointment of counsel under paragraph (b)(2), if appropriate.

However, you, instead, have proceeded by motion brought on by Order to Show Cause and a supporting affirmation, as if this were a proceeding under paragraph (c)(1), applicable only "when respondent claims disability during course of proceeding" and contends by reason thereof that such disability "makes it impossible for the respondent adequately to defend himself". As you know, this was not the case here, and your proceeding is, therefore, marred by a plainly fatal due process flaw.

B. There are, in addition, a number of other critical infirmities. Inter alia, it may be noted that under paragraph (b)(1), if the Court decides to direct an examination of the allegedly disabled attorney, that operative rule contemplates that it will be by "qualified medical experts as this Court shall designate" (emphasis added), and not by one physician selected by the attorney for the Grievance Committee in some undisclosed, unrestricted manner, without any input by the attorney involved or her physician, and with no requirement that said attorney even be furnished a copy of the evaluation to be rendered.

It is respectfully submitted that an attorney's professional life should not depend upon the opinion of a physician whose skill, competence and independence are unknown to the attorney affected and who is unilaterally selected by a partisan advocate, rather than, as the rule requires, "as designated by the Court". It is also objectionable that a partisan advocate, such as you, should be made privy to a privileged and confidential physician's report of a psychiatric evaluation, without regard for the normal safeguards applicable in adversarial litigation. Such safeguards must be provided before I will permit my client to submit to any such examination.

ELI VIGLIANO

Gary Casella, Esq.

Page Three

January 10, 1991

If, after the Committee reviews this letter, you were to be instructed to commence properly an independent proceeding, with the required Petition, as required by law, and if an examination was thereafter properly ordered by the Court, I would expect the following minimum protections to be afforded:

(a) the physician's report would be sealed and forwarded directly to the Court;

(b) a full and complete copy of the report would be furnished to me on behalf of my client, and

(c) the only other copy be retained by Dr. Scher and not replicated, unless ordered by the Court on notice to me, or by my written consent;

(d) that if necessary, I be afforded the opportunity to submit rebuttal medical evidence as deemed appropriate on my client's behalf within thirty (30) days after release to counsel of a copy of the report.

The aforesaid deficiencies inherent in this proceeding require vacatur of the Court's October 18, 1990 Order and its dismissal as a matter of law. Rather than embarrassing you and your Committee with an otherwise unavoidable burden on the Court's time, I request your stipulation thereto. Should your consent not be forthcoming after you have had this letter reviewed by your Committee, I will have no alternative but to take legal steps for appropriate relief, seeking sanctions, including all counsel fees and expenses related thereto, by reason of the defective and unfounded proceeding commenced by you on behalf of the Grievance Committee -- to be submitted as further evidence of retaliatory and invidious prosecution of this most unfairly treated respondent.

Very truly yours,

  
ELI VIGLIANO

EV/gd



Index No. 00315 Year 1990

SUPEME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: SECOND JUDICIAL DEPT.

In the Matter of Doris L. Sassower,  
An Attorney and Counselor-at-Law,

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,

Petitioner,

DORIS L. SASSOWER,

Respondent.

ORDER TO SHOW CAUSE FOR VACATUR AND INTERIM STAY

~~Attorney for~~ DORIS L. SASSOWER, ~~P.C.~~

Pro Se

Office and Post Office Address, Telephone

~~50 MAIN STREET • TENTH FLOOR~~

~~WHITE PLAINS, N.Y. 10606~~

~~101-288-0084~~

New Address:

283 Soundview Avenue  
White Plains, N.Y. 10606  
(914) 997-1677

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....  
Attorney(s) for

Sir:— Please take notice

NOTICE OF ENTRY

that the within is a (*certified*) true copy of a  
duly entered in the office of the clerk of the within named court on

19

NOTICE OF SETTLEMENT

that an order  
settlement to the HON.  
of the within named court, at  
on

of which the within is a true copy will be presented for  
one of the judges

19 at

M.

Dated,

Yours, etc.

New Address:

DORIS L. SASSOWER, ~~P.C.~~

~~Attorney for~~ Pro Se