

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>

AFFIDAVIT IN REPLY  
AND IN FURTHER  
SUPPORT OF MOTION TO  
VACATE SUSPENSION  
ORDER AND OTHER  
RELIEF

DORIS L. SASSOWER,

Respondent.

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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.

<sup>1</sup> As pointed out in the corresponding footnote to my moving Affidavit, the term "Petitioner" implies that there was a petition underlying the suspension proceeding brought pursuant to 22 NYCRR §691.4(1)(1)(i) for alleged "non-cooperation". Mr. Casella does not address the documentary fact that 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 falsely accused by him of not cooperating.

<sup>2</sup> Mr. Casella does not address the corresponding footnote in my moving Affidavit pointing out that 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, as well as his 1/25/91 Order to Show Cause and foster the misimpression that they are related to the completely separate and unconnected disciplinary proceedings under that identical number.

Ex "H"

2. This Affidavit is submitted in reply to Mr. Casella's false, misleading, and sanctionable Affirmation in Opposition, dated June 18, 1992, and in further support of my motion to vacate the June 12, 1991 Suspension Order--in effect now for more than one year without a hearing--and for appropriate disciplinary action against Mr. Casella by reason of his prosecutorial misconduct which is continuing to the present time.

3. Mr. Casella's instant Affirmation fully supports the need for this Court's intervention to protect me, as well as the public, from a devious, unscrupulous prosecutor abusing the powers of his office.

4. Mr. Casella does not controvert the specific facts and law detailed by my motion to vacate and other relief. Nor does he distinguish In Re Russakoff or other cases cited by me so as to show how their rationale does not apply to my case. What Mr. Casella does, instead, is to: (a) misrepresent the Suspension Order; (b) misrepresent the relevant chronology; and (c) continue his practice--documented in my moving papers--of employing intimidation tactics when he knows the facts and law are against him.

VACATUR IS MANDATED BY THE RUSSAKOFF CASE

5. Because he knows that the rationale of In Re Russakoff mandates vacatur, Mr. Casella engages in outright dishonesty. Thus he states:

"In its Order dated June 14, 1991, this Court immediately suspended respondent from the practice law pursuant to Section 691.4(1) of the Rules Governing the Conduct of Attorneys

[22 NYCRR 691.4(1)] based on a finding that she had failed to comply with the Order of October 18, 1990, directing that she be examined by a medical expert to determine if she is incapacitated...This Court in suspending respondent fully complied with Matter of Padilla and Gray 67 NY2d 440 and Matter of Russakoff. (NYLJ, May 11, 1992, p. 27, cols. 1,2,3,4)...this Court in imposing suspension made a finding as required and articulated its reasons in support thereof." (at pp. 5-6)

6. This bald-faced lie is exposed by this Court's June 14, 1991 Decision/Order--a dispositive document--showing, on its face, that no findings were made and no reasons articulated to support the non-existent findings (Exhibit "B" to my motion).

7. Moreover, as discussed in my moving papers--but wholly unaddressed by Mr. Casella--since all the material facts were controverted by me, this Court would have been constitutionally precluded from making the necessary findings without first directing an evidentiary hearing as to the disputed issues.

8. Mr. Casella does not deny that I had no hearing. Nor does he dispute that only emergency circumstances factually showing an immediate threat to the public interest would have allowed immediate suspension without a hearing--itself requiring findings to that effect. Mr. Casella does not deny that such findings were, likewise, not made by this Court--or that he did not even make the requisite allegations of any emergency situation threatening the public interest--let alone that he had "probable cause" to believe that such situation existed.

9. Mr. Casella also does not deny that I have had no hearing as to my alleged "non-cooperation" in the more than one year that has elapsed since my interim suspension. For that outrage there could be, and is, no justification whatsoever--any more than if an alleged criminal were locked up for that period of time with no hearing as to the charges for which he was arrested and confined.

10. In the face of the requirements of Padilla--reiterated by In Re Russakoff--Mr. Casella's refusal to consent to an immediate vacatur of the Suspension Order is conduct he knows to be factually and legally unfounded--"frivolous" within the meaning of 22 N.Y.C.R.R. §130.1 et. seq. and unethical under DR7-102 of the Code of Professional Responsibility. Mr. Casella's instant opposition to the motion he required me to make is based upon his misrepresentation of the Suspension Order and the controlling law. As such, it constitutes unethical conduct proscribed by DR7-102<sup>3</sup>, as well as a "deceit" upon the Court within the meaning of Judiciary Law 487, subdiv. 1, constituting a misdemeanor, as well as a violation of his duty as a public prosecutor, as mandated in DR7-103<sup>4</sup>.

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<sup>3</sup> Review of the instant motion papers, as well as all of the papers heretofore filed in the course of the suspension proceedings establishes that Mr. Casella has knowingly engaged in "illegal or fraudulent conduct", within the meaning of DR 7-102.

<sup>4</sup> Under DR7-103, Mr. Casella is required, as a public prosecutor, to disclose matters which "negate the guilt of the accused", even though that means he does not get his conviction.

**MR. CASELLA'S MISREPRESENTATION OF THE  
RELEVANT CHRONOLOGY IS DESIGNED TO FURTHER  
MISLEAD THE COURT AS TO THE FUNDAMENTAL  
THRESHOLD JURISDICTIONAL ISSUE**

11. Mr. Casella's recitation (at pp. 1-2) of "the history of the Court's action in this matter" further perpetuates the fraud by which he procured the jurisdictionally void and unlawful June 14, 1991 Suspension Order.

12. Mr. Casella's recitation should have begun no earlier than his May 8, 1990 Order to Show Cause--since there was, and is, no nexus between this Court's December 14, 1989 Order (his first reference at p. 1) and Mr. Casella's May 8, 1990 sua sponte motion, which invoked Rule 691.13(b)(1) for my suspension following a medical examination to determine incapacity. That rule has nothing to do with any pending disciplinary proceeding--unlike Rule 691.13(c) which Mr. Casella could not invoke because it was plainly inapplicable.

13. Mr. Casella does not dispute the fact that Rule 691.13(b)(1) does not require any "underlying disciplinary proceeding" since it is a new proceeding, independent of any proceeding theretofore commenced. Mr. Casella was, therefore, required to proceed in the mandated way to initiate a suspension proceeding by "petition", with personal service thereof under Judiciary Law §90(6)--with which requirements the record shows Mr. Casella did not comply.

14. Mr. Casella uses his improper chronology to confuse the Court into believing that the completely separate disciplinary proceedings, initiated pursuant to this Court's

December 14, 1989 Order, have some relevance and constitute an "underlying disciplinary proceeding" which, under Rule 691.13(c) would have served as a basis for his proceeding by ordinary motion.

15. It is to obliterate the critical distinction between Rule 691.13(b)(1) and Rule 691.13(c) that Mr. Casella excerpts a portion of this Court's October 18, 1990 Order into his Affidavit in Opposition--which he knows to be erroneous. Indeed, my moving Affidavit (p. 8, fn. 7) detailed one of the several extraordinary errors in this Court's October 18, 1990 Decision/Order, i.e., its statement that my cross-motion to dismiss was addressed to "the underlying disciplinary proceeding", when, in fact, it was addressed to Mr. Casella's May 8, 1990 Order to Show Cause<sup>5</sup>.

16. Examination of the record is dispositive as to the Court's error as to my cross-motion. Mr. Casella's knowing use of such error represents a deliberate attempt by him to confuse the two completely separate disciplinary proceedings so that the Court would compound the key error reflected in its October 18, 1990 Decision/Order. Such conduct by Mr. Casella constitutes a fraud upon this tribunal, unethical under DR 7-102,

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<sup>5</sup> Other errors in this Court's October 18, 1990 Decision/Order include the two references to my cross-motion as based, inter alia, on "lack of personal jurisdiction". Review of the record shows that I was personally served with the Petition in the separate and unrelated disciplinary proceeding, initiated by this Court's December 14, 1989 Order--which the October 18, 1990 Decision/Order further erroneously refers to as "dated December 6, 1989" (Exhibit "D" to my moving papers).

and further unethical under DR 7-103 as in violation of his duties as a public prosecutor.

**MR. CASELLA'S AFFIRMATION IN OPPOSITION  
EVIDENCES FURTHER PROSCRIBED AND SANCTIONABLE  
ETHICAL MISCONDUCT**

17. The record before this Court shows not only the merit of my objections to the procedures employed by Mr. Casella, but also the validity of my objections concerning his monstrous abuse of his prosecutorial power.

18. Mr. Casella's Affirmation in Opposition is an identical replay of the manner in which he procured the Orders of October 18, 1990 and June 14, 1991. Again, Mr. Casella falsifies, distorts, and conceals the material facts bearing upon the factual and legal basis for his proceeding and, in the face of my perfectly valid and legitimate objections--to which he has no sufficient answer--he dismisses them with conclusory allegations, not only unsupported by the evidence, but which he knows to be untrue.

19. As illustrative, in paragraph 8 (at p. 5) of his Affirmation in Opposition, Mr. Casella accuses me of being "intent on obstructing and delaying a disciplinary proceeding" relative to the Supplemental Petition--notwithstanding he concedes that by this Court's June 4, 1992 Order no motion or answer was due until June 18, 1992. Mr. Casella has full knowledge, through numerous personal conversations with me and applications made to this Court, that there is no substantiation whatever for his false and unfair accusation. He deliberately

ignores the perfectly logical and legitimate arguments I made in support of my stay application (at pp. 4-6 of my moving papers)--which he in no way refutes--substituting instead untrue statements and unwarranted conclusory aspersions for facts.

20. Mr. Casella's instant fraudulent and baseless representations replicate the fashion in which he accused me of "non-cooperation" with this Court's October 18, 1990 Order--on which baseless charge he secured the Suspension Order<sup>6</sup>.

21. The insubstantial and abusive manner in which Mr. Casella has seen fit to respond to my carefully detailed and documented instant motion papers warrants the full relief requested in my motion, including the disciplinary investigation into his conduct.

22. In that connection it is appropriate to incorporate herein my June 18, 1992 dismissal motion in the unrelated disciplinary proceeding. Although, as noted, there is no connection between those proceedings and the proceeding out of which the subject Suspension Order arose, the common thread in both is Mr. Casella's disregard for proper procedure, relevant law, and fundamental jurisdictional and constitutional principles.

23. It may be noted that Mr. Casella's sole defense to

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<sup>6</sup> Any objective review of the underlying papers shows that my January 28, 1991 Order to Show Cause should have been granted because (a) Mr. Casella's proceeding was legally and factually unfounded; and (b) Mr. Casella was engaging in manifestly frivolous and retaliatory tactics by bringing his motion to suspend.



the documentary evidence of his misconduct is that this Court denied relief to me in its Orders of June 12, 1991, June 14, 1991, and July 15, 1991<sup>7</sup>. Apart from the fact that those Orders contained no findings, the Legislature, by CPLR §5015(a)(3) and (4), recognized that fraudulently-obtained and jurisdictionally void orders do occur and that, given such compelling circumstances, redress is necessary and proper in order that justice be done. In the instant case, the record makes manifest that Mr. Casella was able, by reason of his enormous power as a public prosecutor, to mislead this Court and thereby work a horrendous injustice upon me by his inequitable conduct.

24. The Suspension Order sets forth no facts to support it. On a de novo review of the record, the only findings warranted by the facts before this Court would be as follows:

(a) the two suspension proceedings on which it rested

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<sup>7</sup> As Mr. Casella knows--although his para. 13 of his Affirmation in Opposition (p. 7) otherwise implies--the Court of Appeals did not decide the merits of the issues raised by my counsel when it denied the leave application. Nor did the Court of Appeals explain its reasons for denial of such leave application.

However, the incontrovertible fact is that the Court of Appeals thereafter granted Mr. Russakoff leave to appeal his interim Suspension Order and, in vacating same, rested its decision on grounds which are equally applicable to my case.

In that connection, although Mr. Casella's June 15, 1992 letter (Ex. "H-2" to my moving papers) makes the unsubstantiated claim that: "Russakoff involves a set of circumstances quite different than yours", Mr. Casella's Affirmation nowhere elucidates upon such differences. Indeed, as set forth in my moving Affidavit (at pp. 10-12), my case is a fortiori to Russakoff and more strongly compels vacatur.

were commenced by motion, not petition, as required by law<sup>8</sup>;

(b) I was not served personally, as required by Judiciary Law §90<sup>9</sup>;

(c) All material facts alleged by Mr. Casella were controverted by me<sup>10</sup>;

(d) There was no immediate threat to the public interest by any alleged professional misconduct, and no probable cause to support a finding that I was guilty of professional misconduct immediately threatening the public interest<sup>11</sup>;

(e) There was no hearing before or after the Suspension Order, a fact which has obtained for more than one year up to and including the present date<sup>12</sup>.

25. Under those documented circumstances--none of which are controverted by any specific facts set forth in Mr. Casella's Affirmation in Opposition--my instant vacate motion must be granted. Moreover, Mr. Casella's false accusation that my fully documented motion is "meritless" and urges sanctions highlights his intimidating tactics and abuse of his public office.

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<sup>8</sup> See, pp. 7, 9 of my moving Affidavit. Also, footnotes 6, 12.

<sup>9</sup> See, pp. 7-9 of my moving Affidavit, including footnotes 8 and 9.

<sup>10</sup> See, pp. 10-11 of my moving Affidavit, including footnote 11.

<sup>11</sup> See, p. 10 of my moving Affidavit, including footnote 10.

<sup>12</sup> See, p. 3 of my moving Affidavit.

26. Mr. Casella's argument that his March 6, 1992 letter (Exhibit "G" to my moving papers) "is no impediment to proceeding" (at pp. 4-5) further substantiates that he does not regard his mandate as deriving from the committee action required by this Court's rules. As Chief Counsel to Petitioner, Mr. Casella should be challenging this Court's subversion of the integrity of the rules which separate the prosecutorial function from the adjudicatory function in disciplinary proceedings. Instead, Mr. Casella would have this Court eradicate the constitutionally-mandated separation of powers by an interpretation of Judiciary Law § 90(2) which would vitiate the function and purpose of the Grievance Committee, turning it into a puppet of this Court. Such position--if that is Mr. Casella's true view, rather than an opportunistic after-the-fact justification of his failure to produce documentation showing proper authorization by Petitioner--furnishes yet another reason why he is unfit to be its Chief Counsel.

VACATUR IS FURTHER REQUIRED BY THE DONDI CASE

27. Mr. Casella fails to deny or dispute my factual allegations that he unlawfully obtained and used the transcript of Dr. Cherbuliez' testimony, itself obtained in violation of my doctor-patient privilege protected under CPLR rights of confidentiality. Such testimony was the sole basis of the October 18, 1990 Order directing me to be examined as to my mental capacity. Mr. Casella likewise fails to dispute or distinguish the principles of law enunciated by the Court of

Appeals in In Re Dondi, 63 N.Y.2d 331 (1984), cited at page 13 of my moving papers. He thereby tacitly admits the applicability thereof and the validity of my arguments.

WHEREFORE, it is respectfully prayed that the instant motion be granted in all respects, including the immediate vacatur ab initio of my interim Suspension Order dated June 14, 1992 and a disciplinary investigation of my well-documented complaints concerning Petitioner's Chief Counsel, Gary Casella, Esq.

  
DORIS L. SASSOWER

Sworn to before me this  
22nd 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