

DORIS L. SASSOWER

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By Fax and Mail  
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June 30, 1992

Appellate Division, Second Dept.  
45 Monroe Place  
Brooklyn, New York 11201

Att: Donna Sosna, Principal Law Assistant

RE: 6/16/92 OSC--June 22, 1992 Calendar  
Docket #90-00315

Dear Ms. Sosna:

Pursuant to telephone authorization, this letter responds to Mr. Casella's untimely, improper, and irrelevant June 26, 1992 Affirmation, styled by him as an "Affirmation in Further Opposition".

UNTIMELY:

Such supplemental affirmation as Mr. Casella has now served is untimely. 2 Carmody-Wait 2d, §8:53, at p. 80, citing Wilcox v. Howland, 6 Cow. 576. Papers served after the return date are properly rejected. Dominski v. Firestone Tire & Rubber Co., 92 A.D.2d 704 (3d Dept. 1983).

IMPROPER IN FORM:

Mr. Casella's June 26, 1992 Affirmation should also be rejected because it is improper in form. Although in the nature of a surreply, it is non-responsive to my Reply Affidavit and includes wholly new matter which, in any case, is irrelevant to both my Reply and Supporting Affidavits.

Additionally, the highly unprofessional tone and content of Mr. Casella's Affirmation--containing palpably improper and objectionable material--should likewise cause its rejection by this Court. As an experienced litigator and Chief Counsel to the Grievance Committee of the Ninth Judicial District, Mr. Casella can be presumed to know elementary rules of practice, one of the most basic being that "affidavits used in support of a motion must allege "evidentiary facts" in support thereof. 2 Carmody-Wait 2d, id. at p. 79. Ad hominem attacks and unsubstantiated remarks of an inflammatory nature designed to prejudice the Court violate the rules governing affidavits, op cit., Ch. 4.

EX "I"

Derogatory comments such as: "poison pen" and "using every trick in her bag" clearly come within the meaning of "offensive tactics", condemned as unethical under the Code of Professional Responsibility, DR 7-101 (See also, EC 7-37). Such venomous comments are even more reprehensible for a lawyer cloaked with the prestige and power of a public prosecutor.

Mr. Casella's unabashed immoderate language demonstrates his personal animus against me--heretofore documented in underlying papers. It further supports my request for Mr. Casella's disqualification for actual and apparent bias.

IMPROPER IN SUBSTANCE:

Mr. Casella's instant Affirmation does not address my legal entitlement to the requested relief of vacatur of the interim Suspension Order. As detailed in my moving and reply papers, the Russakoff case is dispositive that vacatur must be granted.

Mr. Casella does not dispute the pivotal facts requiring vacatur:

- (1) all material allegations were controverted by me;
- (2) I was denied a pre-suspension hearing; and
- (3) no emergency circumstances threatening the public interest were shown, warranting denial of a pre-suspension hearing.

This is quite apart from the vacatur required by this Court's failure to make necessary findings to support its interim Suspension Order--a vacatur dictated by the Court of Appeals' ruling in Russakoff.

The fact that I have been denied a post-suspension hearing as to the issue of my alleged "non-cooperation"--the purported basis upon which I was suspended--only accentuates the egregious injustice perpetrated by Mr. Casella, knowingly, deliberately and maliciously.

It is uncontroverted that at no time during the more than one year from the June 14, 1991 date of my suspension until the present was any hearing scheduled as to such charge or as to the disputed allegations underlying the October 18, 1990 Order directing me to be mentally examined.

UNETHICAL IN PRESENTATION

It is precisely because Mr. Casella knows that he never made any attempt to schedule a post-suspension hearing that he introduces the totally irrelevant letter dated April 15, 1992 sent by me to Presiding Justice Guy Mangano.

Examination of my letter plainly shows that its focus was the "dormant disciplinary proceedings" which this Court's April 1, 1992 Decision/Order directed go forward--based on charges made in the original Petition, as well as those to be made in a Supplemental Petition which that Order authorized. My letter has absolutely nothing to do with the June 14, 1991 Suspension Order--except to the extent that I pointed out that pursuant thereto I was not practicing law and that, therefore, there was no prejudice by the requested deferment of the proceedings to be held with respect to the Petition and Supplemental Petition.

My aforesaid April 15, 1992 letter made no claim as to any mental incapacity on my part. As a reading of the letter makes evident, the "circumstances" to which I referred--in the paragraph Mr. Casella has excised from its context--were the severe time constraints I was under by virtue of litigation pending in the Appellate Division and my need for the discovery of essential documents so that I could "move with respect to the Petition".

This distortion and mischaracterization by Mr. Casella is the latest example of the outright fraud of Mr. Casella's style of presentation. It was such tactics--comprehensively documented by me in my underlying papers--that enabled Mr. Casella, a totally unscrupulous practitioner, to procure the Suspension Order against me.

MR. CASELLA'S INSTANT AFFIRMATION FURTHER SUPPORTS VACATUR OF THE INTERIM SUSPENSION ORDER--AS WELL AS THE NEED FOR DISCIPLINARY INVESTIGATION AND ACTION AGAINST HIM:

Mr. Casella's dishonest presentation, coupled with his manifest disregard for established rules of law and practice, underscore the further ground upon which I have sought vacatur: his fraud, misrepresentation and other misconduct. This Court cannot ignore the fact--documented again by his instant Affirmation--that Mr. Casella continues a pattern of misbehavior impermissible for a lawyer--let alone for a public prosecutor.

Donna Sosna, Esq.

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CONCLUSION:

Mr. Casella's June 26, 1992 "Affirmation in Further Opposition" should be considered as demonstrative evidence of my right to the relief requested in my Order to Show Cause for vacatur on the ground of Mr. Casella's misconduct (p. 2, ¶3) and for a disciplinary investigation into Mr. Casella's conduct as Petitioner's Chief Counsel (p. 2, ¶4).

Most respectfully,

  
DORIS L. SASSOWER

DLS/er

cc: Gary Casella, Esq.