COURT OF APPEALS: STATE OF NEW YORK
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In the Matter of Doris L. Sassower,
An Attorney and Counselor-at-Law,

GRIEVANCE COMMITTEE FOR THE NINTH
JUDICIAL DISTRICT,

Affidavit in Support of Jurisdiction for Appeal as of Right

Petitioner-Appellee,

DORIS L. SASSOWER, A.D. #90-00315

Respondent-Appellant.
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STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

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

1. This response to the jurisdictional inquiry of this Court is set forth in affidavit form to attest that all facts asserted herein relative to the above matter are true and correct and of my personal knowledge.

2. Since there were no factual findings by the Appellate Division, Second Department, all issues raised on this appeal are matters of law. This will be shown by the discussion herein of the applicable legal principles in support of this Court's jurisdiction to entertain my appeal as of right from the July 31, 1992 Order of the Appellate Division (Ex. "A") because of the substantial constitutional questions directly involved and the irreparable injury flowing therefrom[1].

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[1] The Court is asked to take judicial notice of the irreparable injury resulting when a lawyer is stigmatized by a suspension of the license to practice law, albeit the suspension is characterized as an "interim" one. Such injury fully meets the test of finality, which is "...whether irreparable injury is

The subject order, inter alia, denied my motion to vacate (Ex. "B") the Appellate Division's June 14, 1991 summary order (Ex. "C-1"), which suspended me, without findings, immediately, indefinitely, and unconditionally from the practice of law[2].

3. Pursuant to Article VI, §3(b)(1) of the New York State Constitution, CPLR §5601(b), as well as §90(8) of the Judiciary Law, this Court has jurisdiction to review as an appeal of right a patently unconstitutional suspension order. Nothing in Judiciary Law §90, conferring power on the Appellate Division to govern the conduct of attorneys, purports to diminish that right. In re Robinson, 209 N.Y. 354, 103 N.E. 160 (1913). Nor could the Legislature constitutionally abolish an appeal as of

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done if the decision is wrong." Cohen & Karger, The Powers of the Court of Appeals, §9, at p. 32 (1952 ed.) Moreover, the Appellate Division's failure to direct a post-suspension dispositional hearing in its July 31, 1992 order (Ex. "A") shows that the Appellate Division itself, as well as the Grievance Committee, viewed the June 14, 1991 suspension order as "final" in the jurisdictional sense, requiring no further action on the Court's part.

[2] A separate and independent ground for my appeal as of right is the Appellate Division's summary denial of that branch of my motion which sought disciplinary investigation into the prosecutorial misconduct of Appellee's Chief Counsel based on unrefuted evidence of his misconduct in bringing about a constitutionally void and factually baseless suspension (Ex. "B", pp. 12-18; Ex. "H", pp. 8-9 (para 23). Such denial--without findings (Ex. "C-2")--raises a constitutional question of equal protection of the law by affording special treatment providing exemption from accountability for Grievance Committee lawyers who violate ethical rules, as against lawyers not so employed.

right where a constitutional question is involved[3].

4. At issue here is not the normal attorney disciplinary proceeding where a suspension or disbarment order represents the culmination of due process plenary hearings and other procedural safeguards. Such procedural safeguards, inter alia, require preliminary investigation and a hearing by a subcommittee of the Grievance Committee[4]. The Petition then authorized by the Court must set forth written charges, to be served personally upon the accused attorney, in accordance with Judiciary Law §90(6). If controverted, the accused attorney is entitled to an evidentiary hearing--which would be a second hearing, the first hearing having been before the Grievance Committee subcommittee. Such second hearing is before a court-appointed Referee--whose report and recommendations form the basis for review and determination by the Appellate Division.

The Appellate Division thus functions as the appellate reviewing body. In the usual case, any subsequent Court of Appeals' review constitutes a second review of a determination

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[3] The right to review the decision in a matter affecting substantial rights must be deemed to exist unless the intent to destroy it is expressed with great clarity. In re Brady, 69 N.Y. 215 (1899).

[4] The only exception to the hearing requirement is in cases brought under 22 NYCRR §691.4(e)(5) where "the public interest demands prompt action and...the available facts show probable cause for such action". Pursuant to such section, a vote of the full committee of the Grievance Committee must be taken to recommend to the Court commencement of a disciplinary proceeding without a prior subcommittee hearing. At no time did Mr. Casella claim to be proceeding under the exception provided by the aforesaid rule nor was there ever a finding to that effect.

that is the product of two separate prior hearings. This justifies the requirement that leave be first sought for any appeal to the Court of Appeals, absent involvement of constitutional issues.

5. In the instant case, none of the foregoing due process safeguards were followed--either prior to the initial application for a medical examination of me or prior to the later application for suspension of my license for alleged "non-cooperation" with the Appellate Division Order directing such examination. Each of those applications--seeking my suspension as the ultimate relief--was made by ordinary motion on the part of the Grievance Committee, rather than the required formal petition[5]. Each was brought on, sua sponte, by Mr. Casella, as Chief Counsel for the Grievance Committee, without any prior investigative inquiry of me, with no prior hearing before a subcommittee of the Grievance Committee, and without any allegation by Mr. Casella that the initiation of such emergency suspension procedures had been authorized by the required "majority vote of the full committee". Such omissions were all contrary to the express provisions of §691.4(e) of the Rules of the Appellate Division, Second Department, and of the explicit language of §691.13(b)(1)--the rule under which Mr. Casella was expressly proceeding in seeking to have me medically examined (Ex. "D").

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[5] See, Ex. "B", p. 1 (fn. 1), p. 7 (fn. 6); Ex. "H", p. 1 (fn. 1), p. 5 (paras. 13-14)

Likewise, although each motion was sharply contested by me, the Appellate Division failed to direct that the disputed issues be set down for an evidentiary hearing. Instead, that Court summarily granted the relief sought by the Grievance Committee on each motion and summarily denied the constitutional objections raised by my opposing motions to dismiss--without reasons, explanation, or findings in either order (Ex. "C-1", Ex. "C-2" and Ex. "D").

6. Thus, in the case at bar, the Appellate Division did not act as an appellate reviewing body and did not review any prior "adjudications"--since there were none. For this reason alone, the instant appeal lies as of right:

(a) to review the constitutionality of the Appellate Division's unwarranted and unexplained abrogation of Judiciary Law §90(6), as well as of 22 NYCRR §691.4 et seq., which codifies the administrative procedure governing summary disciplinary proceedings in the Second Department;

(b) to provide the only appellate review where the Appellate Division has acted as the court of first instance[6],

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6 "The theory of New York practice is that there may be at least one appellate review of the facts." Seigel, Commentary to CPLR 5501 (b), at p.28. Thus, although the Court of Appeals "can as a rule review only questions of law", "where the Appellate Division finds new facts and renders a final judgment on the new findings, the only court in which a review of the new findings can be made is the Court of Appeals", id. In the case at bar, the failure of any adjudicative body to make factual findings prior to the interim suspension--a per se denial of due process--raises clear constitutional questions of law, entitling Appellant to a non-discretionary right of appeal.

(rather than as a reviewing body with respect to an adjudication and recommendation by an impartial Referee, following a fact-finding hearing, based on an initial determination by the Grievance Committee, itself following a fact-finding hearing) and where it has failed to follow clear, recent controlling precedent.

Under such circumstances, to deny appeal as of right would deprive attorneys such as myself the appellate review which is the Appellate Division's proper function. Such position is contrary to well-settled legal principles[7] and would deny equal protection to attorneys who are the subject of the Appellate Division's plainly improper "short-cut" procedures and permit abuse of power without assured accountability by a right to appellate review.

7. In the instant case, although my suspension by the Appellate Division, Second Department, on June 14, 1991 (Ex. "C-1") was purportedly an "interim" one, nearly a year and a half has now elapsed--without a post-suspension hearing or review by any court, acting in an appellate capacity or otherwise. Thus, the decisive questions involved are of constitutional magnitude, controlled by unequivocal decisional law of this Court and the

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[7] 4 N.Y.Jur.2d §388, citing Handy v. Butler, 183 A.D. 359, 169 N.Y.S. 770 (1918): "The legislature has uniformly recognized the right of suitors to one appeal."; See also, 4 N.Y. Jur.2d §2, at 56, citing Haydorn v. Carroll, 184 A.D. 151, 171 N.Y.S. 601, app. dismd. (1918) 225 N.Y. 84, 121 N.E. 463 (1918): "It is the general policy of the legislature to grant liberally the right to appeal where the merits of a cause are involved, and the courts, likewise, favor the right of appeal." (emphasis added)

U.S. Supreme Court. As hereinafter shown, such controlling law has simply been ignored or deliberately disregarded by the Appellate Division, Second Department.

8. My motion to vacate (Ex. "B") was expressly based, inter alia, on this Court's recent decision in Matter of Russakoff, 72 N.Y.2d 520, 583 N.Y.S. 949, 593 N.E. 2d 1357 (1992). In Russakoff, this Court, reaffirming Matter of Padilla, 67 N.Y.2d 440, 503 N.Y.S.2d 550, 494 N.E.2d 1050 (1986), vacated an interim suspension order. Like my own suspension order (Ex. "C-1"), the Russakoff order was made without factual findings and without direction for a prompt post-suspension dispositional hearing. This Court vacated the Russakoff interim suspension order, favorably citing Barry v. Barchi, 443 U.S. 55, 66-68, 19 S.Ct. 2642, 2650-51, 61 L.Ed 2d 365 (1979), 66-681 (1978) and Gershenfeld v. Justices of Supreme Ct., 641 F. Supp. 1419, E.D. Pa. (1989), which held such allegedly interim suspension orders to be violative of the 14th Amendment of the United States Constitution and of the Constitution of the State of New York, Article 1, §6.

9. My motion to vacate contended that Russakoff was dispositive of my entitlement to vacatur, as a matter of law. In raising both the due process and equal protection arguments (Ex. "B", pp. 6-12), I argued that my case was a fortiori to Russakoff in that the following facts in my case were undenied below by the Grievance Committee:

(a) There was no hearing before the Grievance

Committee or before any Referee appointed by the Appellate Division or before any tribunal prior to entry of the June 14, 1991 suspension order (Ex. "C-1"). Nor was any hearing ever offered me. By contrast, Mr. Russakoff had refused to attend a directed hearing before the Grievance Committee.

(b) All material factual allegations as to my alleged "non-cooperation"--including those bearing on jurisdiction[8]--were specifically controverted by me, and my specific denials were fully documented in my written submissions in opposition and in support of my motions to dismiss Mr. Casella's motions to suspend me both for alleged mental incapacity, as well as for my alleged "non-cooperation" with the Order he procured for my medical examination. By contrast, Mr. Russakoff submitted an affirmation in which he made only general denials of the charges of misconduct alleged and declined to answer any specific questions concerning the material allegations of misconduct, as to which he asserted his privilege against self-incrimination. Even so, this Court stated that Mr. Russakoff's general denials refuted the Committee's claim that the charges of misconduct were completely "uncontroverted".

(c) No moral turpitude was claimed in connection with

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[8] Unlike the case in Russakoff, I raised jurisdictional objections since the application for my interim suspension rested on a motion only--not an underlying formal petition. Moreover, it was undenied that I was never served with "a copy of the charges" on which the suspension was based or ever served personally therewith (Ex. "B", pp. 7-9). Judiciary Law §90(6) explicitly requires compliance with both those prerequisites "before an attorney can be suspended".

the motion for my suspension for alleged "non-cooperation", resulting in the June 14, 1991 suspension order (Ex. "C-1")--in contrast to Mr. Russakoff, who was accused of mishandling client and estate accounts by his unexplained withdrawal of escrow funds--substantiated by unrebutted documentary evidence of his bank statements and other evidence that the Committee had inspected following submission of his aforesaid affirmation.

(d) No immediate danger to the public interest was "clearly established" below by admissions or uncontroverted proof--since there were no admissions by me or any uncontroverted proof by the Grievance Committee of either "immediate danger to the public" or "probable cause" to believe such was the case[9]. In Russakoff, this Court, applying Padilla, recognized that, absent admissions or uncontroverted proof of facts showing such immediate danger and probable cause, an interim suspension order without findings must be reversed, where the normal pre-suspension hearing requirement has not been adhered to.

(e) There was no time limitation specified in the June 14, 1991 order as to the duration of my suspension (Ex. "C-1")--in contrast to Mr. Russakoff's suspension which was limited in duration at least by the disposition of the pending proceedings against him, although no time for such disposition

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[9] The Appellate Division's suspension order (Ex. "C-1") made no predicate finding of a "public interest" need for my suspension without prior due process rights, 22 NYCRR §691.4(l)(1)--clearly defying the controlling holding in Matter of Padilla, supra. (see Ex. "B", pp. 9-10 (paras. 14-6); Ex. "H", p. 3 (para. 8))

was stated.

(f) There was no post-suspension dispositional hearing in my case, let alone a prompt one. Even in Russakoff, where this Court chose not to reach the issue of whether the failure to require a prompt post-suspension hearing rendered the suspension order unconstitutional, this Court articulated the need for corrective action by the Appellate Division to eliminate the possibility of an indefinite interim suspension. In denying my vacate motion, the Appellate Division ignored this Court's clear intentions on the subject.

10. Russakoff establishes my entitlement to appeal in this Court both by (a) its express requirement of findings to support an interim suspension order; and (2) its implicit ruling that an interim suspension order without an expeditious post-suspension dispositional hearing is constitutionally infirm:

> "...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(l), 801.4(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)". (emphasis added)

11. Examination of the aforesaid two cases, cited by this Court in Russakoff, shows the far-reaching constitutional dimensions of interim suspensions of persons in licensed

occupations. In Barchi, supra, a case construing a New York statute relating to harness racehorse trainers, the U.S. Supreme Court ruled unconstitutional a statutory provision permitting interim suspension of a license without provision for a reasonably prompt post-suspension dispositional hearing. In Gershenfeld, supra, the federal district court in Pennsylvania interpreted Barchi as similarly applicable to attorney suspensions, recognizing that a license to practice law is a property right similarly protected by due process[10]. Thus, when this Court in Russakoff favorably cited those two cases in calling for corrective action by the Appellate Division, it did so with the reasonable expectation that the Appellate Division would implement what had become a constitutional mandate.

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[10] In Barchi, supra, the U.S. Supreme Court held a licensing statute unconstitutional where, although it required a post-suspension hearing, it provided no time in which the hearing was to be held and allowed "as long as thirty days after the conclusion of the hearing in which to issue a final order adjudicating a case". The failure to assure the licensee a prompt final disposition of the charges was an acknowledgement that "the consequences of even a temporary suspension can be severe", and that "...the opportunity to be heard must be 'at a meaningful time and in a meaningful manner', Barchi, supra, 443 U.S. at 66, 99 S.Ct. at 2650. Gershenfeld likewise emphasized that the risk of irreparable injury, the need for business continuity, and the possibility of erroneous deprivation are so great that even in cases where the need for emergency action is uncontroverted, suspension of a constitutionally-protected right to work--be it in the practice of law or other licensed occupation--constitutes impairment of a valuable property right, which cannot be sustained, if 'meaningful' opportunity for post-deprivation hearing is not afforded. "The guarantee of a prompt dispositional post-deprivation hearing, however, is a critical factor in determining the constitutional validity of the previously invoked interim or temporary deprivation processes", id., at 1424, citing numerous U.S. Supreme court cases for the proposition that a prompt post-suspension dispositional hearing is a constitutional requirement.

12. Nevertheless, in the face of Russakoff, the Appellate Division, Second Department, not only failed, in the abstract, to take the indicated "corrective action" to remedy its non-compliance with such mandate--but affirmatively denied me the relief I am entitled to thereunder and further perpetuated an unconstitutional suspension order. Such defiance of this Court's intentions and of the law of the land is further ground for my appeal as of right. Indeed, by the Appellate Division's unexplained peremptory denial of my vacate motion, it has now made the constitutional issue of indefinite "hearing-less" suspensions a matter requiring the "corrective action" of the Court of Appeals itself.

13. Expedited review by this Court is imperative also because the Appellate Division has failed to rectify, by sua sponte vacatur, the interim suspension orders of similarly situated attorneys and to afford immediate post-suspension hearings in all such cases. Annexed hereto as Ex. "E" is a letter from the Clerk of the Appellate Division, Second Department, which was an exhibit in the Russakoff brief to this Court, setting forth the names of those attorneys subject to interim suspension orders[11]. As I confirmed yesterday by conversation with Robert Rosenthal, the Clerk assigned to disciplinary proceedings by the Appellate Division, Second

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[11] The letter, dated January 27, 1992, from Martin Brownstein, Clerk of the Appellate Division, Second Department, lists the names of 31 attorneys in the Second Department "temporarily suspended". In fact, such list is not complete--as shown by Mr. Brownstein's May 12, 1992 letter to me (Ex. "F").

Department (Ex. "G"), the Court has taken no action to implement the Russakoff decision with respect to such affected attorneys, myself included. Nor has it notified the affected attorneys of their rights under the Russakoff decision. The position taken by the Court is that each case will depend on whether or not the individual attorney takes any action to seek vacatur based thereon[12].

14. Yet, what my case graphically shows is that even when an affected attorney moves for vacatur, with the clear constitutional right thereto based on Russakoff, the Appellate Division, Second Department, summarily denies same--again without reasons.

15. This case thus presents the Court of Appeals with the opportunity to demonstrate to the bar at large that not only do lawyers have obligations as officers of the Court, but that the Judiciary, likewise, has affirmative obligations to individual members of the bar who have been unjustly deprived of their constitutional rights.

16. Mr. Casella's September 16, 1992 letter-response to this Court wholly ignores Russakoff and the important constitutional principles at stake. Instead, Mr. Casella refers this Court to his two affirmations, dated June 18, 1992 and June 26, 1992, which he submitted to the Appellate Division,

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[12] Since this is the position obtaining in the Appellate Division, Second Department, where Russakoff originated, the First, Third, and Fourth Departments--with presumably comparable numbers of similarly-situated lawyers--may likewise be ignoring their obligations to initiate sua sponte corrective action.

resulting in the July 31, 1992 Order herein appealed from (Ex. "A"). Such affirmations provided no analysis at all and made no attempt to distinguish the controlling law.

17. Since Mr. Casella has seen fit to rely on his irrelevant, stale, and bad-faith affirmations, this Court should have before it my replies in the Appellate Division to those affirmations. Such replies are incorporated herein by reference to avoid needless duplication of the facts set forth therein and are annexed hereto as Ex. "H" and Ex. "I".

Tellingly, Mr. Casella omits any reference to my replies to his prior affirmations--as full candor to this Court should have dictated. Those replies detail a pattern of fraud, deception and dishonesty, including outright lies to the Court.

18. My aforesaid replies (Ex. "H" and Ex. "I") establish that conclusory statements by Mr. Casella as to purported compliance with the requirements of Russakoff are completely false[13]--as shown by the dispositive document, the June 14, 1991 suspension order (Ex. "C-1"). On its face, that order shows there were no factual findings made by the Appellate Division--in direct contravention of Russakoff.

19. Mr. Casella fails to address Points I, II, and III of my Jurisdictional Statement as to my entitlement to an appeal as of right--and effectively concedes my position, inter alia, (a) that there was never a pre-or post-suspension hearing afforded me by the Appellate Division or by the Grievance

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[13] See, Ex. "H", pp. 2-4.

Committee or any subcommittee thereof; (b) that all material facts, including those central to the Court's disciplinary jurisdiction, were sharply disputed by me--necessitating an evidentiary hearing before any findings could be made[14].

20. Mr. Casella has thus tacitly conceded all of the predicate facts supporting my position that I was deprived of fundamental constitutional rights. Under CPLR §5601(b)(1):

> "...where the decisive question is whether a judgment is the result of due process, an appeal lies to the Court of Appeals as a matter of right...". 4 N.Y.Jur.2d §63, citing Valz v. Sheepshead Bay Bungalow Corp., 249 N.Y. 122 (1928), 163 N.E.124, cert. den., 278 U.S. 647, 49 S.Ct. 82, 73 L.Ed.560(1928).

21. The denial of my constitutional right to confront the witnesses against me, as well as to be heard in my own defense regarding the facts giving rise to the initial suspension--and its continuation for almost a year and a half, without a post-suspension dispositional hearing--represent an on-going denial of my due process rights--presenting substantial federal and state constitutional questions to be decided as matters of law. This is precisely what this Court's jurisdiction was designed for. Cooper v. Morin, 49 N.Y.2d 69, 424 N.Y.S.2d 168, 399 N.E.2d 1188 (1979), cert. den. 446 U.S. 984, 100 S.Ct. 2965, 64 L.Ed. 2d 840 (1980).

22. Mr. Casella argues that this Court's September 10, 1991 denial of the motion for leave to appeal to the Court of

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[14] See also, Ex. "H", pp. 3-4; Ex. "I", p. 2

Appeals[15], filed by my counsel immediately after the June 14, 1991 suspension order (Ex. "C-1"), precludes this appeal as of right. It must be noted that Russakoff had not been decided at the time my counsel made the leave application on my behalf. Nor was it known then that for nearly a year and a half thereafter, I would be denied a post-suspension dispositional hearing as to my alleged medical incapacity and "non-cooperation" (with no hearing in sight even now as to those issues).

Mr. Casella surely knows that a decision denying a leave application based on the failure to afford me a pre-suspension hearing is not res judicata of an appeal from the denial of a motion to vacate a suspension order based on the failure to hold any post-suspension dispositional hearing thereafter, let alone an expeditious one.

23. Since this Court did not state any reason in its September 1991 decision/order for its denial of my attorney's motion for leave to appeal my interim suspension order, such denial may well have been due to the fact that I was entitled to an appeal as of right:

> "Where an appeal lies to the Court of Appeals as of right, neither that court nor the Appellate Division has authority to grant permission to appeal, and a motion for permission in this situation will either be dismissed or denied." 4 N.Y. Jur. 2d §74, at 140.

24. Moreover, as Chief Counsel for the Grievance

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[15] This Court is asked to take judicial notice of my papers filed with the Court of Appeals in connection with the application for leave to appeal, dated July 19, 1991.

Committee, Mr. Casella is chargeable with the knowledge that denial of leave to appeal by the Court of Appeals is without precedential value. Mountain View Coach Lines, Inc. v. Storms, 102 A.D.2d 663, 476 N.Y.S.918 (1984).

25. My suspension by the Appellate Division was based on Mr. Casella's insupportable contention, unashamedly reiterated in his letter-response, of my alleged "blatant and flagrant failure to comply" with the Appellate Division's October 18, 1990 order (Ex. "D") directing my medical examination.

Not only is Mr. Casella's knowingly false contention not supported by the record and completely bogus[16], but, as in any disciplinary proceeding, a hearing was required to determine the issue of "wilfulness"--which issue was vigorously contested by me[17]. As in the case of contemptuous conduct, only after a plenary hearing can such issue be properly adjudicated. Bloom v. Illinois, 391 U.S. 194 (1968).

Mr. Casella knows that "non-cooperation" which is (i) not a wilful contempt (ii) of a lawful order could not

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16 See, Ex. "B", pp. 11 (para. 18), 15-17; Ex. "H", pp. 8-9

17 In the most mundane matters where only monetary interests are affected, the Appellate Division, Second Department, has had no problem in recognizing the right to an evidentiary hearing where material issues of fact are in dispute. See, for example, Mandell v. Black-Hoffman Co., Inc., 92 AD.2d 885, 460 N.Y.S.2d 94 (2nd Dept. 1983), where the Appellate Division reversed Special Term's denial of a motion to vacate a default judgment on the issue of liability for personal injuries for failure to direct a hearing as to whether defense counsel had orally acceded to an extension request.

constitutionally be made the subject of discipline[18]. He thus cloaks his false accusation with highly-charged adjectives like "blatant" and "flagrant", rather than concrete facts substantiating his bald accusations. No such concrete facts exist--and Mr. Casella presents none to this Court, anymore than he did to the Appellate Division[19].

26. The suspect nature of the disciplinary proceedings from the outset, including the failure of the Grievance Committee, its counsel and the Appellate Division, to follow controlling law of this Court (Matter of Russakoff, supra, 79 N.Y.2d 520, 583 N.Y.S. 2d 949 (1992); Matter of Padilla, supra, and of the U.S. Supreme Court, as well as their published rules and regulations, raise questions of equal protection, as well as due process. The record below raised the issue that I was being made the subject of invidious and discriminatory prosecution and that my suspension was pretextual, calculated to conceal and

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[18] §691.4(l)(1), of the Rules of the Appellate Division, Second Department, expressly require that the finding of misconduct based on non-cooperation rest "upon the attorney's failure to comply with any lawful demand of this court or the grievance committee." (emphasis added). It is thereby made clear that a lawyer is not bound to obey an unlawful command, any more than an officer or soldier, who does so at his own risk and cost. United States v. Barreme, 2 Cranch [U.S.], 170; United States v. Carr, 1 Wood [U.S.] 480; Matter of Mulligan, 4 Wall. 120. Thus, where the command in question is challenged as unlawful, as in the case at bar, the court must make a finding, based on proof of the evidentiary facts in issue, that the demand made was lawful in all respects. Governmental disregard for basic principles of jurisdiction and rules of law is precisely what the Bill of Rights is all about--the failure to respect which by the Court below makes the instant case reviewable as of right by the Court of Appeals.

[19] See, Ex. "H", p. 8 (paras. 21 and 23)

cover-up the true and unconstitutional retaliatory intent thereof (cf. South Dakota v. Opperman, 428 U.S. 364 (1976).

27. The issue of invidious selectivity, in violation of my constitutional right of equal protection, U.S. Constitution, Amendment XIV; N.Y. State Constitution, Article 1, §11; Middlesex County Bar v. Garden State Bar, 457 U.S. 423 (1982), raised by me in connection with proceedings against me in the Appellate Division, Second Department, required at least a threshold judicial determination after a due process evidentiary hearing, People v. Utica Daw's Drug, 16 A.D.2d 12, 225 N.Y.S.128 (4th Dept. 1962). Nonetheless, the Appellate Division refused to examine those issues[20] and summarily denied my motion to vacate my interim suspension, stating no reasons (Ex. "A").

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[20] See, Ex. "B", pp. 17-18

CONCLUSION

THE ORDER APPEALED FROM IS REVIEWABLE AS OF RIGHT

The July 31, 1992 Order appealed from (Ex. "A), denying my motion to vacate the June 14, 1991 interim suspension Order (Ex. "C-1"), rendered without findings, without reasons, without a pre-suspension hearing before the Court or before the Grievance Committee, and without a post-suspension dispositional hearing for nearly a year and a half--a per se violation of Federal and State constitutional guarantees, Barry v. Barchi, supra--is reviewable by this Court as a matter of right.

Doris L. Sassower

DORIS L. SASSOWER
Appellant Pro Se

Sworn to before me this
14th day of October 1992

Notary Public

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

EXHIBITS

Exhibits which are already in your possession are indicated by an astrisk.

*Ex. "A"	July 31, 1992 order of the Appellate Division
*Ex. "B"	Motion to Vacate, OSC signed June 16, 1992
*Ex. "C-1"	June 14, 1991 order of the Appellate Division
*Ex. "C-2"	June 12, 1991 order of the Appellate Division
*Ex. "D"	October 18, 1990 order of the Appellate Division
Ex. "E"	Exhibit "3" to Russakoff Brief: January 27, 1992 letter from Martin Brownstein, Clerk of Appellate Division, 2nd Dept.
Ex. "F"	May 12, 1992 letter from Martin Brownstein to DLS
Ex. "G"	October 13, 1992 letter from DLS to Robert Rosenthal, Appellate Division, 2nd Dept.
*Ex. "H"	June 22, 1992 Affidavit in Reply and in Further Support of Motion to Vacate Suspension Order and Other Relief
*Ex. "I"	June 30, 1992 letter of DLS to Appellate Division in opposition to June 26, 1992 Affirmation of Gary Casella, Esq.

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COURT OF APPEALS: STATE OF NEW YORK

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

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,

Petitioner-Appellee,

DORIS L. SASSOWER,

Respondent-Appellant.

AFFIDAVIT IN SUPPORT OF JURISDICTION FOR APPEAL AS OF RIGHT

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

DORIS L. SASSOWER, [redacted]
[redacted] Appellant Pro Se
Office and Post Office Address, Telephone
[redacted]

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 of which the within is a true copy will be presented for
settlement to the HON. one of the judges
of the within named court, at
on 19 at M.

Dated,

Yours, etc.

New Address:
283 Soundview Avenue
White Plains, N.Y. 10606

DORIS L. SASSOWER, [redacted]
[redacted] Appellant Pro Se

To