

2. Respondents' Motion Disregards The Petition's Allegations and Evidentiary Showing That The Jurisdictional Objections Cannot Be Adequately Addressed Other Than By this 78 Proceeding

53. Mr. Sullivan's Affidavit makes the totally unsupported statement that:

"...petitioner's jurisdictional objection to her disciplinary proceeding can adequately be addressed by respondent Special Referee in the first instance, and by this Court on a subsequent motion to confirm the Special Referee's report or on appeal." (at para. 11)

54. The record directly contradicts such statement--as Mr. Sullivan would know had he procured the April 8, 1993 transcript (Ex. "C"), which my verified Petition specifically stated would establish that the Respondent Referee was refusing to perform his adjudicative duty. As set forth therein in my paragraph "ELEVENTH":

"In a telephone conference on April 8, 1993,...Respondent Galfunt refused to entertain Petitioner's...jurisdictional objections and stated he would proceed to adjudicate the February 6, 1990 Petition...Said telephone conference was stenographically recorded and the Attorney General should supply a certified copy thereof on or before the return date of the Order to Show Cause bringing on this Petition pursuant to CPLR §7804."

55. In the face of such allegation, Mr. Sullivan had a duty to confer with his clients as to what took place on April 8, 1993--if he were not going to procure a copy of the transcript to review. Such consultation would have established that the Respondent Referee has refused to pass upon any jurisdictional questions.

56. The following is illustrative of the Respondent Referee's position, which required that I bring this Article 78 proceeding to address my jurisdictional objections:

[Ex. "C": 4/8/93 Tr. 10]

DLS: "Are you saying, your Honor, that at the outset, before any hearing is held on the substantive charges against me, that you are not going to address the fundamental threshold questions as to whether you have jurisdiction?"

Referee: "No, Ma'am. I have jurisdiction. The Appellate Division gave it to me."

DLS: "Jurisdiction is not self-proving. It has to be established where it is questioned--"

Referee: "Ms. Sassower, I told you before, and I will tell it to you again, you have your right to go to the Appellate Division--"

DLS: "Well, I will."

Referee: "--and make your motions. They are not before me."

...
DLS: "...now that you have made it so clear that you are not going to initially rule on my jurisdictional objection, I am going to have to commence an Article 78 proceeding..."

57. Despite Mr. Sullivan's statements to the contrary (Memo of Law, p. 5), my jurisdictional objections were not "rejected" by the Respondent Referee. Rather, the Respondent Referee has refused to rule on them at all. Such position is further reflected by the April 28, 1993 transcript (Ex. "D"):

[Ex. "D": 4/28/93 Tr. 59]

DLS: "Your Honor stated in our last conversation that you are not going to address the jurisdictional objection which I have raised to this petition."

Referee: "Absolutely, that is my ruling. Next."

[Ex. "D": 4/28/93 Tr. 69]

Referee: "We have gone over this whole thing before, and as I told you before, I have been given an order to proceed with the hearing. If you have any jurisdictional questions, any objections, the Appellate Division is the place where you make your motions, period."

DLS: "I respectfully except. Your Honor is performing a judicial function, and your Honor is expected to rule on any of the matters that are appropriate to be ruled upon by a Judicial Hearing Officer, who has all the powers of a Supreme Court Judge."

58. The extent to which the Respondent Referee has eliminated jurisdiction as a subject of proof at the hearing is highlighted by his unauthorized and unheard-of direction to Respondent Casella during the April 28, 1993 conference to delete from paragraph "FIRST" of the February 6, 1990 Petition (Ex. "A" to 78 Pet.) the reference to the July 31, 1989 Report, upon my request for a copy of that Report:

[Ex. "D": 4/28/93 Tr. 87-8]

Referee: "...we will take that out from the petition. Eliminate that from the petition then. That comes out except--"

Casella: "'By order of the Court, dated and file on December 14, 1989'--you want me to remove the language, 'based upon the acts of professional misconduct as set forth in the report of the Grievance Committee for the Ninth Judicial District dated July 31, 1989'?:"

Referee: "Absolutely."

59. The transcript also shows that the Respondent Referee not only openly stated his peremptory refusal to address jurisdiction, but improperly rejected plainly relevant exhibits bearing thereon to be marked for identification, which I

requested so as to preserve my rights for appellate review:

[Ex. "D": 4/28/93 Tr. 80-1]

DLS: "I take it your Honor is denying my request to have an exhibit--"

Referee: "Absolutely."

DLS: "--offered into evidence to be marked as part of this record, which I have a right to do."

Referee: "Absolutely."

DLS: "In other words, I have no right to have my exhibits marked."

Referee: "Yes you can, that are relevant to this proceeding."

DLS: "It is relevant to determine whether this Court has the right to require me to be here in the first place."

Referee: "The Appellate Division did that, not I."

60. Thus, the transcripts clearly show that the Respondent Referee interprets the Order appointing him (Ex. "B" to 78 Pet.), as well as the Second Department's Order denying my June 18, 1992 dismissal motion addressed to the pleading sufficiency of the Petition (Ex. "M-1"), as dispositive of the ultimate jurisdictional facts, and not as leaving jurisdiction as a matter to be proven by evidence at the hearing:

[Ex. "D": 4/28/93 Tr. 109-10]

Referee: "I read the order issued by the Appellate Division to me which authorized me to proceed on a hearing [Ex. "B" to 78 Pet.]...That I told you was my duty as a Special Referee. That was my appointment."

DLS: "I asked you if you have in addition the duty to determine fully, before subjecting me as well as the people of the State of New York to the expense of a protracted hearing, to determine the

jurisdiction as to whether or not we will proceed here in the first instance, whether there was jurisdiction on the part of the Court that appointed you."

Referee: "And I told you that if you want to know the jurisdiction, you have to go to the Appellate Division."

DLS: "And I stated to your Honor that I am doing that with an Article 78 proceeding..."

Referee: "I would like the record to indicate, and I assume Mr. Casella would know, how many motions have been made with respect to the jurisdiction."

Casella: "I can't count them, I would need a calculator."

Referee: "And the Appellate Division has denied these motions."

DLS: "That is why I am requesting the matter be transferred out of this Department."

61. The foregoing transcript excerpts show that Mr. Sullivan's statements that the Referee, "in the first instance" would address jurisdiction are without factual basis--and known to be such by his clients. Likewise, the record shows no basis upon which Mr. Sullivan could in good faith argue the adequacy of subsequent appellate relief sought from the Second Department. Over and beyond the enormous cost and delays consequent to such course of action both for myself and the justice system, the files under AD #90-00315 establish irrefutably that the Second Department has consistently disregarded my factually and legally dispositive jurisdictional objections.

DLS: "Who in the Appellate Division?"

Referee: "Madam, I told you the Appellate Division. I don't have to report to you."

21. The files of disciplinary proceedings brought against me under A.D. #90-00315--the case number assigned to the February 6, 1990 Petition and thereafter used by Respondent Casella, without leave of Court, for his motion to suspend me from the practice of law, as well as for the March 25, 1993 Supplemental Petition (Ex. "G") and the unrelated January 28, 1993 Petition (Ex. "H")--are incorporated herein by reference in support of my motion for recusal and transfer out of the Second Department. Had Mr. Sullivan read such files--familiarity with which he does not even claim to have--he could not ethically question my right to transfer or seriously argue that such transfer is not required in order to maintain public confidence that I will have a fair hearing.

22. The decisions and orders relating to the February 6, 1990 Petition and A.D. #90-00315 show the involvement of a majority of the judges of the Appellate Division, Second Department. Those decisions and orders, when compared with the record in the proceedings, evidence a pattern of disregard for black-letter law and standards of adjudication--particularly as to threshold jurisdictional issues. In that regard, I respectfully draw particular attention to my June 18, 1992 Motion to Dismiss the February 6, 1990 Petition on jurisdictional and other grounds, which the Court denied, without reasons, by Order dated November 12, 1992 (Ex. "M-1"), although controlling law

mandated the vacatur relief sought by me. Such decision replicates the disposition of the Court on my aforesaid June 14, 1992 Motion to Vacate my suspension which, likewise, was based, inter alia, on lack of compliance with jurisdictional preconditions.

23. The files also reveal that the Second Department has consistently denied my requests to discipline or even to direct an investigation on my fully documented showing of a course of gross prosecutorial misconduct by Respondent Casella. The undisputed record shows that such misconduct has included his fraudulent procurement of this Court's June 14, 1991 Order suspending me from the practice of law (Ex. "A-1"), accomplished by him without any hearing and by ordinary motion, unsupported by petition, through his wilful misrepresentation that the wholly unrelated February 6, 1990 Petition was an "underlying" proceeding. The aforesaid misrepresentation and the factually and legally fabricated nature of Respondent Casella's motion for my suspension was meticulously documented by my counsel's opposing papers. Despite the unassailable facts and law in my favor, the Second Department's issuance of its June 14, 1991 Order (Ex. "A-1") immediately, indefinitely, and unconditionally suspending me from the practice of law and its June 12, 1991 Order (Ex. "A-2") threatening future sanctions against my counsel "upon a continued showing of frivolous conduct", made perfectly clear the intensity of its animus against me. The papers on which said Orders were based show unequivocally: (a) it was