COURT OF APPEALS
STATE OF NEW YORK
----------x
In the Matter of DORIS L. SASSOWER,

A.D. #93-02925

Petitioner-Appellant,

-against-

Notice of Motion for Reargument, Reconsideration, Leave to Appeal, and Other Relief

HON. GUY MANGANO, as Presiding Justice of the Appellate Division, Second Dept., HON. MAX GALFUNT, as Special Referee, and EDWARD SUMBER and GARY CASELLA, as Chairman and Chief Counsel respectively of the Grievance Committee for the Ninth Judicial District,

Respondents-Respondents.
----------x

S I R :

PLEASE TAKE NOTICE that upon the Affidavit of DORIS L. SASSOWER, dated July 19, 1994, and the exhibits annexed thereto, and upon all the papers and proceedings heretofor had herein, Petitioner-Respondent DORIS L. SASSOWER will move this Court, at the Courthouse thereof, 20 Eagle Street, Albany, New York on August 1, 1994, in the forenoon of that day, or as soon as counsel may be heard, for an order granting:

(a) reargument and reconsideration of this Court's Decision & Order, dated May 12, 1994, pursuant to §500.11(g) of this Court's Rules of Practice, and upon such reargument and reconsideration for vacatur of same and acceptance of jurisdiction of the instant appeal as of right;

(b) leave to appeal to this Court, pursuant to CPLR §5513(b), in the event it denies reargument and reconsideration of its May 12, 1994 Decision & Order or upon granting same, adheres to its aforesaid Decision & Order;

(c) referral of the Justices of the Second Department, their at-will appointees, and the Attorney General of the State of New York for criminal and disciplinary investigation, pursuant to §100.3(b)(3) of the "Rules Governing Judicial Conduct"; and

(d) such other and further relief as this Court may deem just and proper.

Dated: White Plains, New York
July 19, 1994

DORIS L. SASSOWER, Pro Se
Petitioner-Appellant
283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

TO: ATTORNEY GENERAL G. OLIVER KOPPELL
Attorney for Respondents
120 Broadway
New York, New York 10271
(212) 416-8625

COURT OF APPEALS
STATE OF NEW YORK
----------x
In the Matter of DORIS L. SASSOWER,

Petitioner-Appellant,

-against-

Affidavit in Support of Reargument, Reconsideration, Leave to Appeal, and Other Relief

HON. GUY MANGANO, as Presiding Justice of the Appellate Division, Second Dept., HON. MAX GALFUNT, as Special Referee, and EDWARD SUMBER and GARY CASELLA, as Chairman and Chief Counsel respectively of the Grievance Committee for the Ninth Judicial District,

Respondents-Respondents.
----------x

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

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

1. I am the Appellant, now acting pro se in the above appeal, and personally familiar with all the facts, papers, and proceedings heretofore had and the questions of law involved therein.

2. This Affidavit is submitted in support of a motion: (a) for reargument and reconsideration of this Court's Decision & Order, dated May 12, 1994 [hereinafter "the Order"], dismissing my appeal as of right "upon the ground that no substantial constitutional question is directly involved"; (b) for leave to appeal to this Court in the interests of justice, in the event reargument and reconsideration of such Order is denied

or the Order adhered to on granting of reargument and reconsideration; (c) for a referral of the Justices of the Second Department, their at-will appointees, and the Attorney General of the State of New York for criminal and disciplinary investigation, pursuant to §100.3(b)(3) of the "Rules Governing Judicial Conduct"; and (d) for such other and further relief as this Court may deem just and proper.

3. Annexed hereto as Exhibit "I"[1] is a copy of this Court's May 12, 1994 Order, served upon me by mail with Notice of Entry on June 14, 1994. Pursuant to CPLR §5513(b), the instant leave to appeal application is timely. Since this Court will thus be reviewing its Order in connection with such leave application, I respectfully request, in the interests of justice and judicial economy, that it also consider this submission for purposes of reargument and reconsideration, pursuant to §500.11(g) so that it can entertain this appeal as a matter of right.

Due to my present pro se status, I was unable to prepare, serve, and file the papers involved in this submission any earlier than today, which, nonetheless, is, as noted, within the parameter of CPLR §5513(b).

---

[1] The sequence of exhibits annexed hereto begin with "I", continuing the lettering of exhibits annexed to my January 24, 1994 Jurisdictional Statement, which were "A" through "H".

APPEAL LIES AS OF RIGHT TO THE COURT OF APPEALS AND, IF NOT, THE ARTICLE 78 STATUTE IS UNCONSTITUTIONAL

4. As to the requested reargument and reconsideration, it is respectfully submitted that this Court, in rendering its aforesaid Order (Exhibit "I"), has, sub silentio, and without articulation of any reasons therefor, altered the well-settled and accepted rule that appeal lies of right from an order or judgment in an Article 78 proceeding originating in the Appellate Division.

5. In addition to the treatise references presented at ¶10 of my January 24, 1994 Jurisdictional Statement and discussed further at pp. 9-10 of the March 14, 1994 letter of my counsel, Evan Schwartz, Esq., in response to this Court's sua sponte jurisdictional inquiry, I respectfully quote to the Court the accepted rule of law, stated unequivocally in Carmody Wait, 2nd Edition, §145:376, as follows:

> "A judgment in a proceeding against a body or officer may be made either by Special Term or the Appellate Division, as the case may be. If the judgment is made at Special Term, appeal lies successively to the Appellate Division and the Court of Appeals. If the judgment is made by the Appellate Division, appeal lies to the Court of Appeals."

6. This Court's Order dismissing an appeal as of right in an Article 78 proceeding where the Appellate Division is exercising original jurisdiction creates precisely the situation depicted in Mr. Schwartz' March 14, 1994 letter to this Court:

> "A citizen aggrieved by the abusive conduct of Supreme Court justices would be denied

> appellate review equal to that afforded a citizen aggrieved by the misconduct of lower court judges. Supreme Court justices would thus be accorded preferential status not afforded to lower court judges or other public bodies or officers, whose unlawful conduct, similarly challenged in Article 78 proceedings, is subject of a statutorily guaranteed scrutiny by a higher court as to both the law and facts. No rational basis exists for such a distinction." (at pp. 10-11)

7. Inasmuch as this Court's Order provides no basis for such distinction (Exhibit "I"), it is respectfully submitted that the Court's construction of the Article 78 statute to permit dismissal of this appeal as of right violates the Fourteenth Amendment to the U.S. Constitution, as well as Article 1, §11 of the Constitution of this State.

8. It is difficult to conceive that had the Judgment appealed from been rendered by an impartial tribunal and had it been Respondents who were appealing from an adverse judgment, this Court would not have entertained their appeal as of right.

THE MERITS OF THIS APPEAL PRESENT MULTIPLE ISSUES DIRECTLY INVOLVING SUBSTANTIAL CONSTITUTIONAL QUESTIONS

A. Venue:

9. Aside from the constitutional issue raised as to the appellate rights of the parties to Article 78 proceedings, this case presents the important issue of the constitutionality of the venue provisions of CPLR §506(b) as they relate to Article 78 proceedings. As discussed in Mr. Schwartz' March 14, 1994 letter:

> "The legislative scheme laid out in CPLR 506(b)(1), deriving from the historic origin

> of common law writs, contemplates that an Article 78 proceeding against judges will be brought in a higher tribunal. In the case of lower court judges, the required venue is the Supreme Court. In the case of Supreme Court justices, the required venue is the Appellate Division. However, there is no provision in the CPLR specifically defining the venue of Article 78 proceedings brought against Appellate Division justices. By analogy, the venue for such proceeding should be in the Court of Appeals, which would call upon it to exercise original jurisdiction for such purpose...". (at p. 11)

10. Since the Constitution of this State does not provide for original jurisdiction in the Court of Appeals, this Court was confronted with the fact that there is no higher tribunal in this State empowered, in the first instance, to adjudicate Article 78 proceedings against Appellate Division justices. This, in turn, required this Court to address the constitutional infirmity resulting from the venue restriction in CPLR §506(b)(1), placing venue in the judicial department where the underlying action or proceeding are triable. The consequence is that Article 78 proceedings against Supreme Court justices sitting on the Appellate Division must be brought in the very Appellate Division in which they sit.

11. In permitting accused judges to adjudicate their own case--and to do so, as here, in the context of an Article 78 proceeding against them--this Court has not only flouted the historic origin and legislative intent behind the Article 78 statute, but has disregarded a vast body of law relative to

judicial disqualification[2]--including that incorporated in our State Constitution and codified in Judiciary Law §14, as well as that which has been constitutionalized by decisional law of the United States Supreme Court, including Aetna v. LaVoie, 475 U.S. 813, 106 S.Ct. 1580 (1986) and Liljeberg v. Health Services, 486 U.S. 487, 108 S.Ct. 2194 (1988).

B. Disqualification:

12. The New York State Constitution recognizes the profound importance of safeguarding the appearance, as well as the actuality, of impartially administered justice. Thus Article VI, §20(b)(4) of our State Constitution explicitly provides for:

> "such rules of conduct as may be promulgated by the chief administrator of the courts with the approval of the court of appeals".

13. Indeed, this Court's duty to promulgate statewide ethical standards to be observed by the judiciary is then reiterated at Article VI, §28 thereof.

14. The rules promulgated under the heading "Rules Governing Judicial Conduct" thus have the force of constitutional mandate.

15. Explicitly mandated in such rules is the

---

[2] It is a long-settled principle in the administration of justice that "no man can be a judge in his own cause". Leonard v. Mulry, 93 N.Y.392, 396 (1883); Moers v. Gilbert, 175 Misc. 733, 25 N.Y.S.2d 114, 118 (Sup. Ct.N.Y.Co. 1941), aff'd. 261 App. Div. 957, 27 N.Y.S.2d 425 (1st Dept. 1941); People v. Kohl, 17 Misc.2d 320, 192 N.Y.S.2d 83, 85 (Sup.Ct. Niagara Cty 1959): "'Nemo debet esse judex in propria causa' is an ancient maxim deriving from Civil Law. It has been called "a fundamental rule of reason and of natural justice'. Burrow's English Settlement Cases 194, 197."

disqualification of a judge under circumstances defined in §100.3(C):

> "(C) **Disqualification.** (1) A judge shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned, including...where:
>
> (iii) the judge knows that he or she...has...[an] interest that could be substantially affected by the outcome of the proceeding;
>
> (iv) the judge...
>
> (a) is a party to the proceeding...
>
> (c) is to the judge's knowledge likely to be a material witness to the proceeding".

16. The justices of Respondent Second Department who dismissed the Article 78 proceeding met the foregoing criteria for recusal, but failed, nonetheless, to recuse themselves. As pointed out by my Jurisdictional Statement (at ¶6), Respondent Second Department's September 20, 1993 Judgment (Exhibit "A")[3] not only failed to address "the threshold issue of [its] duty to recuse itself from a proceeding in which it was a party Respondent...", but was rendered:

> "by a five-judge panel, three of whose members--Justices Thompson, Sullivan, and Bracken--had themselves participated in <u>every</u> Order which the Article 78 proceeding sought to have reviewed--and a fourth members, Justice Balletta, who had participated in more than half of said Orders."

17. Moreover, as discussed in Exhibit "C" to my Jurisdictional Statement (Point II of my Memorandum of Law to the

---

[3] Exhibits "A" through "H" herein are annexed to my January 24, 1994 Jurisdictional Statement.

Second Department), the justices of Respondent Second Department had a disqualifying self-interest to cover-up the judicial and prosecutorial misconduct challenged by my Article 78 proceeding, since such misconduct, "if exposed, would result in severe disciplinary and criminal sanctions" to them.

18. The record before this Court amply demonstrated Respondent Second Department's liability for their unlawful suspension of my license and their manipulation of the disciplinary machinery--which they control--to harass me with repeated groundless, jurisdictionless disciplinary proceedings. Quite apart from the detailed recitation concerning my unlawful suspension at pp. 12-16 of my January 24, 1994 Jurisdictional Statement, my March 8, 1994 letter to the Attorney General (Supp. Exh. "7")[4], provided substantiation of the fact that all 19 of the findingless Orders annexed to my Jurisdictional Statement as Exhibit "D" are, when compared to the record, proven to be jurisdictionally void, as well as factually and legally unfounded.

19. Respondents never controverted my serious allegations concerning their criminal and disciplinary liability. Nor did their counsel, who admitted that he had never reviewed the underlying disciplinary files under A.D. #90-00315 (Supp. Exh. "5", ¶1).

20. Thus, this Court was presented with profound

---

[4] Supplemental Exhibits "1"-"10" are annexed to Mr. Schwartz' March 14, 1994 letter.

constitutional issues of disqualification, resting on the "Rules Governing Judicial Conduct", incorporated in the New York State Constitution, at Article VI, §20 and §28. Plainly, were accused Appellate Division justices to be permitted to sit in judgment of their own challenged conduct under any interpretation of the Article 78 statute, the statute would conflict with the aforesaid constitutionally embodied disqualification rules and subvert the historic origin and legislative intent of Article 78 proceedings, designed to provide independent, impartial review of governmental conduct.

21. It must be noted that, in contradistinction to what was done in the case at bar by Respondent Second Department in deciding its own case, is the case of Capoccia v. Appellate Division, Third Department, 104 A.D.2d 536, 479 N.Y.S.2d 160 (3rd Dept. 1984), later proc., 104 A.D.2d 735, 480 N.Y.S.2d 313 (4th Dept. 1984); later proc., 107 A.D.2d 888, 484 N.Y.S.2d 325 (3rd Dept. 1985), wherein the Third Department recognized its ethical duty to recuse itself and transferred an Article 78 proceeding against it to the Fourth Department for determination. Indeed, it must be noted that in other matters, not involving me, the Second Department has itself readily recognized the disqualification requirement, where it was involved indirectly and the bias only presumed or inferred. Brooklyn Bar Ass'n. v. Kings County Bar Ass'n., 258 App.Div. 920, 16 N.Y.S.2d 751 (2nd Dept. 1939). Indeed, in other cases, the Second Department has not hesitated to direct recusal to avoid the appearance of

impropriety or to transfer cases to another Judicial Department by reason thereof. People v. Zappacosta, 77 A.D.2d 928, 431 N.Y.S.2d 96, 98-99 (2d Dept. 1980); Milazzo v. LILCO, 16 A.D.2d 495, 483 N.Y.S.33 (2d Dept. 1984) ("Nevertheless, to avoid any appearance of impropriety, we believe the action should be transferred out of Kings County..."); DeLuca v. CBS Inc., 105 A.D.2d 770, 481 N.Y.S.2d 425 (2d Dept. 1984) ("...we believe that the protection of the court's reputation from the slightest suspicion as to the fairness of the proceedings requires a change of venue..."). To the same effect, Burstein v. Greene, 61 A.D.2d 827, 402 N.Y.S.2d 227 (2d Dept. 1978); Seifert v. McLaughlin, 15 A.D.2d 555, 223 N.Y.S.2d 18 (2d Dept. 1954); Arkwright v. Steinberger, 283 App.Div. 397, 128 N.Y.S.2d 823 (2d Dept. 1954), citing older cases going back to the last century.

22. An impartial tribunal is recognized as the most fundamental component of due process. Accordingly,

> "...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

In the case at bar, it should be evident that my due process rights were violated when the Second Department denied my motion to recuse itself from an Article 78 proceeding in which it was a party and to transfer it out to another Judicial Department. Consequently, this Court erred in denying me an appeal of right from the subject Judgment, dismissing my Article 78 proceeding.

C. Due Process and Equal Protection:

23. The gravamen of the Article 78 proceeding was the complete deprivation of my constitutional due process and equal protection rights by Respondent Second Department, aided and abetted by its at-will appointees. I documented the fact that these Respondents have deliberately and maliciously launched a succession of disciplinary proceedings against me, which they knew to be jurisdictionless and factually and legally groundless and have deliberately deprived me of my livelihood by a jurisdictionless, hearingless, and findingless June 14, 1991 "interim" suspension Order (Exhibit "D-6")--now in effect for more than three years without my ever having had a hearing as to its basis.

24. Although controlling black-letter law of this Court requires vacatur of such findingless "interim" suspension Order, Respondent Second Department has, without reasons, repeatedly denied me such relief. I respectfully draw this Court's attention to Exhibit "G" to my Jurisdictional Statement showing my suspension to be in all respects a fortiori to that vacated in Matter of Russakoff, 72 N.Y.2d 520, 583 N.Y.S.2d 949 (1992), as well as Exhibit "H", showing, by documentary comparison with suspension orders of the Second Department affecting 20 other attorneys, that my suspension is unprecedented. I alone have been denied a hearing--where all material allegations were controverted by me--and a final order for purposes of appeal.

25. As detailed by my July 2, 1993 cross-motion to my Article 78 proceeding, even while I am suspended and denied a hearing as to the basis therefor, Respondent Second Department has continued to harass and burden me with new disciplinary proceedings, which it continues to generate, with full knowledge that they are jurisdictionless and factually and legally baseless.

26. As described at pp. 16-17 of Mr. Schwartz's March 14, 1994 letter, events subsequent to Respondent Second Department's September 20, 1993 Judgment (Exhibit "A") establish that Respondents' malicious and jurisdictionless conduct has continued, more virulent then ever, and that, contrary to the alleged basis upon which that Judgment was made, i.e. that I had an alleged remedy in the underlying disciplinary proceeding, Respondents continue to refuse to address my jurisdictional challenge therein. In this regard, Respondent Second Department's January 28, 1994 denial, without reasons (Supp. Exh. "3"), of my dispositive November 19, 1994 Dismissal/Summary Judgment motion[5], and its threat to hold me in criminal contempt if I make another motion without prior judicial approval, is an unequivocal demonstration of how brazenly Respondent Second Department is trampling upon my due process and equal protection rights and attempting to intimidate and frighten me.

27. Likewise, at the hearings on the February 6, 1990

---

[5] As reflected by Supplemental Exhibit "1" to Mr. Schwartz' March 14, 1994 letter, all papers on that motion were supplied to this Court under a March 2, 1994 coverletter.

Petition--held following Respondent Second Department's dismissal of my Article 78 proceeding (Exhibit "A")--the Respondent Referee disallowed my efforts to raise a jurisdictional challenge and conducted the hearings in total disregard of rudimentary standards of due process. As stated by me in ¶15 of my Jurisdictional Statement, the violations of my rights at those hearings provide "a separate and additional basis" for my petition for Article 78 relief.

28. In view of the fact that this Court, in adjudicating its jurisdiction over this appeal as of right, did not requisition the underlying disciplinary files under A.D. #90-00315 or the transcripts of the hearings held on the February 6, 1990 Petition so as to verify the enormity and extent of my constitutional deprivations--and the continuing and irreparable injury caused thereby--I am herewith transmitting to this Court a copy of such files and transcripts.

29. In that connection, as a further aid to the Court, I am annexing as Exhibit "J" hereto, a detailed Chronology of the factual background relative to each of the 19 disciplinary Orders under A.D. #90-00315, annexed to the Jurisdictional Statement as Exhibit "D". Such Chronology is annotated with cross-references to the disciplinary files herein transmitted, which are meticulously organized, precisely as they were for the Attorney General's review, when I transmitted same to him on March 8, 1994 (Supp. Exh. "7").

30. The aforesaid documents further show my clear

legal right to Article 78 relief in that they establish--as heretofore unequivocally alleged by me--that there is no remedy in the underlying disciplinary proceedings because Respondent Second Department has abandoned all legal standards and respect for the rule of law.

D. First Amendment:

31. As discussed in Mr. Schwartz' March 14, 1994 letter:

> "This Court has personal knowledge that Appellant has been a leading spokesperson against the increasing politicization of the bench and that, as pro bono counsel to a public interest group, she brought such issues to the fore by litigation in 1990 challenging judicial cross-endorsement deals by the major political parties and judicial nominating conventions conducted in violation of the Election Law. Since examination of the disciplinary files under A.D. #90-00315 reveals no factual or legal basis for the steady continuum of jurisdictionless Orders (Juris Stmnt, Exh. D), Respondents' retaliation against Appellant becomes apparent and unmistakable." (at pp. 5-6)

32. The Chronology herein supplied (Exhibit "J") will assist the Court in appraising the free speech and retaliation arguments outlined at pp. 5-8 of Mr. Schwartz' March 14, 1994 letter--particularly as they relate to the timing of Respondent Second Department's October 18, 1990 Order directing a medical examination of me (Exhibit "D-7") and its June 14, 1991 "interim" Order suspending me (Exhibit "D-6").

33. The sequence of events set forth in the Chronology (Exhibit "J") establishes that what is at work is more than a bias and hostility to me on the part of Respondents, but, rather,

their use of their public offices to further a politically-motivated vendetta to destroy my professional career and practice and to exhaust me physically, emotionally, and financially so as to prevent me from speaking out against judicial corruption.

34. The Chronology also highlights my activities in publicly criticizing decisions and motivations of this Court in refusing to take jurisdiction over the Election Law cases, Castracan v. Colavita and Sady v. Murphy as not directly involving substantial constitutional questions, as well as in denying me leave to appeal from the June 14, 1991 "interim" suspension Order (Mo. No. 890). All the foregoing may be seen from my October 24, 1991 letter to Governor Cuomo, which called for appointment of a Special Prosecutor. A copy of that letter was transmitted to this Court at that time. For the Court's convenience, I annex hereto another copy as Exhibit "K".

35. Since this Court's subsequent decision in Matter of Russakoff, supra, is so completely controlling as to my right to vacatur of the June 14, 1991 "interim" suspension Order (Exhibit "D-6"), its November 12, 1992 decision (Mo. No. 1208 SSDD 99) dismissing, for lack of finality, my appeal as of right, based on Russakoff, is inexplicable, except as a reflection of this Court's own animus against me, motivated by my prior free speech exercise.

36. This Court's subject May 12, 1994 Order is, likewise, inexplicable, since the controlling law and the factual record are both overwhelmingly in my favor and the issues herein

raised by my appeal strike at the very foundations of our judicial system.

37. It may be thus publicly perceived that this Court is also retaliating against me for exercising my First Amendment rights. While Judges Levine and Ciparick, the two members of the Court whose nominations to the Court of Appeals I publicly opposed, recused themselves, the other members may well be viewed as harboring resentment toward me, particularly Chief Judge Kaye, who publicly endorsed Justice Ciparick and whose own confirmation hearing I alluded to in the course of my testimony in opposition to Justice Ciparick. This is apart from the presumed hostility to me of Judge Bellacosa, whose nomination to this Court was opposed by my ex-husband (fn. 7 of Mr. Schwartz' 3/14/94 ltr).

E. <u>The Unconstitutionality of Judiciary Law §90 and the Disciplinary Rules of the Appellate Division:</u>

38. My Jurisdictional Statement (p. 23: Points IIB and III) included among the points to be argued the unconstitutionality of Judiciary Law §90 and court rules in their failure to preclude the possibility of open-ended interim suspension orders of indefinite duration and of the court-appointment of financially self-interested per-diem referees to serve as judicial hearing officers for disciplinary proceedings.

39. Mr. Schwartz' March 14, 1994 letter (at pp. 5-8) described the disciplinary mechanism, controlled as it is in all adjudicative and prosecutorial respects by the Appellate Division, as lending itself to abuse and permitting:

"the Appellate Divisions to employ the

> disciplinary machinery to discredit and destroy 'whistleblowers' in the legal profession who speak up about corruption and incompetence in the courts." (at p. 7)

40. The thrust of such argument was primarily addressed to the potential for abuse and its actuality, as applied to me by Respondent Second Department.

41. By way of reconsideration, I have concluded, based upon further research and study, that the points to be raised on this appeal must be expanded to include the unconstitutionality of Judiciary Law §90, as well as of the Appellate Divisions' disciplinary rules as a whole.

42. The constitutional inadequacy of New York's procedures for disciplining its attorneys was raised nearly twenty years ago in a federal case, Mildner v. Gulotta, 405 F.Supp. 182 (1975), affm'd 96 S.Ct. 1489. In a three-judge opinion sustaining constitutionality, Judge Jack Weinstein dissenting, the court held that in the absence of a showing of bias in the State judiciary toward the aggrieved attorney, a federal court would abstain from passing upon a state court's disciplinary procedures and interfering with their judgment with respect to same.

43. The case at bar fully meets the federal criteria for intervention so as to address the constitutional infirmities of this State's disciplinary procedures--the record herein establishing a pattern of continuing and on-going bias on a massive scale.

44. However, it is the thoughtful and scholarly

dissenting opinion of Judge Weinstein, invalidating Judiciary Law §90 on due process and equal protection constitutional grounds, that I wish to argue here so that this Court, rather than a federal court, can nullify this shamefully inadequate statute and the similarly deficient court-created disciplinary rules. Such decision is long overdue and the instant case is the right one for this Court to articulate the statutory deficiencies and those of the Appellate Divisions' promulgated disciplinary rules.

45. The ad hoc remedial action provided by decisions of this Court on a case by case basis over the twenty years since promulgation of the Appellate Divisions' disciplinary rules cannot begin to fill in all the unconstitutional gaps or undo the on-going and irreparable injury caused by their inherently unconstitutional nature.

46. In Matter of Nuey, 61 N.Y.2d 513, 474 N.Y.S.2d 714 (1984), this Court explicitly recognized that there is no authority under the Judiciary Law for the Appellate Division to issue an interim order of suspension, but then went on to say that an interim suspension order without findings was "premature". The Court did not confront the fact that the lack of such statutory authority rendered interim suspension orders unconstitutional, irrespective of any findings made therein.

47. The lack of a clear, unequivocal statute authorizing interim suspension orders and delineating, systematically, the procedure relating thereto resulted--six years later--in this Court's addressing interim suspension orders

in Matter of Russakoff, supra, where the issue of a findingless interim suspension order was again presented, as well as the failure to afford the interimly-suspended attorney a prompt post-suspension hearing.

48. The fact that between Nuey and Russakoff, this Court did not grant my motion for leave to appeal from my "interim" suspension order in 1991--in all respects a fortiori to Mr. Russakoff's, whose appeal it took the following year--indicates the injustice that is visited on attorneys who are not protected by the clear mandate of a statutory provision.

49. Even with this Court's decisions in Nuey and Russakoff to rely on, my case shows that attorneys cannot depend on Respondent Second Department to follow such decisional law or to make rule changes recommended by this Court, as it did in Russakoff, relative, inter alia, to an interimly suspended attorney's right to a prompt post-suspension hearing.

50. To the present time, upon information and belief, there has been no rule change by Respondent Second Department to implement this Court's opinion in Russakoff. Indeed, in September 1992, when I sought to appeal as of right to this Court from Respondent Second Department's denial of my motion to vacate my "interim" suspension Order based on Russakoff, I brought to this Court's attention (at ¶13) that Respondent Second Department had taken no action to "no action to implement the Russakoff decision". Nor had it made any rule change, as this Court had recommended in Russakoff.

51. Those rules themselves are unconstitutional in that they are unauthorized by statute and, in violation of the separation of powers, make substantive law, which is beyond the power of the Appellate Division to enact under the guise of rule-making. Gair v. Peck, 6 N.Y.2d 97, 104; cf. A.G. Ship v. Lezak, 69 N.Y.2d 1, 5-6.

52. Moreover, such rules are the product of a secret and undemocratic process. As shown by the letter from the Chief Clerk of the Second Department, annexed hereto as Exhibit "L-3", there is no history available as to the process whereby the present disciplinary rules were promulgated.

53. In the light of the history of my case, it is ironic to read in Judge Raymond J. Dearie's May 18, 1994 opinion in Thaler and Falow v. Casella, CV 93-4061 (RJD) the following statement:

> "Implicit in plaintiffs' argument for federal intervention is the absurd proposition that the New York Court of Appeals will be insensitive to their cries of constitutional foul. There is no basis upon which to assume that the state courts will be less protective of plaintiffs' rights than will the federal courts." (at p. 12)

54. Based on the record before this Court, it is Judge Dearie's statement for which there is no basis. Indeed, the fact that on my instant appeal from Respondent Second Department's dismissal of my Article 78 proceeding against it, this Court could see that, three years after issuance, I am still suspended under an "interim" Order (Exhibit "D-6") that, on its face, makes no findings or reasons, and could learn that the

Second Department denied me a hearing before such Order was issued and for three years since, but, nonetheless, cite lack of finality to again fail to address the issues raised on the merits, shows that accused attorneys cannot rely on this Court to protect attorneys from the inherent unconstitutionality of "interim" suspension orders and the anarchy that prevails in disciplinary proceedings[6].

55. It may be noted that the basis for constitutional challenge in Thaler and Falow v. Casella, supra, were the ex parte communications between the Grievance Committee and Second Department, resulting in its authorization of disciplinary proceedings against the attorney plaintiffs involved, their interim suspension prior to the filing of charges against them of professional misconduct, and the Second Department's denial of discovery of those ex parte communications.

56. In my case, the ex parte communications between the Respondents Grievance Committee and Second Department were repeatedly sought by me not only in the underlying disciplinary proceeding, but as part of the Article 78 proceeding. That

---

[6] As to that part of this Court's May 12, 1994 Order that dismissed for lack of finality that branch of my appeal as related to the Second Department's denial of my cross-motion, the fact is that the Judgment appealed from terminated the Article 78 proceeding, thereby precluding the possibility of lack of finality as to any aspect of that proceeding. Moreover, the right to Article 78 relief, such as prohibition, is not affected by the lack of finality, Gross v. Ambach, 126 App.Div.2d 1, 512 N.Y.S.2d 910 (1987) since the very purpose of such relief, historically, was to prevent the loss of private and public resources entailed by having to go forward with a proceeding wherein the judge had no jurisdiction.

Respondent Second Department could base its Orders (Exhibits "D-1", "D-15", and "D-16") authorizing disciplinary proceedings on such ex parte communications and then refuse to direct disclosure of same to the attorney affected on the basis of the confidentiality provision of Judiciary Law §90(10) only confirms the inherent unconstitutionality of the statute.

57. I would further draw the Court's attention to a series of articles by John Bonomi, Esq., former Chief Counsel to the Committee on Grievances of the Association of the Bar of the City of New York, published in the Law Journal more than ten years ago.[7] Mr. Bonomi, with the benefit of his nearly fifteen years as Chief Counsel, pointed out major deficiencies in our State's disciplinary structure and procedures, as reflected in Judiciary Law, §90 and court disciplinary rules, which he noted vary from Judicial Department to Department.

58. Mr. Bonomi opined that comprehensive reform was needed because no state statutes or court rules addressed fundamental aspects of disciplinary practice and procedure. This included, inter alia, the absence of reciprocal pre-trial discovery, the lack of rules of evidence in disciplinary hearings, the lack of definition of the standard of proof in grievance proceedings, and the lack of any speedy trial

---

[7] Bonomi, Practice and Procedure: A Disciplinary Void, N.Y.L.J., 6/25/81 and 6/26/81, p.1, col.1T; A Brief for Reciprocal Discovery in Lawyer Misconduct Proceedings, N.Y.L.J., 10/22/81, p.1, col.1M; Time Limitation Urged on the Prosecution of Disciplinary Cases, N.Y.L.J., 3/1/82 and 3/2/82, p.1, col.1T;

requirement in the prosecution of grievance cases.

59. Sad to say, all of the aforesaid criticisms are still valid, giving added reason to a declaration of unconstitutionality at this juncture.

THIS COURT HAS AN AFFIRMATIVE DUTY TO REPORT MISCONDUCT BY JUDGES AND LAWYERS OF WHICH IT HAS BECOME AWARE IN THIS ARTICLE 78 PROCEEDING

60. The mandatory requirement of reporting misconduct of judges and lawyers of which a judge becomes aware is embodied in §100.3(b)(3) of the "Rules Governing Judicial Conduct", which provides:

> "A judge shall take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware."

61. The gravity of the allegations made in this Article 78 proceeding--supported as they are the underlying disciplinary files under A.D. #90-00315 and the transcript of the hearings on the February 6, 1990 Petition--requires this Court to observe the standard that it lays down for other judges.

62. In addition to the grotesque judicial and prosecutorial misconduct documented, there is the most extraordinary misconduct of this State's highest legal office, the Attorney General, detailed by Mr. Schwartz' March 14, 1994 letter and substantiated by the uncontroverted correspondence annexed thereto. That correspondence establishes that the Attorney General has put before this Court knowingly false factual statements and has knowingly failed and refused to retract same.

63. For the purpose of completeness, subsequent correspondence on the subject of the Attorney General's obligation to meet his legal and ethical duty is annexed hereto as Exhibits "M" (3/12/94 fax), "N" (3/30/94 ltr), "O" (4/9/94 ltr), "P" (6/9/94 ltr), "Q" (6/10/94 ltr), and "R" (6/17/94 ltr).

64. From the foregoing, it should be evident that this court has jurisdiction of this motion and of the proposed appeal, including that the Judgment appealed from is a final determination or comes within the special class of nonfinal orders which are appealable by permission of the Court of Appeals under CPLR §5602(a)2. Additionally, Appellant respectfully submits that she has demonstrated why the questions presented merit review by this Court in that they are novel, of transcendent public importance, and involve a conflict with prior decisions of this Court and among the Appellate Divisions.

WHEREFORE, it is respectfully prayed that this Court grant: (a) reargument and reconsideration of this Court's Decision & Order, dated May 12, 1994, and upon such reargument and reconsideration that it vacate the dismissal of this appeal and take jurisdiction thereof; (b) leave to appeal to this Court in the interests of justice, in the event reargument and reconsideration of its May 12, 1994 Decision & Order is denied; (c) referral of the Justices of the Second Department, their at-will appointees, and the Attorney General of the State of New York for criminal and disciplinary investigation, pursuant to §100.3(b)(3) of the "Rules Governing Judicial Conduct"; and (d) such other and further relief as this Court may deem just and proper.

Doris L. Sassower

DORIS L. SASSOWER

Sworn to before me
19th day of July 1994

Louise Di Crocco

Notary Public

LOUISE Di CROCCO
Notary Public, State of New York
No. 4718571
Qualified in Westchester County
Commission Expires March 30, 1982

12-10-94

EXHIBITS TO 7/19/94 REARGUMENT MOTION

SASSOWER v. MANGANO, et al.

Exhibit "I": 5/12/94 Order of the Court of Appeals, with Notice of Entry, dated 6/14/94

Exhibit "J": Chronology

Exhibit "K": 10/24/91 ltr of DLS to Governor Mario Cuomo

Exhibit "L-1": 1/28/94 ltr of DLS to Martin Brownstein, Clerk, Second Department

"L-2": 2/10/94 ltr of DLS to Martin Brownstein

"L-3": 2/14/94 ltr of Martin Brownstein to DLS

Exhibit "M": 3/12/94 fax from DLS to Attorney General Koppell

Exhibit "N": 3/30/94 ltr from DLS to Attorney General Koppell

Exhibit "O": 4/9/94 ltr from DLS to Attorney General Koppell

Exhibit "P": 6/9/94 ltr from DLS to Attorney General Koppell

Exhibit "Q": 6/10/94 ltr from Dan Drachler, Counsel to Attorney General Koppell to DLS

Exhibit "R": 6/17/94 ltr from Elena Ruth Sassower to Dan Drachler

Index No. Year 19

COURT OF APPEALS
STATE OF NEW YORK

In the Matter of DORIS L. SASSOWER,

Petitioner-Appellant,

-against-

HON. GUY MANGANO, as Presiding Justice of the Appellate Division, Second Dept., et al.,

Respondents-Respondents.

MOTION FOR REARGUMENT, RECONSIDERATION, LEAVE TO APPEAL, AND OTHER RELIEF

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

~~Attorney for~~ Pro Se

Office and Post Office Address, Telephone

~~50 MAIN STREET • TENTH FLOOR~~

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

~~(914) 682-0001~~

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 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.

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

New Address:
283 Soundview Avenue