

COURT OF APPEALS  
STATE OF NEW YORK

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

Docket #90-00315

GRIEVANCE COMMITTEE FOR THE NINTH  
JUDICIAL DISTRICT,

Petitioner-Respondent,

JURISDICTIONAL STATEMENT  
PURSUANT TO 22 NYCRR  
§500.2

-against-

DORIS L. SASSOWER,

Respondent-Appellant.

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1. The title of this case is as set forth above.
2. This is an appeal, taken as of right, by Notice of Appeal, dated and served on September 18, 1995, (Exhibit "A"), upon Petitioner-Respondent [herein "Respondent"], as well as on the Attorney-General of the State of New York, and filed with the Appellate Division, Second Department as the court of original instance [herein "Second Department"].
3. This appeal is taken from an Order of the Second Department dated June 23, 1995 [herein "the Order"] (Exhibit "B"), denying the motion of Respondent-Appellant [herein "Appellant"] for reargument and renewal of its prior Order, dated February 24, 1995 (Exhibit "C"), for its recusal and transfer of the case to another Judicial Department, for leave to appeal to this Court, and appeal on certified questions of law as to the unconstitutionality of Judiciary Law §90 and the Second

Department Rules Governing the Conduct of Attorneys (22 NYCRR §691.4 et seq.), as written and as applied to Appellant, and as to the Second Department's refusal to recuse itself, thereby depriving Appellant of a fair and impartial tribunal. Also requested by Appellant's aforesaid motion was other relief, including vacatur of the Second Department's June 14, 1991 so-called "interim" suspension Order (Exhibit "D"), now in its fifth year--which its February 24, 1995 Order (Exhibit C") maintained. Said "interim" suspension Order (Exhibit "D") suspended Appellant's law license, without written charges, without findings, without reasons, without a hearing, without a stay pending appeal, and without affording Appellant any right of appellate review. The Second Department has repeatedly denied Appellant a post-suspension hearing as to the basis of its finding-less "interim" suspension Order (Exhibit "D") and denied her motions for leave to appeal to this Court, including appeal on certified questions of law--among them, whether or not she is entitled to the immediate vacatur of the finding-less June 14, 1991 "interim" suspension Order (Exhibit "D") under this Court's controlling decisional law. Matter of Nuey, 61 N.Y.2d 513 (1984); Matter of Russakoff, 79 N.Y.2d 520 (1992) (Exhibits "E-1" and "E-2").

4. Because of the serious and substantial constitutional issues involved, Notice of Right to Seek Intervention, together with the papers on this motion, were served, by hand, upon the Attorney General of the State of New

York on May 1, 1995, while Appellant's motion for reargument, renewal, and other relief was sub judice before the Second Department. A copy of said Notice is annexed hereto as Exhibit "F".

5. The June 23, 1995 Order, with Notice of Entry, was served upon Appellant by Respondent by regular mail, postmarked August 14, 1995 (see Exhibit "A").

6. The name and address of Respondent's attorney is Gary Casella, Esq., Chief Counsel of the Grievance Committee for the Ninth Judicial District, 399 Knollwood Road, White Plains, New York 10603, and the address of the Attorney General of the State of New York is 120 Broadway, New York, New York 10271.

7. Other orders brought up for review as part of the instant appeal are the Second Department's aforesaid June 14, 1991 Order (Exhibit "D"), interimly suspending Appellant's law license, purportedly pursuant to Judiciary Law §90 and 22 NYCRR §691.4(1), Respondent's underlying October 18, 1990 Order (Exhibit "G"), directing Appellant to be medically examined purportedly pursuant to 22 NYCRR §691.13(b)(1); and its July 31, 1992 Order (Exhibit "H") denying, without reasons, Appellant's motion for vacatur of the finding-less, hearing-less "interim" suspension Order (Exhibit "D") based on Matter of Russakoff (Exhibit "E-2"). Likewise, brought up for review is the Second Department's September 20, 1993 Order (Exhibit "I"), wherein the Second Department refused to recuse itself from Appellant's

Article 78 proceeding against itself, Sassower v. Mangano, et al., A.D. #93-02925, and granted the dismissal motion of its own attorney, the Attorney-General of the State of New York.

8. The unlawful and constitutionally-violative nature of the Second Department's June 14, 1991 "interim" Order (Exhibit "D") and its perpetuation have been the subject of four intended appeals by Appellant to this Court, all seeking review. Each and every one of Appellant's four appeals were dismissed or denied by this Court on jurisdictional grounds without any adjudication on the merits by Orders annexed hereto as Exhibits "J-1", "J-1", "J-3", and "J-4". They are Appellant's July 19, 1991 motion for leave to appeal the June 14, 1991 "interim" suspension Order, denied by this Court's Order dated September 10, 1991 (Exhibit "J-1"); Appellant's September 3, 1992 notice of appeal, as of right, from the Second Department's July 31, 1992 Order (Exhibit "H") denying her motion for vacatur of the "interim" suspension Order, based on Russakoff (Exhibit "E-2"), dismissed by this Court's Order dated November 18, 1992 (Exhibit "J-2"); and her appeals, as of right and by motion for leave, of the Second Department's September 29, 1993 Order (Exhibit "I") dismissing her Article 78 proceeding Sassower v. Mangano, et al., supra, which were dismissed and denied by this Court's Orders dated May 12, 1994 and September 29, 1994 respectively (Exhibits "J-3", and "J-4").

9. There is no "opinion or memorandum of the Appellate Division or any other intermediate appellate court or a statement of no opinion of such court".

10. There are no "formal or informal findings and conclusions upon which the order, judgment or determination [appealed from] was entered". As detailed in Appellant's motion to reargue and renew the Second Department's February 24, 1995 Order, under the heading "The Order is Factually Dishonest and Egregiously Erroneous" (at page 3), the so-called "finding" of the Special Referee, recited at the outset of that Order (Exhibit "C"), is factually fabricated and does not exist, and the two findings which the Referee did make are completely without factual or legal support.

11. This Court has subject matter jurisdiction to adjudicate the instant appeal as of right inasmuch as it directly involves substantial constitutional questions--there being no independent and adequate state grounds to support the jurisdictionally-void February 24, 1995 Order (Exhibit "C") or June 14, 1991 "interim" suspension Order (Exhibit "D"). Such overarching constitutional issues were fully delineated and developed in the record before the Second Department on Appellant's motion to reargue and renew the February 24, 1995 Order and, particularly, at pages 16-23 under the heading:

"There is No Statutory Authority for the February 24, 1995 Interim Suspension Order. 22 NYCRR §691.4(1) Permitting Same is Unconstitutional, as is Judiciary Law §90".

Such pages further referred to the four Points of Law in Appellant's Petition for a Writ of Certiorari to the U.S. Supreme Court in her Article 78 proceeding against the Second Department (at pp. 13-29). A copy of said Petition was annexed to Appellant's reargument/renewal motion as Exhibit "C"<sup>1</sup>.

12. As highlighted at page 17 of Appellant's reargument/renewal motion and at Points I and II of its annexed Petition for a Writ of Certiorari (Exhibit "C", at pp. 16-21), this Court itself recognized in Nuey (Exhibit "E-1") that "interim" suspension orders are statutorily unauthorized--and must be immediately vacated where issued without findings. Such holding was reiterated in Russakoff (Exhibit "E-2"), where this Court further recognized that the absence of any requirement for a prompt post-suspension hearing in the appellate division rules (§691.4(1)) rendered them constitutionally infirm, citing Barry v. Barchi, 443 US 55 (1979), and Gershenfeld v. Justices of the Supreme Court, 641 F. Supp. 1419 (E.D. Pa 1986).

13. Apart from the foregoing controlling decisional law of this Court--entitling Appellant to the same due process and equal protection of the law afforded to attorneys Nuey and Russakoff and immediate vacatur of the Second Department's

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<sup>1</sup> A copy of Appellant's Reply Memorandum to the U.S. Supreme Court in her Article 78 proceeding was annexed as Exhibit "A" to her affidavit in reply and in further support of her motion for reargument/renewal of the Second Department's February 24, 1995 Order.

finding-less, hearing-less June 14, 1991 "interim" suspension Order (Exhibit "D")--Appellant relies on the following constitutional, statutory, and legal authorities supporting this Court's jurisdiction to entertain this appeal and the questions raised therein: U.S. Constitution, First, Fifth, Sixth, Eighth, and Fourteenth Amendments thereof; New York State Constitution, Article I, §§1, 5, 6, 8, 9, and 11 thereof; Judiciary Law §90; 22 NYCRR §691.4 et seq., and particularly, §691.4(1) and §691.13(b)(1); CPLR §321(b); In Re Ruffalo, 390 U.S. 544 (1968); Mildner v. Gulotta, 405 F. Supp. 182 (E.D.N.Y. 1975), aff'd 425 U.S. 901 (1976); Matter of Thalheim, 853 F.2d 383 (5th Cir. 1988); Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963); Withrow v. Larkin, 421 U.S. 35 (1975); Lewellyn v. Raff, 843 F.2d 1103 (8th Cir. 1988); Herz v. Degnan, 648 F.2d 201 (3rd Cir. 1981)<sup>2</sup>.

14. On the instant appeal, Appellant will present the constitutional questions set forth in her Petition for a Writ of Certiorari to the U.S. Supreme Court and not adjudicated by reason of its denial thereof, which, together with the additional question relating to the Second Department's disqualification--were squarely presented to the Second Department in her reargument/renewal motion. They are:

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<sup>2</sup> See also "Table of Authorities" in Appellant's Petition for Certiorari (Exhibit "C" to her motion for reargument/renewal of the Second Department's February 24, 1995 Order).

I. WHETHER NEW YORK'S ATTORNEY DISCIPLINARY LAW IS UNCONSTITUTIONAL, AS WRITTEN AND AS APPLIED:

1. where an attorney can be immediately, indefinitely, and unconditionally suspended from the practice of law by an interim order, without findings, reasons, notice of charges, a pre-suspension hearing, or a post-suspension hearing for [now over] four years;

2. where a disciplined attorney has no right of judicial review, either by direct appeal or by the codified common law writs;

3. where adjudicative and prosecutorial functions are wholly under the control of the courts, enabling them to retaliate against attorneys who are judicial "whistle-blowers";

4. where disciplinary proceedings: (a) do not comply with the court's own disciplinary rules, requiring pre-disciplinary hearings and other due process safeguards and a "probable cause" finding; (b) are commenced by ex parte applications of the Grievance Committee's Chief Counsel, without notice or opportunity to be heard prior thereto by the accused attorney; (c) deny the accused attorney all discovery rights, including access to the very documents on which disciplinary orders purport to be based; (d) do not rest on any accusatory instrument, are asserted 'on information and belief', and are not based on any findings of "probable cause" or other jurisdictional prerequisites.

II. WHETHER THE SECOND DEPARTMENT'S DENIAL OF APPELLANT'S REARGUMENT/RENEWAL MOTION FOR ITS RECUSAL VIOLATED HER DUE PROCESS RIGHT TO AN IMPARTIAL AND UNBIASED TRIBUNAL, AS GUARANTEED BY THE FEDERAL AND STATE CONSTITUTIONS, JUDICIARY LAW §14, CANON 3C OF THE CODE OF JUDICIAL CONDUCT, AND §100.3(c) OF THE RULES GOVERNING JUDICIAL CONDUCT?



15. It is hereby certified by the undersigned that pursuant to §500.2(d) notice of this constitutional challenge to Judiciary Law §90 and the related court rules has been given to the Attorney General and Solicitor General by service on their offices of a copy of this Jurisdictional Statement.

Dated: White Plains, New York  
November 15, 1995

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