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,

Affidavit in Opposition To Petitioner-Respondent's Motion to Dismiss Respondent-Appellant's Appeal of Right

-against-

DORIS L. SASSOWER,

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

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

1. I am the Respondent-Appellant, fully familiar with the facts, papers, and proceedings heretofore had herein.

2. This Affidavit is submitted in opposition to Petitioner-Respondent's dilatory and defective motion to dismiss my appeal of right. As hereinafter shown, said motion, made by Petitioner-Respondent's chief counsel, Gary Casella, through one Matthew Renert, is frivolous within the meaning of 22 NYCRR §130-1.1 et seq., and a deliberate deceit upon this Court within the meaning of Judiciary Law §487(1).

3. Initially, it should be noted that Petitioner-Respondent does not identify under what specific statutory provision he is proceeding in making his motion, whose purpose is more than adequately accomplished by the Court's sua sponte

jurisdictional inquiry, routinely made under its published rules, to wit, 22 NYCRR §500.4. In fact, Petitioner-Respondent knows that such sua sponte inquiry was already in progress with respect to the pending appeal herein. Consequently, for Mr. Renert to burden the Court and me with this obviously needless motion can only be viewed as dilatory. Indeed, I am informed by the clerk's office that a motion takes eight to ten weeks for decision[1].

4. It should be further noted that this motion is defective in that Mr. Renert has failed to serve it upon the Attorney-General. As shown by the face of my Notice of Appeal[2], I gave notice thereof to the New York State Attorney General. This is consistent with this Court's rule, §500.2(d), which requires notice to the Attorney General where the constitutionality of a state statute is being challenged, in this case, Judiciary Law §90. It is self-evident that adverse counsel was required to serve his motion upon the Attorney-General to permit him to properly evaluate his proper role herein.

5. Such required service was more specifically drawn to Petitioner-Respondent's attention by ¶4 of my Jurisdictional Statement, and, additionally, by the certification at ¶15, wherein I expressly stated:

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[1] Apparently, no special consideration is given to the fact that this appeal arises out of a disciplinary proceeding, entitled to preference under the rules pursuant to which the subject order was issued. 22 NYCRR §691.4(k)

[2] Exhibit "A" to my Jurisdictional Statement.

> "pursuant to §500.2(d) notice of this constitutional challenge to Judiciary Law §90 and 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."

Notwithstanding same, Mr. Renert's Notice of Motion shows that he has served his motion papers on me alone--and not on the New York State Attorney General or the Solicitor General.

6. Additionally, Mr. Renert's status and standing on this motion is questionable. Although he identifies himself in his moving affirmation (at ¶1) as "of counsel to Gary Casella, attorney for the petitioner-respondent" in this proceeding--the usual meaning of the term "of counsel" connotes some independent contractual relationship. However, Mr. Renert indicates no separate professional office address and submits his motion under Mr. Casella's legal back, without even adding the aforesaid "of counsel" identification.

7. The record under this file number, A.D. #90-00315, shows that it is Mr. Casella--and only Mr. Casella--who has exclusively handled all aspects of Petitioner-Respondent's disciplinary litigation against me, even including routine adjournment requests, which I was, early on, informed that no one but Mr. Casella could even discuss. Indeed, Mr. Renert's instant submission to this Court marks the first time in five years of extensive, intensive, bitterly-contested litigation under A.D.

#90-00315[3] that anyone other than Mr. Casella himself has submitted an affirmation on Petitioner-Respondent's behalf. Plainly, it is Mr. Casella, and not Mr. Renert, who is "fully familiar" with the facts and proceedings herein and who has direct, personal knowledge thereof. Mr. Renert offers no explanation for Mr. Casella's failure to sign and submit an affirmation in his own name. Under the circumstances, it may be fairly inferred that Mr. Casella is "hiding" behind Mr. Renert to avoid having to confront the issues presented by my Jurisdictional Statement.

8. Mr. Renert's five-page affirmation in support of his motion consumes two pages just recapping the subject order, with no recitation of its factual or procedural history. This is not surprising since the subject order is, apart from being factually and legally unsupported, utterly aberrant, procedurally as well as substantively. As shown by the uncontroverted record before this Court[4], the subject order granted

> "relief not requested by the Petitioner, without notice to me, without charges, without a hearing, without any evidentiary findings, and without any committee action whatsoever". (¶4, Motion for Reargument/Renewal).

9. Nowhere does Mr. Renert's skimpy affirmation deny or dispute a single fact relating to the subject order, as set

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[3] This excludes my Article 78 proceeding Sassower v. Mangano, under A.D. #93-02925, wherein the defendants, including Petitioner-Respondent, were defended by the New York State Attorney General.

[4] See ¶¶6-16, 22-3 of my Motion for Reargument/Renewal.

forth at ¶¶2, 9, and 10 of my Jurisdictional Statement and as documented by the uncontroverted record transmitted therewith.

10. Significantly, Mr. Renert concedes (at ¶¶3, 5 of his affirmation) that the subject order continues the June 14, 1991 "interim" suspension order "pursuant to 22 NYCRR §691.4".

11. As to the June 14, 1991 "interim" suspension order[5], Mr. Renert does not deny or dispute any of the assertions contained in my Jurisdictional Statement, to wit, that it was rendered:

> "without written charges, without findings, without reasons, without a hearing" (Jurisdictional Statement, ¶3)

Nor does he deny or dispute that, in the now more than four and a half years that have since elapsed since it was rendered, I have been denied any and all appellate review of the "finding-less", "hearing-less" June 14, 1991 "interim" suspension order, and denied, as well, any post-suspension hearing as to the basis of the "interim" suspension (Jurisdictional Statement, ¶3).

12. The aforesaid facts being undisputed, Mr. Renert then wholly ignores every constitutional issue flowing from such profoundly unconstitutional circumstances. These issues were highlighted by my Jurisdictional Statement--more particularly, at ¶¶11-14. They include the fact that, as this Court recognized in Matter of Nuey, 61 N.Y.2d 513, 515 (1984), there is no statutory authority for interim suspension orders, and, moreover, that 22 NYCRR §691.4(l) is constitutionally infirm in failing to provide

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[5] Exhibit "D" to my Jurisdictional Statement.

for a prompt post-suspension hearing to "interimly" suspended attorneys--a rule change this Court found to be "warranted" in Matter of Russakoff, 79 N.Y.2d 520, 525 (1992)[6]. This Court's decisions in those cases, annexed to my Jurisdictional Statement as Exhibits "E-1" and "E-2", are utterly dispositive of the fact that the "finding-less", "hearing-less" June 14, 1991 "interim" suspension order--perpetuated by the subject order--constitutes a flagrant transgression of my fundamental constitutional rights.

13. As more fully set forth at ¶11 of my Jurisdictional Statement, the issue of the unconstitutionality of Judiciary Law §90 and 22 NYCRR §691.4, et seq. was squarely before the Appellate Division, Second Department when it rendered its subject order--there being no adequate and independent state ground to support that order, or the June 14, 1991 "interim" suspension order it purported to continue. Mr. Renert does not deny or dispute such facts.

14. Consequently, Mr. Renert's bald pretense (at ¶10 of his affirmation) that I have "not provided any bases for an appeal as of right" must be seen as the ultimate deceit. As shown hereinabove, his motion wholly fails to address the substantial constitutional bases for such an appeal, as set forth in my Jurisdictional Statement.

15. Plainly, were this Court to construe attorney

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[6] Yet, the record shows that the Appellate Division, Second Department has still not modified 22 NYCRR §691.4(l) so as to require a prompt post-suspension hearing. (See, ¶30 of my Motion for Reargument/Renewal)

disciplinary proceedings as "civil"--which controlling decisional law of the U.S. Supreme Court has held they are not, In Re Ruffalo, 390 US. 544 (1968)--my appeal of right could be sustained under Article 6, Section 3(b)(1) and (2) of the New York State Constitution and CPLR §5601(b)(1) and (2), if not barred for lack of finality.

16. The aforesaid constitutional and statutory provisions each require "finality"--as does Judiciary Law §90(8), which specifically affords attorneys disciplined under a "final" order a right of appeal "upon questions of law". Yet, Mr. Renert's moving affirmation asserts no objection to this Court's jurisdiction based on lack of finality. Mr. Renert may, thus, be deemed to have waived such objection.

17. Apart from such waiver, as the record reflects, I have heretofore contended that, for all intents and purposes, the June 14, 1995 "interim" suspension order satisfies the test of finality, which is "whether irreparable injury is done if the decision is wrong". Cohen & Karger, The Powers of the Court of Appeals, §9, at p. 32 (1952 ed.).

18. It is submitted that the reason the Legislature did not specifically provide in Judiciary Law §90(8) for appeals from interim orders of suspension is, quite simply, because it did not authorize interim suspension orders in the first place. As hereinabove set forth--and at ¶12 of my Jurisdictional Statement--this Court has already recognized the lack of statutory authorization for interim suspension orders, Matter of

Nuey, supra.

19. Since there is no legislative authorization for interim orders of suspension, Nuey, supra, there is no statutory basis to preclude review thereof for lack of finality.

20. Certainly, failure to interpret Judiciary Law §90(8) as applicable to statutorily-unauthorized interim suspension orders makes the unconstitutionality of such interim orders even more apparent since it would permit such interim orders to be effectively non-reviewable. This is a constitutional anathema where, as here, such orders are retaliatory and the product of flagrant violations of due process and equal protection rights.

21. Attorney disciplinary proceedings being "quasi-criminal" in nature[7], In Re Ruffalo, supra, it is respectfully submitted that the source of this Court's jurisdiction to review attorney disciplinary orders may be derived from the provision governing criminal appeals, as set forth in Article 6, Section 3(b) of the New York State Constitution, as follows:

> "Appeals to the court of appeals may be taken... [i]n criminal cases, directly from a court of original jurisdiction where the judgment is of death, and in other criminal cases from an appellate division or otherwise as the legislature may from time to time provide."

22. In a disciplinary proceeding, the suspension of an

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[7] See, pp. 14-15 of my cert petition to the U.S. Supreme Court in my Article 78 proceeding, Sassower v. Mangano (Exhibit "C" to my Motion for Reargument/Renewal) regarding the judicial divergence of views as to the meaning of "quasi-criminal" in the context of attorney disciplinary proceedings.

attorney's license, whether final or interim--as implemented by 22 NYCRR §691.4--is akin to "professional death". It is, therefore, my contention that disciplined attorneys should have the same absolute right of review by this Court on the law and the facts[8], as is afforded to criminal defendants in capital cases.

23. It may be noted that the only reference to my Jurisdictional Statement made by Mr. Renert's affirmation (in the first of his two paragraphs "12") is to emphasize my four previous unsuccessful attempts to appeal to this Court from the June 14, 1991 "interim" suspension order. For that proposition, he cites ¶8 of my Jurisdictional Statement.

24. However, Mr. Renert misleads the Court in his ¶11, pretending that there is something untoward in the attempt of disciplined attorneys "to frame constitutional issues" in their appeals of right to this Court. As Mr. Renert knows from his citation to Article 6, Section 3 and CPLR 5601, a showing of constitutional issues is required for "civil" appeals, taken of right.

25. Moreover, his citation to Gerzof v. Gulotta, 42 N.Y.2d 960 (1977), and Mildner v. Gulotta, 405 F.Supp. 182 (D.C.N.Y. 1975), affirmed, 425 U.S. 901 (1976) is egregiously inapt. In those cases, the plaintiffs were deemed to have waived

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[8] Compare the rights of judges disciplined under determinations of the New York State Commission on Judicial Conduct, who are given an absolute right of review by this Court on the law and the facts. New York State Constitution, Art.6, §22 (d); Judiciary Law, §44(9).

the defense of unconstitutionality of Judiciary Law §90 by their failure to properly preserve that objection in the lower court.

26. Mr. Renert does not contend that I failed to raise such objection in the lower court--and the record before this Court shows that the issue of the unconstitutionality of Judiciary Law §90 and the related Appellate Division, Second Department rules was fully developed before the lower court.

27. It may be further pointed out that in Mildner and Gerzof, supra, the issue of the constitutionality of interim suspension orders did not arise--the disciplined attorneys having each been suspended under a final order of suspension. Moreover, such final suspension orders followed full-blown hearings, at which due process was specifically found to have been afforded. Thus, in Gerzof, 87 Misc.2d 768 (1976), the Special Term decision found:

> "[Gerzof] received notice of the charges against him and was given an opportunity to confront and cross-examine adverse witnesses during a hearing before...the Special Referee. He was represented by counsel who had an opportunity to present a summation to the Referee. The Referee prepared a report and a supplemental report which contained detailed findings of fact and conclusions respecting the specified charges.
>
> Moreover, a full transcript of the proceedings before the Referee was submitted to the Appellate Division and ... The Appellate Division's opinion recites that it reviewed the evidence before [the Referee] and found that it supported the charges preferred against plaintiff.
>
> Thus plaintiff was afforded a fair and open hearing and the evidence presented before the Referee was reviewed by the ultimate trier of

fact." Gerzof at 779-80.

28. Where, as here, the uncontroverted and incontrovertible record shows that I have been denied all such due process rights, it is fraudulent, deceitful, and sanctionable for Mr. Renert to pretend that the Gerzof and Mildner decisions control my appeal of right in some vague, unspecified way and to impugn this most meritorious appeal--as well as my previous appeals--as being "improper" (see, Mr. Renert's two paragraphs "12").

29. Indeed, the lower court decision in Gerzof, supra, 778, refers to the well-settled principle that appellate review is required "where a litigant has been denied due process in the trial court", citing Ohio v. Akron Park Dist., 281 U.S. 74, 80. This is irrefutably the case at bar--where the uncontroverted record shows there is not a shred of factual or legal support for the subject order or the June 14, 1991 "interim" suspension order it purports to continue.

30. Moreover, as expressly acknowledged by the lower court in Gerzof, supra, the equal protection clause is violated where appellate review is afforded some litigants and arbitrarily and capriciously denied to others, citing Lindsey v. Normet, 405 U.S. 56, 77. This is plainly the case at bar where, as set forth at ¶13 of my Jurisdictional Statement and in my November 15, 1995 transmittal letter, this Court denied jurisdiction to review of my finding-less, hearing-less "interim" suspension--be it by right or by leave--notwithstanding it took jurisdiction over the

interim suspension orders of attorneys Nuey and Russakoff, which it thereupon vacated.

31. Should this Court rule, notwithstanding the foregoing, that my appeal taken of right is one requiring leave, in the interests of justice and judicial economy, I request that the Court, sua sponte, grant me the leave it heretofore granted to the interimly-suspended attorneys Nuey and Russakoff. The documentary record before this Court amply establishes my contention that my case is a fortiori in every respect to those attorneys' cases[9]. Such conversion of this appeal is without prejudice to my contention that an appeal lies of right.

32. As set forth in my November 15, 1995 transmittal letter, the unconstitutional suspension of my law license by Petitioner-Respondent's June 14, 1991 "interim" suspension order and the wholesale deprivation of my federally and state-guaranteed constitutional rights of due process and equal protection are now the subject of a federal action brought under 42 U.S.C. §1983 in the district court for the Southern District of New York. That lawsuit, entitled Sassower v. Mangano, 94 Civ. 4514 (JES), challenges the constitutionality of Judiciary Law §90 and the Appellate Division, Second Department's disciplinary rules, as written and applied.

33. If this Court refuses to take jurisdiction over my instant appeal--be it by right or by leave--so as to adjudicate

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[9] See, inter alia, Exhibit "G" to my 1/24/94 Jurisdictional Statement in my Article 78 proceeding Sassower v. Mangano, A.D. #93-02925.

the merits of the constitutionality of New York's disciplinary law, the aforesaid federal court may soon do so. Indeed, annexed hereto as Exhibit "A" is the most recent order of the federal court[10] in my aforementioned action, requesting

> "all documents filed in state court proceedings relating to complaints filed against plaintiff pro se, the suspension of plaintiff pro se's license to practice law and the constitutionality of the proceedings therein".

This will, of course, include the documents filed in this Court in my attempts to obtain its review of the June 14, 1991 "petition-less", "finding-less", "hearing-less" "interim" suspension order--including this, my fifth attempt. Such documents leave no doubt but that this Court, by its dismissals of my appeals of right and denial of my motions for leave, has knowingly and deliberately deprived me of my due process and equal protection rights. As set forth in my November 15, 1995 transmittal letter, because of the substantial constitutional issues directly and necessarily involved, this Court's failure and refusal to afford review can only be interpreted as a reflection of its bias--as a result of which I have no state remedy to protect my federally and state-guaranteed constitutional rights.

34. The record before this Court is rank with civil

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[10] The order erroneously refers to defendants as having made a summary judgment motion. In fact, they made a dismissal motion for judgment on the pleadings--which, pursuant to FRCP 12(c), I requested be converted to a motion for summary judgment in my favor, and for sanctions against them.

rights violations of a magnitude and multitude so great as to call for a referral for criminal and disciplinary investigation of Petitioner-Respondent and its counsel, consonant with its ethical duty under the §100.3(b)(3) of the Rules Governing Judicial Conduct and Canon 3(b)(3) of the Code of Judicial Conduct.

WHEREFORE, it is respectfully prayed that Petitioner-Respondent's motion to dismiss the instant appeal of right be denied and that jurisdiction thereof be accepted, that financial sanctions and costs, pursuant to 22 NYCRR §130-1.1, et seq., be imposed on Petitioner-Respondent and its counsel, personally, for their frivolous conduct, and that a disciplinary and criminal referral of such counsel be made for their fraudulent, deceitful, and collusive conduct, within the meaning of Judiciary Law §487(1), together with such other and further relief as this Court may deem just and proper.

Doris L. Sassower
DORIS L. SASSOWER

Sworn to before me this
26th day of December 1995

Sherri Mabe Carter
Notary Public

SHERRI MABE CARTER
Notary Public, State of New York
No. 31-4998719 Qualified in Westchester County
Certificate Filed in New York County
Commission Expires July 6, 96

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age, and resides in White Plains, New York.

On December 25, 1995 Deponent served the

within: AFFIDAVIT IN OPPOSITION TO PETITIONER-RESPONDENT'S MOTION TO DISMISS RESPONDENT-APPELLANT'S APPEAL OF RIGHT

upon: Grievance Committee for the Ninth Judicial District
399 Knollwood Road
White Plains, New York 10603

Attorney General of the State of New York
120 Broadway
New York, New York 10271

Solicitor General, Department of Law
The Capitol
Albany, New York 12224

by depositing true copies of same in post-paid properly addressed wrappers in an official depository under the exclusive care and custody of the United States Post Office within the State of New York at the address last furnished by them or last known to your Deponent.

Elena Ruth Sassower
ELENA RUTH SASSOWER

Sworn to before me this
26th day of December 1995

Sherri Mabe Carter
Notary Public

SHERRI MABE CARTER
Notary Public, State of New York
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-against-

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Respondent-Appellant.

AFFIDAVIT IN OPPOSITION TO PETITIONER-RESPONDENT'S MOTION TO DISMISS RESPONDENT-APPELLANT'S APPEAL OF RIGHT

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

~~*Attorney for*~~ Respondent-Appellant Pro Se

Office and Post Office Address, Telephone

~~50 MAIN STREET • TENTH FLOOR~~

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

~~(914) 682-2001~~

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.~~

~~*Attorney for*~~ Respondent-Appellant Pro Se

Office and Post Office Address

~~50 MAIN STREET • TENTH FLOOR~~

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

To

Attorney(s) for