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By Priority Mail

December 6, 1995

Court of Appeals
20 Eagle Street
Albany, New York 12207-1095

Att: Donald Sheraw, Clerk

RE: Matter of Doris L. Sassower
A.D. #90-00315

Dear Mr. Sheraw:

This letter responds to yours dated November 27, 1995. At the outset, I note that you have not sent a copy of your letter to either the New York State Attorney General or Solicitor General--notwithstanding both my §500.2 Jurisdictional Statement and November 15, 1995 transmittal letter in the above matter reflect service upon them.

As to the substance of your largely boiler-plate form letter, you assert a purported need for a sua sponte jurisdictional inquiry by requesting information and materials that I have already supplied to the Court by my November 15, 1995 transmittal.

Thus, you ask me to provide:

> "comments justifying the retention of subject matter jurisdiction, including references to the record demonstrating that a constitutional question was raised in the court or other forum of original instance".

and, additionally, ask that I enclose:

> "a copy of each brief filed in the Appellate Division, as well as a copy of the Record on Appeal or Appendix filed in that court.."

I respectfully submit that such requests entirely ignore the content of my §500.2 Jurisdictional Statement and my November 15, 1995 coverletter relating to this Court's jurisdiction.

As to the former request, I specifically draw your attention to ¶¶11-14 of my §500.2 Jurisdictional Statement. Those paragraphs explicitly delineate the constitutional issues directly involved, establishing, with record references, that my objections were

properly raised and squarely before the Appellate Division, Second Department, as the court of original instance. Illustrative excerpts from ¶¶11-12 of my Jurisdictional Statement follow:

> "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(l) Permitting Same is Unconstitutional, as is Judiciary Law §90'[1]...
>
> 12. As highlighted at page 17 of Appellant's reargument/renewal motion...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(l)) 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)."

Indeed, because this Court's decisions in Nuey and Russakoff are dispositive of the constitutional due process and equal protection issues directly involved and of my right to this Court's review, copies of those decisions were annexed to my Jurisdictional Statement as Exhibits "E-1" and "E-2".

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[1] Examination of the very first paragraph under that heading shows that I also raised the constitutional issues in my opposition papers prior to rendition of the Appellate Division, Second Department's February 24, 1995 Order.

As to your second request--for the record--I respectfully refer you to ¶2 of my November 15, 1995 letter, which explicitly stated that I was simultaneously transmitting with my §500.2 Jurisdictional Statement a duplicate copy of the record that was before the Appellate Division, Second Department:

> "So as to obviate the need for any 'sua sponte jurisdictional inquiry' and to expedite the Court's verification of the facts as to the substantial constitutional questions directly involved--there being a complete absence of any 'adequate and independent state ground' to sustain the orders herein appealed".

Additionally, ¶3 of my letter brought to your attention that:

> "Since this is now the fifth time that I am bringing up for the Court's review the Second Department's June 14, 1991 "interim" Order suspending my law license, the Court already has in its possession virtually the entire record of the disciplinary proceedings against me under A.D. #90-00315."

Consequently, in response to your November 27, 1995 letter, I rest on my §500.2 Jurisdictional Statement and the materials transmitted with my November 15, 1995 coverletter.

As to the issue of the Court's recusal, it was not my intention that recusal "be granted administratively". The Court is constitutionally and statutorily mandated to recuse itself, sua sponte, when--as here--its actual bias has been demonstrated and its impartiality might reasonably be questioned (Article VI, §20(b)(4), §28(c) of the Constitution of the State of New York, §100.3(c) of the Rules Governing Judicial Conduct).

Therefore, I do not know what you mean when you state "your letter request will not be considered by the Court". I respectfully submit that, as Clerk, you have a duty to apprise the Court of my November 15, 1995 letter request for its recusal. Certainly, it has always been my understanding that before making a formal motion for such relief, as a courtesy to the judges involved--who may prefer not to have all the reasons for recusal articulated--the objection should be raised orally or by letter to permit each judge to search his or her own conscience in determining, sua sponte, whether, in the event of an adverse decision, justice will not only be done, but will be seen to have been done.

I would point out that apart from the grounds identified in my November 15, 1995 letter, additional grounds for recusal were presented to the Court in the March 14, 1994 letter of Evan Schwartz, Esq., my attorney, in support of the Court's

jurisdiction as of right in my Article 78 proceeding, Sassower v. Mangano, et al.. Said grounds are incorporated herein by reference--with a copy of the pertinent pages (pp. 5-7) annexed for the Court's convenience.

Finally, since my November 15, 1995 letter expressly referred to the published report that the Chief Judge is "awaiting public comment in the next 90 days" before acting on such reform proposals as opening attorney disciplinary proceedings, I do not understand why you refuse to "accommodate" my request that said letter be transmitted to the Chief Judge, together with the enclosed separate copy of the cert petition in my Article 78 proceeding, Sassower v. Mangano, et al.. Indeed, it was for that purpose that a duplicate of the November 15, 1995 letter was provided to you[2].

As for the Chief Judge's Committee, headed by Mr. Craco, it has already concluded its work. Although, I would hope that Mr. Craco would initiate a re-evaluation of its proposal based upon the information he has received from me, that committee's proposals are now before the Chief Judge. Consequently, I reiterate my request that the duplicate copy of my November 15, 1995 letter and enclosed cert petition be transmitted to the Chief Judge without further delay. Should you continue to refuse to do so, I ask you to return those two documents to me so that I may send them directly to the Chief Judge.

The foregoing matters were each discussed with Martin Strnad with whom I spoke last week following receipt of your letter, who suggested that they be formalized in a letter to you.

Very truly yours,

Doris L. Sassower

DORIS L. SASSOWER

Enclosure

cc: Attorney General of the State of New York
Solicitor General, Department of Law
Gary Casella, Chief Counsel
Grievance Committee for the Ninth Judicial District

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[2] By contrast--and for reasons unknown to me--your deputy clerk designated the "Judges of the Court" as indicated recipients of his November 30, 1995 letter to my daughter, Elena, responding to her separate letter to you, dated November 15, 1995. Her letter simply requested access to the files of disciplined attorneys who have sought review by the Court during the past three years.

suspension under such circumstances -- or for any of the other 19 orders under A.D. 90-00315, annexed as Exhibit D to Appellant's Jurisdictional Statement -- all of which are jurisdictionally void ab initio.

In the just decided case Matter of Catterson, N.Y.L.J., 3/11/94, at 24, col. 3, Respondent Second Department, by a panel comprised of four of the same justices who dismissed Appellant's Article 78 proceeding at ba,r[6] found a "clear right to relief" by prohibition where an order -- in that case a discovery order -- was without statutory basis. Such decision contrasts starkly with its decision in this case, where they denied Appellant her "clear right" to such relief -- notwithstanding the file of the underlying disciplinary proceeding under A.D. #90-00315 establishes that each and every order therein is without factual or legal basis, statutory or otherwise. This includes the still extant June 14, 1991 "interim" suspension Order (Juris Stmnt, Exh D-6). That Respondent Second Department would grant the extraordinary remedy of prohibition in Matter of Catterson, but deny it here can only be seen as the latest expression of that Court's retaliatory double standard of adjudication where Appellant is concerned, all denying her due process and equal protection of the laws.

This Court has personal knowledge that Appellant has been a leading spokesperson against the increasing politicization of the

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[6] Those justices being Justices Thompson, Sullivan, Balletta and Rosenblatt.

bench[7] 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.[8] Since examination of the disciplinary files under A.D. #90-30015 reveals no factual or legal basis for the steady continuum of jurisdiction-less orders (Juris Stmnt, Exh D), Respondents' retaliation against Appellant becomes apparent and unmistakable. Indeed, that contention was set forth by Appellant in the underlying proceedings under A.D. 90-00315, inter alia, immediately following her June 14, 1991 suspension, as part of her June 20, 1991 Order to Show Cause brought before Respondent Second Department to vacate the "interim" suspension Order[9] issued six

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[7] Appellant has given oral and written testimony at recent Senate Judiciary Committee public hearings in opposition to the confirmation of two members of this Court, Judges Levine and Ciparick, and raised questions therein as to the constitutionality of the nomination and confirmation process for Court of Appeals judges.

Appellant's ex-husband testified in January 1987 at Senate Judiciary Committee hearings in opposition to the confirmation of Judge Bellacosa to this Court. On information and belief, both Judge Bellacosa and Chief Judge Kaye are the subject of pending litigation by Mr. Sassower in Federal court.

[8] See Castracan v. Colavita, 173 A.D.2d 924 (2d Dep't), appeal dismissed 78 N.Y.2d 1041 (N.Y. 1991), and the companion case Sady v. Murphy, 175 A.D.2d 895 (2d Dep't), lv denied 78 N.Y.2d 960 (N.Y. 1991), which were both before this Court during the same time as Appellant's motion for leave to appeal from the June 14, 1991 "interim" suspension Order, which motion was denied. Matter of Sassower, 80 N.Y.2d 1023 (1992).

[9] Appellant's Supporting Affid, at ¶¶12-14, wherein, inter alia, she stated that ". . . it is not my medical [condition], but rather my activities as pro bono counsel for the Ninth Judicial Committee that have resulted in the [suspension] order -- swift retribution for the opinions expressed. . . ."

days earlier.

The constitutional issues raised by this case thus take on First Amendment dimensions.[10] Since the Appellate Divisions control all aspects of the disciplinary mechanism, encompassing not only control of the judicial function, but, as well, the prosecutorial and administrative quasi-judicial functions through at-will appointments of those involved in such functions, the disciplinary mechanism can, as here, be triggered, sua sponte, by the behind-the-scenes manipulation of such at-will appointees (Juris Stmnt ¶27: Point III). This permits 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. As has happened here, the confidentiality afforded under Judiciary Law §90(10) is then employed not as a shield to protect an unfairly accused attorney -- in conformity with legislative intent -- but as a sword against such attorney to conceal retaliation by its abrogation of mandated due process procedures.

That the structure of the disciplinary process permits judicial manipulation against lawyers who speak out impinges not only on a lawyer's First Amendment right of free speech, but the special duty imposed upon lawyers to "assist in maintaining the integrity and competence of the legal profession" (Canon 1 of the Code of Professional Responsibility) and to "assist in improving

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[10] The right to free speech is also protected by Article I, §8 of the New York State Constitution.