COURT OF APPEALS
STATE OF NEW YORK
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In the Matter of Doris L. Sassower,
An Attorney and Counselor-at-Law,

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,

Petitioner-Respondent,

-against-

DORIS L. SASSOWER,

Respondent-Appellant.
----------x

Mo. No. 1673

Appellant's Affidavit in Opposition to Cross-Motion and in Further Support of her Motion for Recusal, Reargument, Reconsideration, and Leave to Appeal

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

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

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

2. This Affidavit is submitted in opposition to the Cross-Motion for Dismissal of Matthew Renert, Esq., who purports to be "of counsel" to Gary Casella, Chief Counsel to Petitioner-Respondent[1], and in further support of my Motion for Recusal,

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[1] In my December 26, 1995 affidavit in opposition to Mr. Renert's December 6, 1995 cross-motion to dismiss my appeal of right, I questioned (at ¶¶6-7) Mr. Renert's so-called "of counsel" status and standing to appear on behalf Mr. Casella. Renert did not respond or submit any legal authority to sustain Mr. Casella's delegation of his attorney function to someone whose "of counsel" title connotes a relationship of independent contractor, rather than employee. I, therefore, reiterate that objection, as more fully set forth at ¶¶6-7 of my December 26,

Reargument, Reconsideration, and Leave to Appeal, dated March 27, 1996, returnable on April 15, 1996. As hereinafter shown, Mr. Renert's Cross-Motion is--like his previous one--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. Since Mr. Renert predicates his instant Cross-Motion for Dismissal on a demonstrably false and misleading timeliness objection, I wish at the outset to assert my objection to the patent untimeliness of his Cross-Motion--which objection is jurisdictional in nature[2].

4. Under CPLR §2215, a cross-motion requires at least three days notice, and when, as here, service is by mail, CPLR §2103(b)(2) requires that "five days shall be added to the prescribed period". Nonetheless, Mr. Renert mailed his April 8, 1996 cross-motion on that date. Such mailed service is, therefore, one day short for an April 15, 1996 return date--since, in computing the time within which an act must be done in an action or proceeding, the day of service is excluded in determining the day from which the reckoning is made. General

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1995 affidavit.

2 I would note that on Mr. Renert's instant cross-motion is--like his previous cross-motion--he has again failed to serve either the Attorney-General or upon the Solicitor-General, who because the constitutionality of Judiciary Law §90 is herein being challenged, were noticed by me on this appeal, consistent with this Court's rule §500.2(d). See ¶¶4-5 of my December 26, 1995 opposing affidavit.

Construction Law §20.

5. Consequently, Mr. Renert's cross-motion is dismissible as a matter of law--his failure to comply with CPLR §§2215 and 2103 being jurisdictional. Vanek v. Mercy Hospital, 133 App. Div. 2d 707, 522 N.Y.S.2d 607 (2nd Dept. 1987).

THE MOTION FOR LEAVE TO APPEAL IS TIMELY

6. By his Notice of Cross-Motion, Mr. Renert seeks dismissal of my March 27, 1996 motion in its entirety, pursuant to this Court's Rule §500.11(g). However, §500.11(g) explicitly applies to reargument motions--and not to motions for leave to appeal.

7. Motions for leave to appeal are governed by this Court's Rule §500.11(d). The time to move for such leave is controlled by CPLR §5513(b), which gives the movant 30 days from the date of service upon such party of a copy of the order, with notice of entry. Once again, when, as here, service is by mail, CPLR §2103(b)(2) requires that "five days shall be added to the prescribed period".

8. Wholly omitted from Mr. Renert's affidavit is the date upon which he served me, by mail, with this Court's February 20, 1996 Decision and Order [Cf. his ¶¶8, 9].

9. As hereinabove set forth, such date is critical fact to determining the timeliness of a motion for leave to appeal.

10. As alleged by me at ¶3 of my moving affidavit, and dispositively documented by Mr. Renert's own February 26,

1996 coverletter as to his service of this Court's February 20, 1996 Decision and Order, annexed to my moving affidavit as Exhibit "B" thereto, Mr. Renert served me, by mail, on February 26, 1996. Consequently, my time in which to move for leave to appeal did not expire until 35 days after his mailed service, to wit, April 1, 1996.

11. Hence, Mr. Renert's false claim (at his ¶9) that I served him with my motion on March 29, 1996--for which he gives no substantiation--even if true, which it is not, would not affect the timeliness of my motion for purposes of leave to appeal.

12. As shown by the affidavit of service for my instant motion, annexed hereto as Exhibit "A", my motion was served on March 27, 1996.

13. Consequently, my motion for leave to appeal is timely and Mr. Renert's attempt to mislead the Court to the contrary a deliberate deceit.

THE MOTION FOR REARGUMENT IS NOT UNTIMELY AS A MATTER OF LAW

14. Reargument motions before this Court are governed by §500.11(g). Subdivision (3) of such provision specifies with respect to the time requirement as follows:

> "Unless otherwise permitted by the court, the notice of motion shall be served not later than 30 days after the appeal on [sic] motion is decided." (emphasis added)

15. It was for such reason that at the very outset of my moving affidavit in support of my reargument motion, I called upon the Court to exercise its discretion under §500.11(g)(3)

> "to excuse the minor delay in bringing on this motion as it relates to reargument and reconsideration" (at ¶4).

Such minor delay consisted of eight days beyond the 30th day from the February 20, 1996 date of this Court's Decision and Order. In support of this Court's exercise of its discretion, I documentarily showed good cause for such inconsequential delay by annexing three medical certificates, substantiating physically-disabling circumstances (Exhibit "C" thereto), as well as proof of vindictive and retaliatory stressful litigation deadlines imposed upon me by the Appellate Division Second Department (Exhibit "D"). This is over and beyond the fact that my status as a pro se litigant should evoke the normal solicitude of the court--not to mention the nature of the disciplinary order sought to be reviewed on this appeal, which raises a question (however spurious) as to my mental capacity.

16. Mr. Renert himself acknowledges (at ¶10 of his cross-moving affidavit) this Court's discretion under §500.11(g)(3) to waive the 30-day requirement for reargument motions. Since he in no way denies the inconsequential nature of the eight-day delay he asserts as a basis for dismissal and does not deny or dispute my ample showing of good cause for the Court to exercise its discretion in my favor, his cross-motion resting solely on such immaterially tardy filing--which I myself identified when I sought to be excused therefrom--is sanctionable.

17. Under the uncontroverted circumstances before this

Court, particularized at ¶4 of my moving affidavit, it would be an abuse of discretion for this Court to do other than grant the requested permission.

18. I would further point out that but for this Court's Rule 500.11(g)(3)--differentiating, without reasons, the timeliness computation for reargument motions as running from the date of the subject order, with notice of entry, rather than from the usual computation, running from service of the order, as in the case of leave to appeal motions--there would be no timeliness issue here at all. I submit that such statutorily unauthorized, court-created rule is so sharp a departure from the normal and customary rules of practice prescribed in the CPLR as to constitute a "trap for the unwary".

IT IS UNDENIED THAT THE SUBJECT ORDER IS ERRONEOUS, IN FACT AND IN LAW, WARRANTING THE GRANTING OF REARGUMENT

19. Mr. Renert does not deny or dispute my factual and legal showing, as set forth at ¶¶5-8 and ¶¶15-18 of my moving affidavit, that this Court's February 20, 1996 Decision and Order is erroneous. Nor does he in any way challenge my allegations concerning the threshold issue--ignored by this Court's subject Decision and Order--as to the Court's duty to recuse itself, as particularized at ¶¶9-14.

20. What Mr. Renert does do, however, is misrepresent (at his ¶7) the jurisdictional bases upon which I filed my Notice of Appeal of Right. As may be seen by my November 15, 1995 Jurisdictional Statement, I did not identify the sections under which I sought review--and argued my entitlement under sections

additional to Judiciary Law §90(8) and CPLR §5601 in my December 26, 1995 affidavit in opposition to Mr. Renert's previous cross-motion[3].

21. Mr. Renert has not denied or refuted the arguments set forth by me in my December 26, 1995 affidavit.

22. Consequently, the truth and merit of my reargument motion for recusal and appeal as of right are conceded by Mr. Renert.

MR. RENERT DOES NOT DISPUTE MY SHOWING OF ENTITLEMENT WARRANTING THE GRANTING OF LEAVE TO APPEAL

23. Mr. Renert does not deny the good and meritorious basis upon which my moving affidavit seeks leave to appeal. He simply ignores my argument, set forth at ¶¶19-21 of my motion, which reads in pertinent part as follows:

> "I submit that this Court's decisions in Matter of Nuey and Matter of Russakoff[4]--in both of which this Court granted leave to appeal interim suspension orders and invalidated them for lack of findings--are dispositive of my entitlement to this Court's properly exercised discretion, pursuant to CPLR §5601(a)[2], to review the June 14, 1991 petition-less, finding-less, hearing-less 'interim' suspension Order, encompassed in the within appeal.
>
> As heretofore highlighted...my case is in every respect a fortiori."

24. Nor does Mr. Renert in any way deny my argument (at ¶9) that, as a matter of equal protection, I am entitled to

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3 See ¶¶15-22 of my December 26, 1995 opposing affidavit.

4 Matter of Nuey and Matter of Russakoff were annexed to my Jurisdictional Statement as Exhibits "E-1" and "E-2", respectively.

review equal to that afforded Nuey and Russakoff--to which, he does not deny my case is a fortiori.

25. Both Nuey and Russakoff reflect the transcending constitutional issues, squarely presented by my motion for leave to appeal. This was pointed out, with record references, at ¶12 of my Jurisdictional Statement, as follows:

> "...this Court itself recognized in Nuey that 'interim' suspension orders are statutorily unauthorized--and must be immediately vacated where issued without findings. Such holding was reiterated in Russakoff, 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)."

26. Indeed, as of this date--nearly four years after this Court ruled in Russakoff--the Appellate Division, Second Department has still not amended its rules to require prompt post-suspension hearings.

27. As highlighted by me at ¶¶9-13 of my December 26, 1995 affidavit in opposition to Mr. Renert's prior dismissal motion--and as remains true--Mr. Renert has not denied or disputed the factual allegations of my detailed Jurisdictional Statement establishing the flagrant violation of my constitutional rights by the Appellate Division's subject Orders. Nor has he denied or disputed that I raised a constitutional challenge to those Orders in the Appellate Division, Second Department, as set forth at ¶11 of my Jurisdictional Statement.

28. Likewise, Mr. Renert does not address my arguments, as set forth at ¶22 my moving affidavit, as to unconstitutionality of New York's attorney disciplinary law, recognized more than twenty years ago by Judge Jack Weinstein, in Mildner v. Gulotta, 405 F. Supp. 182 (E.D.N.Y. 1975), discussed and analyzed in my cert petition which was part of the record of the proceedings in the Appellate Division, Second Department on my constitutional challenge before it (See, Exhibit "C" to my March 27, 1995 reargument/renewal motion in the Appellate Division, Second Department).

29. Consequently, Mr. Renert's bald pretense (at his ¶11) that my appeal is "not of state-wide importance" and has "no impact" beyond my "own circumstances is again a deceit upon the Court, totally belied by the record. His attempt (at ¶12) to characterize my suspension as due to my "failure to comply with a lawful order of the Appellate Division, Second Department" is over and again belied by the record, which shows that the October 18, 1990 Order[5] directing my medical examination is unlawful and, on its face, contains seven errors designed to conceal that it is jurisdictionally void. (See, inter alia, Exhibit "D", ¶79 to my March 27, 1995 reargument/renewal motion in the Appellate Division, Second Department)

30. There is no finding anywhere in the record that the Appellate Division, Second Department's October 18, 1990 Order is lawful--including in its June 14, 1991 suspension

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5 See, Exhibit "G" to my Jurisdictional Statement.

Order[6]--which makes no findings of any nature--or in its February 24, 1995 Order[7], which, likewise, makes no findings.

31. As a matter of public policy, there is a long established policy in favor of appeal. Good v. Daland, 119 N.Y. 153; Livingston v. New York Elev. R. Co., 60 Hun. 473; 15 N.Y.S. 191. It is because of the belief that "an aggrieved party should be afforded every reasonable opportunity to have his day in court", Grombach Productions, Inc. v. Waring, 37 N.Y.S.2d 668, rev'd on other grounds, 266 A.D. 772, 42 N.Y.S.2d 921, the rule is that "the party seeking to appeal is given the benefit of any technicality so as to sustain his appeal, Dobyns v. Commercial Trust Co., 50 Misc. 629, 98 N.Y.S. 748, and the party seeking to limit the appellate rights of his adversary to appeal is held to strict practice." Kelly v. Sheehan, 76 N.Y. 325, Good v. Daland, 119 N.Y. 153.

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6 See, Exhibit "D" to my Jurisdictional Statement.

7 See, Exhibit "C" to my Jurisdictional Statement.

WHEREFORE, it is respectfully prayed that Mr. Renert's Cross-Motion to dismiss be denied and 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 demonstrably 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
18th day of April 1996

Beth Avery Beth Avery
Notary Public

commissioned in
Westchester county
02AV5056824
My commission
expires 3/11/98

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 April 18, 1996 Deponent served the

within: Appellant's Affidvit in Opposition to Cross-Motion and in Further Support of her Motion for Recusal, Reargument, Reconsideration, and Leave to Appeal

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
18th day of April 1996

Beth Avery Beth Avery
Notary Public

Commissioned in
Westchester County
02AV5056824
my commission
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COURT OF APPEAL
STATE OF NEW YORK

In the Matter of Doris L. Sassower.
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GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT.

Petitioner-Respondent.

-against-

DORIS L. SASSOWER.

Respondent-Appellant.

APPELLANT'S AFFIDAVIT IN OPPOSITION TO CROSS-MOTION AND IN FURTHER SUPPORT OF HER MOTION FOR RECUSAL, REARGUMENT, RECONSIDERATION, AND LEAVE TO APPEAL

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) 682-8001~~

283 Soundview Ave
White Plains NY 10606-3821
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.~~

~~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