The Third Judicial Circuit of the United States

John P. Hehman
Circuit Executive

21613 U.S. Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106-1721
215-597-0718

October 3, 1991

Mr. George Sassower
16 Lake Street
White Plains, NY 10603

Re: Complaint of Employee Misconduct
Cases 89-5810, 90-5147

Dear Mr. Sassower:

Enclosed for you attention is a decision on your complaint about employee misconduct in the court of appeals.

This represents a final decision on your complaint. You may, however, appeal to the Judicial Council of the Third Circuit for a review of this decision pursuant to Judicial Council Rule 15, a copy of which is enclosed. Appeals should clearly state the basis for disagreement with the decision, and should be addressed to the Judicial Council in care of this office.

Sincerely,

William J. Buckley
Assistant Circuit Executive

WJB/
Enclosures
cc: Sally Mrvos, Clerk, U.S. Court of Appeals
P. Douglas Sisk, Senior Staff Attorney

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MEMORANDUM FOR THE RECORD

RE: Complaint of Employee Misconduct submitted by George Sassower

DATE: October 3, 1991

JURISDICTION. George Sassower has submitted a complaint dated April 19, 1991 charging P. Douglas Sisk, the Senior Staff Attorney of the U.S. Court of Appeals for the Third Circuit, with misconduct in handling case No. 89-5810. On May 6, 1991, he complained about Mr. Sisk's handling of case number 90-5147. Mr. Sassower amended his complaint on June 9, 1991 to include as additional respondents Sally Mrvos, the Clerk of the U.S. Court of Appeals for the Third Circuit, and Deputy Clerk Jacqueline Sinibaldi. He added Patricia Coleman of the Staff Attorney's Office as a respondent by his letter dated June 17, 1991.

Under Judicial Council Rule 15, such complaints are initially referred to the court which employs the subject of the complaint. The Circuit Executive has been designated by the U.S. Court of Appeals to adjudicate complaints regarding its employees.

SUMMARY OF COMPLAINT & RESPONSES. A copy of the complaint was provided to Mr. Sisk and Ms. Mrvos, and responses were requested on behalf of themselves and their offices. Mr. Sisk responded on June 5, 1991 for himself and Ms. Coleman, and Ms. Mrvos responded on July 23, 1991 for herself and Ms. Sinibaldi.

Mr. Sassower complains that Mr. Sisk and other court employees have withheld his pro se motions and other papers from the court, thereby depriving him of judicial review in two appeals in which he is the appellant: No. 90-5147, *Sassower v. Abrams, et al.*, and No. 89-5810, *U.S.A. v. Sassower*. His specific claims are as follows:

Case No. 90-5147. Mr. Sassower complains that his motion entitled "Judicial Corruption in the Third Circuit," filed June 29, 1990, was withheld by Mr. Sisk from the panel of the Court. Mr. Sassower contends that it should have been

immediately referred to a motions panel on filing. In support of this contention, Mr. Sassower refers to a letter dated July 3, 1990 from Mr. Sisk, which stated that the motion would be sent to the next available panel of the court.

Mr. Sisk responds that the motion was in fact delayed in being forwarded to the Court due to: (1) normal processing time; (2) Mr. Sisk's personal workload; (3) the merits-related nature of the motion; (4) the pendency of Mr. Sassower's several lawsuits naming specific judges of this court as respondents, which created potential recusal/disqualification problems until resolved.

However, Mr. Sisk states that the motion was submitted to the Court for decision and therefore Mr. Sassower has not been deprived of access to the Court as he contends.

Case No. 89-5810. As to this case, Mr. Sassower alleges that "P. Douglas Sisk, Esq., deliberately and intentionally concealed my decisive and unopposed motion of October 23, 1989."

Mr. Sassower claims that he sent three letters inquiring about the status of the motion but those were unanswered. He further claims that, during a telephone conversation, Deputy Clerk Sinibaldi acknowledged the existence of the motion. To further support the motion's existence, Mr. Sassower points to two letters from Mr. Sisk, dated March 14 and June 29, 1990, wherein Mr. Sisk refers to "your motion of October 23, 1989" and "the October 23, 1989 relief" as having been received by the Court. As a consequence, Mr. Sassower contends that "with no disposition on my October 23, 1989 motion, I spent a solid week preparing my brief, and submitted same on February 28, 1990." He adds that "the need for (the brief) would have been obviated by the grant of my unopposed 'prior jeopardy' contention (the motion)".

Mr. Sassower also claims that when he re-submitted the October 23, 1989 motion by his letter dated June 15, 1990, the re-submission was not filed and recorded on the case docket. Mr. Sassower believes that the motion should have been immediately filed, and provides this as a further example of how his submissions are routinely concealed and not forwarded to the Court.

Both Mr. Sisk and Ms. Mrvos acknowledge that the original motion is neither recorded on the case docket nor included in the case file on or about October 23, 1989. Mr. Sisk points out that there is no record of receiving the original October 23, 1989 motion in either the Staff Attorney's office or the Clerk's office. They conclude the original October 23 motion was never received.

Mr. Sisk admits that his letters referred to the existence of the motion but he says those were mistaken and argues that prior correspondence from his office informed Mr. Sassower that the October 23, 1989 motion was never received.

As for the fact that the re-submitted October 23, 1989 motion was not immediately filed on June 19, 1990, Mr. Sisk relies on his June 29, 1991 letter. In that letter, Mr. Sisk acknowledged receipt of the re-submission but pointed out that the court issued its decision in the case on June 19, 1991. The letter characterizes the motion as unnecessary in light of the court's decision and asks for advice as to treatment of the motion. Mr. Sisk states that he received no further advice from Mr. Sassower in this regard.

Mr. Sisk further states that the October 23, 1989 motion was recently considered by the Court in connection with Mr. Sassower's motion filed on January 28, 1991 to recall the mandate in this case. Since the basis for the attempted recall was Mr. Sisk's alleged interference with the October 23, 1989 motion and other documents, and the Court by order dated April 11, 1991 has denied recall, Mr. Sisk contends that the Court has already decided the conduct issue in his favor.

Ms. Mvros reiterates that the record is devoid of evidence to support Mr. Sassower's contention that he submitted the alleged motion, which is not found in the case file or recorded on the case docket, nor was it listed in the December 29, 1989 letter forwarding pending documents to newly-appointed counsel. She states that Deputy Clerk Sinibaldi has no recollection of the telephone conversation in which she allegedly acknowledged receipt of the October 23, 1989 motion. Ms. Mvros points out, however, that Mr. Sassower's Financial Affidavit Form was dated October 23 and filed October 29, 1989 and could have been the subject of confusion.

DISCUSSION. Concerning **case no. 90-5147**, Mr. Sassower's motion was specifically decided by the court in its order filed July 29, 1991. He complains that the delay in a decision by the court on his motion is evidence that Mr. Sisk intended to conceal the motion from the Court. Mr. Sassower's complaint preceded the filing of this order.

In reviewing this matter, it appears that any delay in causing the motion to come before the court was caused by several factors but there is no evidence of an intention to conceal the motion. To the contrary, the motion has been submitted to the court and has been decided. While Mr. Sassower may have wished for the motion to be decided by the court at an earlier date, the court in its July 29, 1991 decision apparently determined to decide all of Mr. Sassower's pending matters at one time since it identified the numerous papers filed by Mr. Sassower in this case and issued an order dismissing each one.

Regarding **case no. 89-5810**, the records in the Clerk's office and the Staff Attorney's office fail to indicate that the October 23, 1989 motion was received prior to June 19, 1991. From Mr. Sassower's correspondence, it appears the motion requested, among other matters, expedited consideration of the appeal and summary reversal of the district court's judgment.

The earliest recording in the case file from Mr. Sassower is a financial affidavit form, dated October 23 and filed October 26, 1989, signed by Mr. Sassower and treated by the clerk's office as a request for appointment of counsel. The only other papers in the file at this time were the usual case opening papers from the district clerk's office and the circuit clerk's office.

Mr. Sassower inquired on three different occasions about the October 23 motion -- a February 5, 1990 letter to Chief Judge Gibbons which was referred to Mr. Sisk by Judge Gibbons; a January 9, 1990 letter to Ms. Sinibaldi; and a January 4, 1990 letter to Ms. Sinibaldi. In a response by Mr. Sisk on March 14, 1990, Mr. Sisk tells Mr. Sassower that his October 23 motion was treated as a motion for appointment of counsel. Mr. Sassower cites this reference to the "October 23 motion" as evidence that his motion existed and was concealed. Mr. Sisk admits this reference is mistaken but it is clear that the reference was to the financial affidavit form and is consistent with previous advice to Mr. Sassower that this was being treated as a motion to appoint counsel.

Later, in a June 9, 1990 letter to the Staff Attorney's Office, Mr. Sassower again referred to the October 23 motion as requesting expedited summary reversal of the district court judgment and complained that the case had been pending for nine months. A staff attorney responded by pointing out that the only October 23 document before the court was his financial affidavit form which was treated as a motion to appoint counsel.

To the extent that confusion exists about the papers before the court, it appears that the practice in the court is to not record motions received from pro se litigants on the case docket while a motion for appointment of counsel is pending or if it has been granted. The motions are held and forwarded to counsel, if appointed. In this case, Mr. Sassower was notified by a copy of the clerk's office letter dated December 29, 1989 to his court-appointed counsel that a document received on November 17, 1989 was being forwarded to counsel. Counsel responded by letter dated January 8, 1990 that Mr. Sassower no longer wished representation and returned the motion for filing. The clerk's office filed the motion on January 11. Mr. Sisk's letter of March 14 advised that no action would be taken on the motion. There is no reference to Mr. Sassower's missing motion.

With respect to the alleged telephone conversation between a deputy clerk and Mr. Sassower, it does not appear that there was any collaboration of this conversation and certainly there is correspondence from the staff indicating the motion had not been filed.

Finally, there remains Mr. Sassower's allegation that when he re-submitted his October 23, 1989 motion on June 19, 1990, it should have been immediately filed. However, in view of the fact that the case was coincidentally decided on the day the re-submission was received, Mr. Sisk's action in returning the motion was not inappropriate. In fact, Mr. Sassower's subsequent filings, treated as a motion to recall the mandate, incorporated references to the October 23, 1991 motion and the handling of that motion in the staff offices. That motion was denied by the court.

FINDING AND DISPOSITION OF COMPLAINT. After carefully reviewing the complaint, the responses and the case files, I find that the complaints of employee misconduct by Mr. Sisk, Ms. Coleman, Ms. Mvros and Ms. Sinibaldi are without merit.

Mr. Sassower's inference of misconduct and corrupt intent on the part of Court employees from the manner in which several of his motions were processed is not supported by the evidence of record. Mr. Sassower may disagree with the way in which his motions were handled, however, the actions complained of hardly rise to the level of misconduct. Mere conjecture concerning the motives of Court employees, without more, is insufficient to sustain a finding of misconduct. Accordingly, the complaint is dismissed.

John Hehman 10/3/91

John P. Hehman — date
Circuit Executive

RULE 15. ALLEGATIONS OF MISCONDUCT BY COURT EMPLOYEES

Allegations of misconduct against employees of one of the courts within the jurisdiction of this Council (excluding circuit, district and bankruptcy judges, as well as magistrates) shall be referred in the first instance to the employing court. Appeals from the final action of that court shall be lodged with the Circuit Executive who shall refer non-frivolous matters to the Council. Such appeals shall be resolved by the Council only after reasonable notice in writing to the employee and an opportunity afforded him or her to respond in writing and to be heard with counsel if the employee desires.