

## Doris L. Sassower

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### BY COURIER

November 19, 1997

U.S. Court of Appeals for the Second Circuit  
40 Foley Square  
New York, New York 10007

ATT: Bernard F. Madsen, Jr.  
Deputy Clerk

RE: §372(c) Judicial Misconduct Complaint, dated November 6, 1997, against  
the three-judge appellate panel in *Sassower v. Mangano, et al.*, #96-7805:  
Judges Dennis Jacobs, Thomas Meskill, and Edward Korman

Dear Mr. Madsen:

This letter responds to yours, dated November 14, 1997, advising that Doris L. Sassower's §372(c) judicial misconduct complaint, dated November 6, 1997, against the three-judge Circuit panel in *Sassower v. Mangano, et al.*, #96-7805, had been rejected for alleged non-compliance with the Second Circuit's rules as to form (and number of copies) (Exhibit "A")<sup>1</sup>. It also memorializes your totally unjustified rude treatment of me on that date, which followed immediately upon the rude treatment I received from Beth Meador -- who I subsequently learned is your supervisor.

I had telephoned Ms. Meador on November 14th because we had received no confirmation that the complaint had been accepted for filing. It was then that Ms. Meador told me that it had been rejected. She would not discuss with me why, but insisted that I would find out when I received the letter you had written. When, at my request, she put you on the phone, you -- like Ms. Meador -- refused to provide any information as to why the complaint had been rejected and, likewise, insisted that we would have to wait until we received your letter by mail. You hung up on me as I pleaded with you that I was going to New York City later that day and could drop off a corrected complaint -- if I only knew what the problem was. You did this notwithstanding I told you that time was of the essence, since -- as stated in our November 6th transmittal letter (Exhibit "B-1") -- the complaint was incorporated-by-reference in Ms. Sassower's Petition for Rehearing with Suggestion for Rehearing *In Banc*, pending before the Second Circuit.

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<sup>1</sup> Cf. Fed.R.App.P. 47(a)(2): "A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement."

So that the record is clear, on Friday, November 7th, I called Eileen Martinez, who, as our case manager, was the indicated recipient of our November 6th transmittal letter, for confirmation that our complaint had arrived. She had not seen it and directed my call to Ms. Meador<sup>2</sup>. I left a voice message for Ms. Meador, who later returned my call and confirmed that she had received it. She indicated, however, that she did not quite understand what the various documents were that were enclosed with the letter. Yet, she was not interested in my explaining to her what they were. She told me that the complaint would have to be reviewed by an assistant, presumably you, who would not be in the office until Wednesday, November 12th.

Concerned that there should be no delay in the processing of the complaints -- because of the pending Petition for Rehearing with Suggestion for Rehearing *In Banc* -- I telephoned Ms. Meador's number on Monday, November 10th, and spoke, at length to Administrative Attorney Arthur Heller, who picked up. I explained to him the need to get the §372(c) complaint to the Circuit judges without delay. He assured me that he would pass on my message to Ms. Meador. Five days later, I called Ms. Meador to verify why we had received no confirmation of that complaint -- only to be told that it was being returned and to be assaulted by her peremptory refusal to discuss the reasons -- followed by your own discourteous and abusive conduct.

It was after you hung up on me that I again telephoned. I told Ms. Meador who picked up that I wished to speak with your supervisor. She then identified herself as your supervisor. After requesting to be connected to Ms. Meador's supervisor so as to get an expeditious answer as to why our complaint was rejected, Ms. Meador told me she would fax your letter to me. It arrived some minutes later<sup>3</sup> (Exhibit "A"). To my surprise, it was dated that very day -- November 14th.

Shortly thereafter, I called back, asking to speak with you. Mr. Heller answered the phone and informed me that you were not in. Upon my asking to speak with Ms. Meador, Mr. Heller informed me that she was at a meeting. I related to him that I had just received the letter rejecting our complaint, and that there was, quite obviously, a complete misunderstanding on the part of the Clerk's office -- which I was eager to resolve as soon as possible. About an hour later, shortly before the time I had indicated to Mr. Heller that I was scheduled to leave for the day, Ms. Meador returned my call. She gave me an opportunity to briefly respond to the spurious bases for the rejection, set forth in your letter.

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<sup>2</sup> I may have also called Ms. Martinez late in the afternoon on Thursday, November 6th to verify receipt of the complaint. If so, then I also spoke with Ms. Meador, who likewise told me that the complaint had not arrived.

<sup>3</sup> The mailed copy of the letter arrived on Monday, November 17th, and enclosed the original complaint and copies.

Although I indicated to Ms. Meador that we would immediately reformulate the complaint and resubmit it, upon further examination of your letter and the Second Circuit rules to which it refers, all that we believe is necessary is to supply five more copies of the complaint<sup>4</sup> -- in addition to the seven that had been provided with our November 6th transmittal letter (Exhibit "B-1"). Such additional copies are provided pursuant to Rule 2(e) -- and are without prejudice to our position that such Rule is burdensome and unnecessary, as hereinafter set forth. Indeed, **inasmuch as rules implementing 28 U.S.C. §372(c) require "appropriate public notice and an opportunity for comment" before they are promulgated or amended [See §372(c)(11)], please consider this letter a request for information as to when and where the public notice was that preceded such Second Circuit rule, as well as whether there was any comment thereon and, if so, a copy thereof.**

As to the objections set forth in your letter (Exhibit "A"), which, it appears, took you two days to devise (assuming you returned to the office on November 12th), we can understand why neither Ms. Meador nor you wanted to discuss them -- since they are frivolous. Our response to them follows:

As to your objection #1 -- the *only* objection you particularize -- Your rejection of the *PREFATORY NOTICE* is based on an unfounded assumption. You state "We assume [it] is intended to be the statement of facts allowed for by Rule 2(b)". Had you read the document, rather than "assuming", then you would know that it has nothing to do with Rule 2(b), i.e., "the facts upon which the claim of misconduct...is based". Rather, it concerns how the complaint should be administratively handled, to wit, the necessity of transferring it to another Circuit and the absolute disqualification of Chief Judge Winter from any review -- as to which the *NOTICE* instructs that guidance can be sought from either the U.S. Supreme Court or the Judicial Conference.

Since the *PREFATORY NOTICE* is not part of the statement of facts relating to the judicial misconduct upon which the complaint is based, your additional objections based thereon are groundless and wrongfully obstructive.

Moreover, you misrepresent Rule 2(e) when you claim:

"the statement of facts accompanying each individual complaint form should name only the one individual subject judicial officer named on the complaint form and address only the facts upon which the claim of misconduct against that particular individual subject judicial officer is based [see Rule 2(e)]"

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<sup>4</sup> The identical complaint is being resubmitted, except for a correction made to footnote 1 of the *PREFATORY NOTICE*, a correction to footnote 4 on page 2 of the statement of facts, as well as the correction of a grammatical error on that page, and an addition to footnote 11 on page 5..

In fact, all that Rule 2(e) requires is that adequate copies of the complaint be filed and that “a separate complaint, with the required number of copies...[for]...each judge...complained about”. As long as separate complaints are filed for each judge complained about, there is nothing in that rule -- or any other -- which prevents a complainant from naming other judges in the complaint. Indeed, where the misconduct is shared -- as with a three-judge appellate panel which, when it acts without dissent, is a single unit, engaging in misconduct collectively, not just individually -- it would be impossible to frame the complaint without naming the other judges conspiratorially involved<sup>5</sup>.

You also misrepresent Rule 2(b) and (d) when you claim:

“...it appears that the statement of facts do [sic] not comport with the rules [see Rule 2(b) and (d)] in that your *APPENDIX* submitted as *EXHIBIT A* to the *PREFATORY NOTICE* is an extension of the statement of facts therefore causing the statement of facts to exceed the allowable page limit. Statement of facts is limited to five typewritten pages.”

Aside from the fact that excluding the *PREFATORY NOTICE* -- which is *NOT* part of the statement of facts -- the complaint is five pages -- Rule 2(b) is advisory, not mandatory. It uses the word “should” rather than “must” or “shall”, to wit, “the statement [of facts] *should* not be longer than five pages (five sides)”. It does not indicate that §372(c) complaints longer than five pages must or will be rejected on that ground. Nor would it make sense to summarily reject them since the nature and circumstances of the misconduct may require more than five pages to be properly explicated and developed. Obviously, the statutory purpose of 28 U.S.C. §372(c) cannot be served when complainants are unable to present the substantiating details of their complaint because of an artificial and restrictive limitation on the length of the complaint<sup>6</sup>. Indeed, had there not been such page advisory in the Rules, this §372(c) complaint -- as well as our prior §372(c) complaint against the district judge (#97-8535) -- would have contained even more cross-referencing to the evidentiary record than they do<sup>7</sup>.

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<sup>5</sup> The collective nature of the appellate endeavor is reflected by the quote from *Aetna Life Insurance Co v. Lavoie*, 475 U.S. 813, 831 (1985), as to the “shared enterprise of appellate decision-making”, appearing in the *PREFATORY NOTICE*.

<sup>6</sup> Cf. “*Self-Regulation of Judicial Misconduct Could Be Mis-Regulation*”, Anthony D’Amato, Michigan Law Review, Vol. 89:609-623 (1990), See, particularly, p. 612, fn. 17.

<sup>7</sup> As reflected at footnote 3 of our §372(c) complaint against the district judge, our prior experience in filing a §372(c) complaint against then Chief Judge Newman (#96-8511) -- is that it was dismissed by Acting Chief Judge Kearse in a dishonest decision which falsely claimed, *inter alia*, that it was “unsupported”.

As to Rule 2(d), entitled "Submission of documents", it explicitly permits documents to be submitted "as evidence of the behavior complained about" -- which is why we annexed Exhibit "A". Contrary to your claim, it was not Exhibit "A" to the *PREFATORY NOTICE* -- whose single-page doesn't even refer to the exhibit, but, rather, Exhibit "A" to the five-page statement of facts -- which expressly identifies it in a footnote to its first paragraph. The footnote reads:

"The fraudulent nature of the panel's Summary Order is highlighted by the Appendix, cross-referenced to the appellate record, which was Exhibit "N-1" to my incorporated-by-reference October 10, 1997 recusal/vacatur for fraud motion, *infra*. A copy is annexed hereto as Exhibit "A"."

Since the Appendix is part of the incorporated-by-reference record substantiating the complaint, our annexing a duplicate copy is not a back-door attempt to expand the complaint beyond the five-page advisory, but a convenience and aid to the judges reviewing this complaint.

It deserves note that the frivolous -- and inconsistent -- nature of this objection may be seen by comparison with the fact that on the same day that you rejected the §372(c) complaint against the Circuit panel based, in part, on the inclusion of an Appendix, you sent us a letter acknowledging acceptance of our §372(c) complaint against the district judge (Exhibit "C-1")<sup>8</sup> -- a complaint likewise annexing an Appendix -- also as its Exhibit "A" -- analyzing the district judge's decision. It, likewise was already part of the record, having been annexed to Appellant's Brief.

As to your objection #2, you provide no specificity as to your claim that the §372(c) complaint was "not in proper format" -- to which you refer us to Rules 2(a) and (b). Pursuant to Rule 2(a), three "original" complaint forms were completed and signed -- one addressed to each of the three judges of the appellate panel. Pursuant to 2(b), a statement of facts -- consisting of five-pages -- was supplied, to which was annexed an instructional "PREFATORY NOTICE" regarding the disposition of the complaint -- not its substance. The only respect in which there was any "non-compliance" with Rule 2(b) was that the statement of facts was not "attached" to the completed complaint forms. This was to facilitate your processing the complaints in the manner deemed appropriate to you. Either you could give each panel judge the statement of facts, with only the completed complaint form as related to him -- or you could also give him the completed complaint forms relating to his colleague panel members. Enough copies were provided to you so that you could provide each judge not only with the complaint form against him, but against his fellow judges, without necessity of supplying another statement of facts -- which was identical to that in his own complaint. If you had any questions, Ms. Meador and Mr. Heller knew from their phone conversations with me, that you had only to telephone

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<sup>8</sup> We were surprised by your November 14th letter acknowledgment of that complaint inasmuch as we had already received a letter of acknowledgment, signed by Ms. Meador, dated October 29, 1997 (Exhibit "C-2").



and I would have clarified the transmittal for you.

As to your objection #3, you provide no specificity as to your claim that we provided you with "insufficient copies" -- to which you refer us to Rule 2(e). That Rule requires that complaints against appellate judges must be submitted by "an original plus three copies". In fact, we submitted three original completed complaint forms -- plus six copies thereof -- as well as seven original statements of facts, to which we had attached seven PREFATORY NOTICES (Exhibit "B"). Although the Rule requires only one copy of supporting exhibits -- we had supplied seven full copies.

The Illustrative Rules propounded by a Special Committee of the Conference of Chief Judges of the United States Court of Appeals -- from which the Second Circuit's Rules derive -- is instructive as to the number of complaints required for a complaint, such as ours, encompassing multiple judges:

"...If the complaint is about more than one judge or magistrate, enough copies must be filed to provide one for the clerk of the court, one for the chief judge of the circuit, one for each judge or magistrate complained about, and one for each judge to whom the clerk must send a copy under rule 3(a)(2)."

Looking to Rule 3(a)(2) of the Illustrative Rules, complaints against appellate judges are not sent by the clerk to anyone but those complained-of appellate judges and to the Chief Judge. This is, likewise, reflected by the Second Circuit's Rule 3(a)(2)<sup>9</sup>.

Since the complaint against the three-judge panel was identical as to each member -- who were complained of collectively, there was no need to send the Chief Judge three copies of an identical complaint -- nor to fill the Clerk's office with three originals of an identical complaint. All that was logically needed is one for the Chief Judge, one for the Clerk, and one for each of the three judges on the appellate panel. That makes a total of five. Again, we provided you with seven of all documents (Exhibit "B-1").

We note that the Commentary to Illustrative Rule 2 includes a paragraph headed "Complaints Against More than One Judicial Officer", which states that it does not believe that the "increase in paperwork" justifies requiring separate complaints against each judicial officer -- which is what this Circuit's Rule 2(e) requires. In the instant situation, such preference serves no purpose other than to needlessly burden the complainant.

It is to satisfy the Circuit's desire for additional "paperwork", that we now enclose an additional five

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<sup>9</sup> Rule 3(a)(1) -- which is virtually identical in both this Circuit's rules and the Illustrative Rules -- spells out the destination of the original complaint and copies. clearly:

copies of the complaint form, *PREFATORY NOTICE*, and statement of the facts. Pursuant to Rule 2(e), we have not annexed additional copies of the supporting exhibits. We have attached the documents so that an original and three are under the complaint form addressed to Judge Dennis Jacobs, an original and three are under the complaint form addressed to Judge Meskill, and an original and three are under the complaint form addressed to Judge Korman. In each of the three sets, there are two full copies, with exhibits, and two copies, without exhibits.

Finally, although our coverletter transmitting our §372(c) complaint against the district judge (Exhibit "B-2") -- as our subsequent coverletter transmitting our §372(c) complaint against the panel (Exhibit "B-1") -- expressly enclosed an additional copy of the complaints for the appellate file in *Sassower v. Mangano, et al* -- so that they would be more readily available for the Circuit judges in conjunction with their consideration of Appellant's Petition for Rehearing with Suggestion for Rehearing *In Banc* -- Ms. Meador stated to me that they would not be so included because §372(c) complaints are confidential. In a phone conversation shortly after the filing of our §372(c) misconduct complaint against the district judge, Ms. Meador told me that they were confidential by law. I responded by telling her that the §372(c) statute does not require confidentiality of the complaints, which has been imposed by the Circuit -- and referred her to my article "*Without Merit: The Empty Promise of Judicial Discipline*", referred to in my first cover letter (Exhibit "B-2"). My second coverletter also referred to it (Exhibit "B-1").

Ms. Meador's response was a letter dated November 10, 1997 (Exhibit "D"), notifying me that the papers relating to our prior §372(c) complaint against then Chief Judge Newman, annexed to our recusal/vacatur for fraud motion, had been removed because "Judicial Misconduct Complaints are confidential and therefore, cannot be included in papers in the public file." She provided no rule or legal authority to support such proposition -- which we assume is the Circuit's Rule 16. **Thus, in addition to our above request for information concerning the Circuit's Rule 2(e) requiring separate complaints against each judicial officer, we also request information as to when and where the public notice that preceded the Circuit Rule's 16 was given, as well as whether there was any comment thereon, and if so, a copy thereof.**

The foregoing responses, supported as they are by the Circuit's own rules, should suffice for the filing of Doris Sassower's within §372(c) complaint against the appellate panel. Should they not satisfy the non-judicial personnel in the Clerk's office, we request that the complaint and this letter be directed for determination by the judge who would be undertaking the initial review -- a judge whose designation should reflect the ethical considerations reflected in the *PREFATORY NOTICE*.

Finally, so that there is no question but that this correspondence is part of the record, it is incorporated by reference as part of the *PREFATORY NOTICE* in support of transfer of this complaint to another Circuit.

Very truly yours,



ELENA RUTH SASSOWER  
Paralegal Assistant to Complainant,  
DORIS L. SASSOWER

Approved By:

  

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DORIS L. SASSOWER

Enclosures

cc: Beth Meador, Supervising Administrative Attorney  
Arthur Heller, Administrative Attorney  
Eileen Martinez, Case Manager  
Assistant Attorney General Jay Weinstein