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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

In the Matter of the Application of
MARIO M. CASTRACAN and VINCENT F. BONELLI,
acting Pro Bono Publico,

Omnibus Affidavit in Opposition to Respondents' Cross-Motion for Sanctions

Petitioners-Appellants,

for an Order, pursuant to Sections 16-100, 16-102, 16-104, 16-106 and 16-116 of the Election Law,

Appeal No. 62134

-vs-

ANTHONY J. COLAVITA, Esq., Chairman, WESTCHESTER REPUBLICAN COUNTY COMMITTEE, GUY T. PARISI, Esq., DENNIS MEHIEL, Esq., Chairman, WESTCHESTER DEMOCRATIC COUNTY COMMITTEE, RICHARD L. WEINGARTEN, Esq., LOUIS A. BREVETTI, Esq., Hon. FRANCIS A. NICOLAI, HOWARD MILLER, Esq., ALBERT J. EMANUELLI, Esq., R. WELLS STOUT, HELENA DONAHUE, EVELYN AQUILA, Commissioners constituting the NEW YORK STATE BOARD OF ELECTIONS, ANTONIA R. D'APICE, MARION B. OLDI, Commissioners constituting the WESTCHESTER COUNTY BOARD OF ELECTIONS,

Respondents-Respondents,

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

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

1. This Affidavit is submitted on my own behalf, as the former counsel for Appellants, directly and indirectly identified by Respondents' counsel as a person against whom their cross-motion for sanctions is addressed.

2. I am fully familiar with, and have personal knowledge of, the facts, papers and proceedings hereinafter

referred to and offer this Affidavit in opposition to the Affidavits and papers submitted by six separate counsel for various above-named Respondents, all of whom cross-move to punish me, as well as Appellants and their present counsel, Eli Vigliano, Esq., by an award of sanctions allegedly pursuant to Sec. 130.1-1 of the Uniform Rules of the Trial Courts for what cross-moving Respondents characterize as "frivolous conduct".

3. Rather than encumbering the record with separate opposing Affidavits, I respectfully beg leave to submit this omnibus Affidavit in opposition to all sanction cross-motions collectively and separately, addressing herein the substantially similar sanction cross-motions served by Mark K. Malone, Esq., dated August 12, 1991, on behalf of Respondent Albert J. Emanuelli, of Sanford Dranoff, Esq., dated August 8, 1991, on behalf of Respondent Howard Miller, against me, and by John Ciampoli, Esq., on behalf of the New York State Board of Elections, now expressly "adopted and ratified" by Guy Parisi, Esq., in his Affirmation dated August 12, 1991, on behalf of Respondent Colavita, by Aldo Vitagliano, Esq., who continues to permit Respondent Guy T. Parisi, Esq. to file his own pro se identical papers in Mr. Vitagliano's name, and by Thomas J. Abinanti, Esq., in his letter dated August 15, 1991, submitted in lieu of an affidavit on behalf of Respondent Nicholai.

4. The alleged "misconduct" is identified in the various cross-motions as the making of the motion pending before this Court for "reargument/renewal, recusal, or, alternatively,

for leave to appeal to the Court of Appeals". Guy Parisi, Esq., a named Respondent herein, as to which he is purportedly represented by Aldo Vitagliano, Esq., as well as attorney for Respondent Colavita, alleges additionally in his cross-motion papers that the alleged "frivolous conduct" is also exemplified by the initiation in Supreme Court, Westchester County, on August 2, 1991, of the case of Sady et.al v. Murphy.

5. Cross-movants claim I am guilty of the aforesaid alleged misconduct, knowing that the attorney of record on both the aforesaid motion and lawsuit is not Doris L. Sassower, but Eli Vigliano, Esq., who filed same. They accuse Eli Vigliano, Esq. of such alleged misconduct "and those associated with him"--by implication including me. They then directly attack me by the totally unsubstantiated outrageous charge that "... Doris Sassower...despite an order from the Appellate Division suspending her from the practice of law, has persisted in her frivolous conduct in this case...". Without specifying a single particular or providing any legal or factual foundation for such bald assertions, Messrs. Ciampoli and Parisi, along with the other cross-movants who expressly adopt same, on the theory apparently that this country still operates on the McCarthy principle of "guilt by association", maliciously commit a double defamation against me--not only that I have been guilty of frivolous conduct, but that I violated the suspension order of the Appellate Division, Second Department, in the process.

6. Besides being bereft of any factual foundation, the cross-movants show no legal authority sustaining the jurisdiction of this Court over a former attorney in this proceeding under the sanction rule relied on. Doris L. Sassower, P.C. was substituted by Mr. Vigliano as attorneys for Appellants herein well before the making of the instant motion. Nonetheless, counsel for the cross-movants still consider me fair game for their relentless character assassination.

7. It is further respectfully submitted that Respondents' cross-motions for sanctions are nothing more than blatant intimidation. They are not only jurisdictionally, legally and factually baseless under the standards set forth in the sanction rule on which they rely, but the very title of that sanction rule--Part 130 of the Uniform Rules for the New York State Trial Courts--shows that it is explicitly applicable to the trial courts of this State, not to the appellate courts.

8. To avoid unduly burdening the Court, I will not repeat, but will rest on what has been set forth in Mr. Vigliano's Affirmation, dated August 15, 1991, in opposition to Mr. Ciampoli's cross-motion for sanctions against Appellants, Mr. Vigliano, and myself, as former counsel. The meritorious nature of the instant motion on behalf of Appellants is extensively detailed therein, and I endorse Mr. Vigliano's statements.

9. As pointed out by Mr. Vigliano, Mr. Ciampoli's Affirmation and cross-motion wholly ignore the extraordinary and compelling public issues at the heart of the Castracan case. The

overriding significance of those issues, involving "the sanctity of the franchise--and the integrity and independence of the judiciary", were the basis on which the Ninth Judicial Committee, the citizens' group which spearheaded this lawsuit to depoliticize the process whereby lawyers become judges, authorized a further effort before this Court to have those issues squarely heard and adjudicated in a motion for reargument/renewal, recusal, or, alternatively, for leave to appeal to the Court of Appeals.

10. Even in the ordinary case, lawyers are not guarantors of the success of their efforts, and do not deserve to be sanctioned for losing a case in court. It is respectfully submitted that in this most extraordinary, unprecedented case, Appellants' inability to win a result in the state courts consistent with the merit of their cause and the public interest they represent is more a reflection of the political realities they challenge than a basis for sanctions against them or their counsel.

11. Like Mr. Ciampoli, Messrs. Dranoff, Malone, Abinanti, Parisi and Vitagliano "duck" the public interest issues--about which they are conspicuously silent.

12. The New York State League of Women Voters had no hesitation in recognizing the state-wide importance of this case when, in October 26, 1990, it issued a state-wide alert, presented to this Court in support of Appellants' formal

application for the preference[1]. The League urged this Court to decide the issues raised by the Petition, stating:

> "It should be determined in court whether the contract between party leaders and judicial nominees involving a series of judicial cross-endorsements over a three year period is legal or not legal and whether there were violations of the Election Law at the judicial nominating conventions. The case deserves to be heard and decided by the Appellate Division, 3rd Department, before the general election." (emphasis added)

13. Likewise, NAACP Legal Defense and Educational Fund had no difficulty in identifying the vast public interest ramifications of the Castracan case on the rights of minorities and women. This was emphasized by their February 8, 1991 written request to this Court to file an amicus brief, which attested to the potential national importance of this case--seen by lawyers connected with NAACP-LDF--as a vehicle which could open new doors for Black Americans.

> "...A great focus of our efforts has been to increase the opportunity for minorities to participate in the judicial selection process. Currently, LDF has two cases before the Supreme Court, Chisom v. Roemer and HLA v. Mattox which raise the issue of the application of Section 2 of the Voting Rights Act to judicial elections. In these cases we have vigorously argued that Congress intended for minority voters to have an equal opportunity to elect judges to the state

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[1] A copy of the New York State League of Women Voter's statewide alert was annexed as Exhibit "A" to Appellants' October 28, 1990 Affirmation in Reply and in Opposition to Respondents' Cross-Motions.

court judiciary."[2]

14. This Court, without explanation, denied Appellants the preference to which the Election Law entitled them as a matter of right and the Court's own rule 800.16, and refused to grant the extra week required to permit the NAACP Legal and Educational Defense Fund to present constitutional arguments as amici in support of Appellants' position that the voting rights of Blacks and other minorities outside the political power structure were violated by the Three-Year Deal--and the fraud at the judicial nominating conventions that implemented it, as pleaded in the Petition--which were not addressed by either Justice Kahn or this Court.

15. In the related case of Sady v. Murphy, relied on by Mr. Parisi and Mr. Vitagliano in their cross-motion papers as "additional evidence of abuse of process and misuse of these courts by Eli Vigliano and those associated with him," Mr. Parisi attempted to argue, as counsel therein for Respondent Colavita, that there had, in fact, been an adjudication on the merits of the cross-endorsements Deal in the Castracan case.

16. The Sady case is the 1991 counterpart of Castracan v. Colavita, challenging Judge Murphy's cross-endorsed nomination to the County Court under the Three-Year Deal, and raising some of the issues raised by Castracan. Mr. Vigliano, on behalf of the Sady Appellants, appealed the Decision of Westchester Justice

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[2] NAACP-LDF shortly thereafter won favorable decisions from the U.S. Supreme Court on both cases--with important implications for Castracan v. Colavita.

Gurahian in that case. Justice Gurahian, in his August 13, 1991 Decision, (Exhibit "A") squarely ruled not only that the Three-Year Deal was legal and constitutional, but that the penal proscription of Section 17-158 of the Election Law requires that the "valuable consideration" offered and received for the public office involved be a monetary one.

17. I was present in court when Mr. Vigliano orally argued Sady before the Appellate Division, Second Department on August 20, 1991. In open court, I heard members of the panel of the Appellate Division, Second Department, assigned to hear the appeal, consisting of Justices Mangano, P.J., Thompson, Sullivan and Lawrence, voice their sharp disagreement with Justice Gurahian's aforesaid ruling. Herein follow a few illustrative comments:

(a) When Alan Scheinkman, Esq., arguing on behalf of both Democratic and Republican Respondents therein, who filed a joint brief, said that the parties to the Three-Year Deal were "proud of it", Justice William Thompson stated from the bench:

> "If those people involved in this deal were proud of it, they should have their heads examined".

(b) Referring to the contracted-for resignations that the Deal required of Respondents Emanuelli and Nicholai, Judge Thompson further stated:

> "these resignations are violations of ethical rules and would not be approved by the Commission on Judicial Conduct"

and still further said: "a judge can be censured for that".

(c) When Mr. Scheinkman sought to argue that the Deal embodied in the resolution was merely a "statement of intent", Presiding Justice Guy Mangano ripped the copy of the Resolution embodying the Deal out of Appellants' Brief, held it up in his hand and said:

> "this is more than a statement of intent, it's a deal"

and that:

> "Judge Emanuelli and the others will have a lot more to worry about than this lawsuit when this case is over".

(d) In response to Mr. Scheinkman's attempt to claim that the Decisions rendered in the Castracan case by Justice Kahn and this Court were on the merits of the cross-endorsement Deal and that the Appellants in the Sady case were collaterally estopped, Justice Thomas R. Sullivan pointed out the difference in the parties and the causes of action, and further stated:

> "what the Third Department does is not persuasive in the Second Department, we do what we believe is right, irrespective of whether the Third Department agrees with us".

18. The above-quoted forthright views were not expressed in the written Decision issued by the Appellate Division, Second Department, the very next day. Instead, overnight, the Appellate Division, Second Department's quoted sentiments were submerged into the Decision dated August 21, 1991, annexed hereto as Exhibit "B", wherein it affirmed, but on other grounds, Justice Gurahian's dismissal of the Sady case, in a one line opinion stating that:

"The petitioners failed to adduce evidence sufficient to warrant invalidating the petitions designating the respondent Murphy."

19. Such holding not only ignored the focal issues dealt with so dramatically at the oral argument the day before, but also ignored another critical aspect presented as part of Mr. Vigliano's oral argument, i.e., that the Petitioners in Sady, just as the Petitioners in Castracan, had been deprived of a hearing at which they could have "adduced evidence" or "presented proof". In both cases, the motions to dismiss were summarily granted, as a matter of law, without any hearing having been held.

20. On August 28, 1991, I was also present at the oral argument on Sady before the two judges of the Court of Appeals[3] assigned to hear applications for leave to appeal to that Court. Again, the verbal comments by Judge Simon at oral argument show the considerable merit of the Sady case and repudiate the preposterous contention that such case was "an abuse of process and misuse of these courts by Eli Vigliano and those associated with him", as Mr. Parisi and the never-seen Mr. Vitagliano brazenly contend in the identical papers on behalf of Mr. Colavita and Mr. Parisi respectively.

(a) Judge Simon expressly stated:

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[3] Despite my suspension by Order of the Appellate Division, Second Department, the Court of Appeals, in an extraordinary, if not unprecedented, dispensation, temporarily lifted my suspension to permit me to participate in the oral argument for leave to appeal in Sady v. Murphy. A copy of the application therefore made by Eli Vigliano, Esq. is annexed hereto as Exhibit "C".

"we know this is "an important case".

(b) Referring to the Three-Year Deal common to both the Sady and Castracan cases, Judge Simon unhesitatingly commented:

> "it is a disgusting deal". (emphasis added to reflect the way Judge Simon emphasized it)

(c) The following interchange between Judge Simon and Mr. Scheinkman was similarly revealing:

> " A promise for a promise is consideration under basic law of contracts. Why, then, wouldn't a promise by the Democrats to nominate a Republican for a judgeship in exchange for a promise by the Republicans to nominate a Democrat for a judgeship constitute 'valuable consideration' under the Election Law?"

In response, Mr. Scheinkman fell back on the same argument given short shrift the preceding week at the oral argument in the Appellate Division, Second Department, i.e., that the Resolution was merely a "statement of intent" and not a binding contract--with the same negative response from Judge Simon as was given by Justice Mangano. At that point, Mr. Scheinkman requested that all Respondents' counsel involved in the Castracan case be notified and given a chance to be heard before any decision was made, to which Mr. Vigliano stated he had no objection and joined in making.

21. Pursuant to Judge Simon's instructions, we waited while the Court was conferencing all leave applications. However, instead of the Court setting another date and time when all counsel on both cases could appear, as had been consented to

by both sides, it was announced that leave to argue before the full bench was denied, and the appeal dismissed. The Court's written Decision in Sady v. Murphy, Exhibit "D", issued the same day contained only the standard boilerplate sentence "no substantial constitutional question was presented".

22. Whether or not the People of this State will be left with Justice Gurahian's Decision that the Three Year Deal involved in Sady and in Colavita is "not unconstitutional or illegal", as well as the dichotomy that now exists in two Judicial Departments of our State as to whether or not "valuable consideration" under 17-158 of the Election Law includes non-monetary barter exchanges are important issues. It is Respondents who are abusing the sanction rule in arguing that Appellants should be sanctioned for exercising their right to try to persuade this Court to reconsider its position on the aforesaid issues of major statewide concern, whether by way of reargument or renewal, or alternatively, by permission for leave to appeal the issues presented to the Court of Appeals.

Under no legitimate argument could it be other than sanctionable misconduct for any responsible lawyer to seriously contend that the motion facilitating resolution of these issues constitutes "frivolous conduct".

23. Indeed, the need for this appeal to be heard is even more urgent than before: There are now two dangerous precedents being interpreted by Respondents and political leaders generally as a green light to new cross-endorsement Deals of

similar ilk to the one at bar, which will doubtless spawn further litigation until the conflict between the Second and Third Departments is resolved[4].

24. As to Respondent Miller's papers, I wish to specifically refer to Paragraph 3 of Mr. Dranoff's Affirmation wherein he states:

> "... appellants have failed to adduce anything which would even remotely relate to any cause of action against MILLER (although there is a quixotic reference to a 'further cross-endorsement bartering deal' without any further explanation) and certainly have not produced any evidence which would support a cause of action against MILLER." (at p. 2)

25. Mr. Dranoff's statement is obvious bad faith, since he knows, (1) Appellants were never granted an evidentiary hearing at which such proof could have been offered; (2) the motion to dismiss granted by Justice Kahn required that all facts pleaded in the Petition, and reasonable inferences therefrom, be accepted as true for the purposes of the motion; and (3) the September 12, 1990 Gannett news item, handed up to the Court in connection with oral argument, and annexed hereto as Exhibit "E", specifically states:

"In return [for the cross-endorsement of

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[4] See In re Fairchild, 151 N.Y. 359, holding that notwithstanding an election had been held, a contest with reference to a nomination could be determined on appeal from an order entered under the predecessor section to the one on which this case is based, where the decision might prevent future embarrassment with reference to the same question and there was a conflict in the decisions of the lower courts as to the law applicable to the case. See, also, Matter of Cuddeback, 3 App. Div. 103).

> Respondent Miller by Democrats] Rockland Republicans agreed to cross-endorse three Democrats for local government posts next year."

26. Thus, the undisputed facts do, indeed, show "a further cross-endorsement bartering deal" by the Republicans to cross-endorse three non-judicial candidates as the quid pro quo for the Democrats' endorsement of Respondent Miller, which may very well be independently unlawful and constitute a separate corrupt practice under the Election Law.

27. Mr. Dranoff further states that Appellants failed to submit any proof in evidentiary form to support any default" (at para. 4). Again, Mr. Dranoff is not being candid with the Court. He fails to disclose that his answering papers on behalf of Respondent Miller were untimely, as were all other individual Respondents herein cross-moving for sanctions, who served them a week later than specified by the Order to Show Cause, accompanying the Petition herein, although they were required "one day before the return date" of October 5, 1990. Notwithstanding that his opposing papers were required therefore to be served on October 4, 1990, Mr. Dranoff did not see fit to serve Respondent Miller's papers until October 11th, despite having been notified when the case was adjourned to October 12th, that the papers had to be served in accordance with the original return date, not the adjourned date. Had Appellants been afforded the opportunity by this Court to supplement the record they could easily have proven the foregoing fact.

28. It should be noted that Mr. Dranoff and the other

cross-moving counsel failed to file their Affidavits of Service with the County Clerk at the time the Record was prepared, thereby preventing me from making same part thereof. As I did not believe the issue of Respondents' default would be before the Court by reason of Justice Kahn's decision not to address procedural objections, I did not consider the omission consequential enough to risk delay. When the case was argued before Justice Kahn on October 15th, Respondents were clamoring for an immediate decision to assure a decision by the Court of Appeals before Election Day.

29. To cooperate fully, I was required to and did--with the assistance of the Ninth Judicial Committee members who labored all night--prepare and serve Appellants' Record on Appeal and Briefs on seven separate law firms in four different counties and file same in Albany by 5:00 p.m. on October 17, 1990, in order to have oral argument of their appeal on October 19th, the last day of the term before Election Day. As this Court knows, despite that superhuman effort, without giving any reasons for such departure from the mandatory preferences accorded Election Law cases, the Court cancelled the scheduled oral argument in this case, denied Appellants' automatic preference under the Election Law and Section 800.16 of this Court's own rules, and deferred the appeal until several months after the general elections.

30. As to Respondent Emanuelli's papers, Mr. Malone's Affidavit fails to meet the minimal prerequisite of the rules of

evidence requiring factual allegations to be based on personal knowledge. Instead of facts, Mr. Malone substitutes ad hominem remarks, unsupported opinions and legal argument. Such flagrant improprieties call for rejection of his papers out of hand.

31. Mr. Malone has not previously appeared in these proceedings. Yet, his lack of personal knowledge as to material facts does not deter him. He states that he is an experienced attorney and practitioner for nearly ten years and makes sure that this Court knows that he is well-connected to the Court system as Law Assistant to Westchester judges. Yet he does not identify the sources of his information and belief--even assuming that information and belief were sufficient for him to deny the positive assertions of Appellants' moving papers upon information and belief--which, of course, it is not. Hence, Mr. Malone's statements insofar as they allege factual matters are plainly inadmissible to prove the truth thereof or to raise issues of fact.

32. Mr. Malone's inflammatory and defamatory remarks concerning me on pages 2-5 of his Affidavit completely distort my statements in my July 25, 1991 Affidavit. The statements by Mr. Malone, a lawyer representing the now Surrogate of Westchester County, are highly improper, indefensible attempts to mislead and to arouse the Court's sentiments against me and thereby prejudice the Court against Appellants in the hope that it would thereby grant his outlandish and unjustified cross-motion for sanctions against me, Appellants, and Mr. Vigliano. Such remarks give

added reason to reject Mr. Malone's patently improper Affidavit, or at least to strike his distorted, calumnious accusations against me.

33. Tellingly, no affidavit is submitted by Respondent Emanuelli or on the Surrogate's behalf by Samuel Yasgur, Esq., a senior partner in the Hall, Dickler firm, who argued the matter before Justice Kahn. Mr. Malone has no personal knowledge of the facts alleged concerning what took place before Justice Kahn, as set forth by me on page 8 of my Affidavit, verified July 25, 1991--which none of the Respondents' counsel who were there, let alone Mr. Malone who was not, in any way contradict.

34. Unlike Mr. Malone, Mr. Yasgur would know there was "proof" of Election Law violations, i.e., the uncontradicted Affidavits of three eye-witnesses at the 1989 judicial nominating conventions--part of this court's Record on Appeal (R 55-76). Indeed, my own personal investigation of the facts connected with the fraud that took place at the 1990, as well as at the 1989, judicial nominating conventions, convinced me that, independent of the illegality of the Three-Year Deal those conventions implemented, the complaints alleged by the Petition unquestionably have merit. Respondents and their counsel who attended those conventions know that the allegations of the Petition with respect to the Election Law violations occurring in the conduct of the judicial nominating conventions are true and correct. As the Petition herein alleges, at the Democratic

judicial nominating convention, there was no quorum, there was no roll call to ascertain the presence of a quorum, and the room in which the convention was held was not large enough to hold the required number of delegates and alternate delegates; and at the Republican Convention, the Convenor and the Chairman of the Westchester Republican County Committee, Anthony J. Colavita, Esq., continued to preside as Temporary and Permanent Chairman after the convention got organized--all fatal, jurisdictional violations of the Election Law.

35. No proof in rebuttal of Appellants' contentions concerning the fraudulent and illegal judicial nominating conventions was ever offered by Respondent Emanuelli or any other Respondent, all of whom have personal knowledge of what went on at those conventions. Therefore, even apart from the fact that on a motion to dismiss, all facts and reasonable inferences therefrom must be accepted as true, the untraversed facts set forth in the Affidavits of those three eye-witnesses as to election law violations at the conventions must be deemed true.

36. Apart from his lack of personal knowledge, since Mr. Malone fails to meet material traversable allegations of my moving Affidavit, they likewise must be accepted as true. Neither Mr. Malone nor other counsel for Respondents take issue with the "Preliminary Statement" contained in Petitioners' Memorandum of Law in support of their instant motion that:

> "This case...is an imperative to decisive adjudication on the merits since the issues affect the lives, liberty, and property interests of one million and a half residents

in the Ninth Judicial District." (at pp. 2-3)

or with the critical and compelling case law cited therein.

37. Mr. Malone resurrects the argument that "Appellants did not seek to compete in the primary", as if that had any relevance. It has been repeatedly stated that Appellants are not lawyers and hence, they are ineligible for judicial office, even if they had the ambition. More importantly, as reiterated time and again, the prosecution of this proceeding by Appellants and their pro bono counsel was not for their private gain as political candidates, but for the public good.

38. Mr. Malone's argument that I, as well as Appellants and their present counsel, should be punished with "severe economic sanctions" because of the $6,000 "expense to Judge Emanuelli" allegedly charged Judge Emanuelli and received by the Hall, Dickler law firm for earlier litigation herein is not only shocking, but revealing as to where Respondents' concerns herein are focused.

39. Respondents could have easily avoided litigation expense from the outset had they been willing to waive any technical objections and let the Court adjudicate the legality of the agreement and the conduct of the judicial nominating conventions. If they had nothing to fear from exposure of the true facts, they should have been more than willing to do that and to demonstrate the correctness of their position at a hearing before the lower court, rather than hiding behind their inconsequential procedural arguments and attempts to "duck"

service[5]. That is what the People of this State have a right to expect--at least from public officials, sitting judges, and judicial aspirants.

40. Needless to say, if the cross-motions for sanctions were to be seriously entertained by this Court, I would wish an evidentiary hearing to further demonstrate the merit of this case, the pending motion, and Sady v. Murphy.

41. It should be noted that Mr. Malone may have only recently joined the Hall, Dickler law firm since he is not listed as an associate or member of the firm in the 1991 edition of Martindale-Hubbell's Law Directory listing of the firm. He may therefore be unaware of the crucial role played by the firm in helping then Supreme Court Judge Emanuelli overcome his last-minute reluctance to resign the position he had been sworn into for a fourteen year term just seven months earlier. According to the local news accounts in September 12, 1990, Exhibit "E", the firm offered Judge Emanuelli the monetary inducement not to renege on the Deal, as he attempted to do at the eleventh hour in August 1990. Judge Emanuelli accepted the firm's offer as special counsel to the firm while he was waiting to be elected

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[5] Respondent Miller's behavior in this regard is illustrative. On my instructions, the Sheriff's Deputy of Rockland County, extended the courtesy of an advance telephone call to arrange for service of the Order to Show Cause and Petition herein upon Respondent Miller, so as not to embarrass or disrupt him by service of process at his law office. As shown by the annexed Affidavit of said Deputy Sheriff (Exhibit "F"), Respondent Miller's response thereafter was to avoid service, and direct his office not to accept the papers.

and inducted into the Surrogate judgeship promised him as part of the Deal if he kept the Supreme Court seat warm for Judge Nicholai to run for it--cross-endorsed--in the November 1990 elections[6]. Hall, Dickler's last minute intervention enabled full implementation of the 1990 phase of the Deal.

42. As to the recusal motion, the 16 hours allegedly expended, for which Mr. Malone is allegedly charging Surrogate Emanuelli $2,500 for his services on this motion, should have been sufficient for him to address the pertinent legal authorities cited and discussed in Petitioners' comprehensive Memorandum of law, particularly as they relate to the recusal issue. As a former law assistant to judges, he should be particularly sensitive to the fact that public confidence is eroded as much by "the appearance of impropriety" as by the actuality, which is why ethical rules require disclosure and disqualification "in any proceeding, where impartiality might reasonably be questioned".

43. Mr. Malone does not explain why it is a sanctionable "affront to the Judges" to suggest that in a case where one of the focal issues is the constitutionality and legality of the use of cross-endorsements to implement a seven judge-trading agreement, the impartiality of judges whose

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[6] Respondent Emanuelli's concern for "the sacrifice of losing his salary, medical insurance, and pension benefits during the nearly five-month hiatus" is discussed in Gannett news articles of both August 7, 1990 and August 8, 1990. Those articles were previously annexed to Appellants' Reply Brief, but are supplied herein again for the Court's convenience as "Exhibit "G".

judicial positions resulted from undisclosed cross-endorsement arrangements "might reasonably be questioned", and thereby create the proscribed "appearance of impropriety".

44. In attacking me for raising the recusal issue, Mr. Malone ignores controlling law and ethical mandates. It is not a question of whether a judge actually feels he could be impartial, when the appearance permits a contrary inference. Public respect for the judiciary can only be maintained by avoiding the belief that one side had an unfair advantage in obtaining a result adverse to the other party for reasons and relationships never revealed on record. Unfortunately, in this case the public has been left with that perception.

WHEREFORE, it is respectfully prayed that Appellants' motion for reargument/renewal/recusal be granted; alternatively, that leave be granted to appeal to the Court of Appeals; that the cross-motion for sanctions be denied, with sanctions against Respondents, if sanctions are allowable, for necessitating my having to defend against their patently frivolous sanction application, together with such other, further and different relief as to the Court may seem just and proper in the premises.

DORIS L. SASSOWER, Pro Se

Sworn to before me this
6th day of September 1991

Notary Public

ELI VIGLIANO
Notary Public, State of New York
No. 4967383
Qualified in Westchester County
Commission Expires June 4, 1992