

730.3(g) by reason of the frivolousness of Deputy Solicitor General Gutman's opposing affirmation.

3. Deputy Solicitor General Gutman's three-paragraph, 1-1/4 page affirmation does not deny or dispute ANY of the facts, law, or legal argument particularized by the 26 pages of my moving affidavit in support of its five branches of relief. As such, it is no opposition, as a matter of law and frivolous per se. Indeed, it offers not the slightest basis for opposing the first, second, third, and fifth branches of my motion.

4. As for my motion's fourth branch, which Deputy Solicitor General Gutman's ¶2 summarizes as seeking:

“to impose sanctions against Assistant Solicitor General R.H. Winters, her supervising attorneys, and Lupi, and to refer them to disciplinary and criminal authorities”,

his ¶3 states:

“Sassower has not identified any conduct by these individuals – nor is there any – that would warrant sanctions or referral. To the extent Sassower's motion continues to seek relief discussed in the parties' prior submissions, I respectfully refer the Court to those submissions.”

5. This is false. Apart from the reference in ¶4 of my notice of motion to “conduct before this Court that is both frivolous and fraudulent, as demonstrated by [my] reply brief[] and by this motion”, my moving affidavit specifies (at ¶¶6-7, 9, 13(C)-14, 37-43) the following conduct for which sanctions and referral against Assistant Solicitor General Winters and supervising attorneys in the Attorney General's Office are warranted:

- the Attorney General's non-party brief in opposition to my appeal #2009-148-WC (bearing Deputy Solicitor General Gutman's

name and Assistant Solicitor General Winter's signature) filed, on behalf of the non-party Clerk Lupi – whose fraudulence I demonstrated by my July 6, 2009 reply brief expressly in support of costs/sanctions against them under this Court's Rule 730.3(g), as well as disciplinary and criminal referrals under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct. As ¶¶40 and 42 of my moving affidavit identify, it is to reinforce my entitlement to such relief that I have embodied the requests of that reply brief in a formal motion.

- the Attorney General's opposition to my May 11, 2009 motion to require Clerk Lupi to file a proper Clerk's Return on Appeal for #2009-148-WC – whose fraudulence I demonstrated by my May 28, 2009 reply affidavit expressly in support of costs/sanctions under this Court's Rule 730.3(g), as well as disciplinary and criminal referrals pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct. As ¶¶13(C) and 38 of my moving affidavit identify, this Court's June 22, 2009 decision and order simply ignored that reply affidavit in denying the motion, without reasons.<sup>1</sup>
- Assistant Solicitor General Winters' fraudulent oral argument before the Court on December 16, 2009 in opposition to my appeal #2009-148-WC. As ¶41 of my moving affidavit identifies, her argument repeated the deceits I had already exposed by my July 6, 2009 reply brief and May 28, 2009 reply affidavit.

6. As Deputy Solicitor General Gutman refers the Court to the “parties’ prior submissions”, I rest on my July 6, 2009 reply brief and my May 28, 2009 reply affidavit<sup>2</sup> – whose accuracy, like that of my dispositive October 10, 2008 affidavit in

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<sup>1</sup> As reflected by my July 6, 2009 reply brief (at fn. 10), the Attorney General's opposition to my May 11, 2009 motion to require Clerk Lupi to file a proper Clerk's Return on Appeal for #2009-148-WC consisted of a letter by Assistant Solicitor General Winters referring the Court to her non-party brief on my appeal #2009-148-WC.

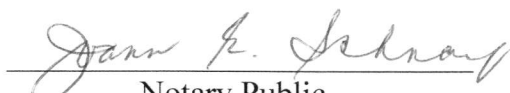
<sup>2</sup> For the convenience of the Court, a copy of my May 28, 2009 reply affidavit is annexed hereto as Exhibit L, continuing the sequence of exhibits (A-K) annexed to my January 2, 2010 motion.

opposition to the Attorney General's cross-motion in White Plains City Court<sup>3</sup>, granted by Judge Friia's October 14, 2008 decision/order – is completely undenied and undisputed.

7. Based on the uncontested showing in those three documents – all record-based, fact-specific, and law-supported – this Court's duty is to impose maximum costs/sanctions under its Rule 730.3(g) and to refer the culpable lawyers in the Attorney General's Office and Clerk Lupi to disciplinary and criminal authorities pursuant to §100.3D(2) and §100.3C(2) of the Chief Administrator's Rules Governing Judicial Conduct. This, in tandem with determining the threshold issue as to the lawfulness of the Attorney General's representation of non-party Clerk Lupi, both before this Court and in White Plains City Court – and his duty to have represented and/or intervened on my behalf, pursuant to Executive Law §63.1, which I invoked based on "the interest of the state" in the integrity of court records and the proper functioning of the White Plains City Court Clerk's Office, and which I alone have been championing.

  
ELENA SASSOWER

Sworn to before me this  
19<sup>th</sup> day of January 2010

  
Notary Public

JOANN E. SCHNAUFER  
Notary Public, State of New York  
No. 01SC5081241  
Qualified in Suffolk County  
Commission Expires June 30, 2011

<sup>3</sup> My dispositive October 10, 2008 opposing/reply affidavit is Exhibit O in the two-volume compendium of exhibits accompanying my appellant's brief in #2008-1427-WC and #2009-148-WC.

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERM: NINTH & TENTH JUDICIAL DISTRICTS

----- x  
JOHN McFADDEN,

Respondent,

#2008-1427-WC

#2009-148-WC

-against-

DORIS L. SASSOWER,

Respondent,

ELENA SASSOWER,

Appellant.

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APPELLANT'S AFFIDAVIT IN REPLY  
TO OPPOSING AFFIRMATION OF  
DEPUTY SOLICITOR GENERAL BENJAMIN N. GUTMAN  
& IN FURTHER SUPPORT OF HER MOTION  
FOR DISQUALIFICATION OF JUSTICE MOLIA & OTHER RELIEF

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**Tel: 646-220-7987**

Appeal #3: Judge Jo Ann Friia's July 3, 2008 Decision & Order  
July 21, 2008 Judgment of Eviction  
July 21, 2008 Warrant of Removal

Appeal #4: Judge Jo Ann Friia's October 14, 2008 Decision & Order

(White Plains City Court #SP-651/89 & #SP-2008-1474)

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERM: NINTH & TENTH JUDICIAL DISTRICTS

----- X  
JOHN McFADDEN,

Respondent,

**#2008-1427-WC**

**#2009-148-WC**

-against-

Affidavit in Reply to  
Opposing Affirmation of  
Deputy Solicitor General  
Benjamin N. Gutman & in  
Further Support of Motion for  
Disqualification of Justice  
Molia & Other Relief

DORIS L. SASSOWER,

Respondent,

ELENA SASSOWER,

Appellant.

-----X  
STATE OF NEW YORK )  
COUNTY OF SUFFOLK ) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the above-named appellant *pro se* and fully familiar with all the facts, papers, and proceedings in these two appeals and in the two related appeals in *John McFadden v. Elena Sassower*, #2008-1433-WC and #2008-1428-WC (White Plains City Ct. #SP-1502/07).

2. This affidavit is submitted in reply to the January 14, 2010 affirmation of Deputy Solicitor General Benjamin N. Gutman in the Office of Attorney General Andrew Cuomo, on behalf of non-party White Plains City Court Clerk Patricia Lupi, opposing my January 2, 2010 motion to disqualify Justice Denise Molia & other relief. It is also submitted in further support of my motion, as well as for imposition of costs and sanctions against the Attorney General's Office pursuant to this Court's Rule