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March 23, 2010

Paul Kenny, Chief Clerk  
Appellate Term, Second Judicial Department  
141 Livingston Street, 15<sup>th</sup> Floor  
Brooklyn, New York 11201

RE: Clarifying your March 16, 2010 Letter – Including by Certifications Pursuant to  
Judiciary Law §255

*John McFadden v. Doris L. Sassower & Elena Sassower*

Appellate Term #2008-1427-WC & #2009-148-WC

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

*John McFadden v. Elena Sassower*

Appellate Term #2008-1433-WC & #2008-1428-WC

(White Plains City Court #SP-1502/07)

Dear Mr. Kenny,

I am perplexed by your March 16, 2010 letter, which you describe as both a “partial response” and “comprehensive response” to my various letters and the inquiries therein set forth.

Most perplexing is your third paragraph:

“Although I have been advised by the Office of Court Administration that I do not have to provide you with copies of signed motion orders or decisions (since we do not provide same to any parties), since a member of the clerk’s office showed you a copy of the signed order, I am enclosing a copy of it for your records<sup>[fn]</sup>. In as much as the signed appeal decisions are physically part of the court’s confidential report and not available to the public, I will not provide you with a signed copy.” (underlining in your original).

Are you saying that the Appellate Term does not normally send parties “copies of signed motion orders or decisions” when rendered? If so, what are the reasons and legal authority, as you give none.

You also imply that even when parties request “copies of signed motion orders or decisions”, as I have, you do not provide them. Is this correct? And, again, what are the reasons and legal authority?

EX W-2

My March 5, 2010 letter to you identified that the original of the October 1, 2008 order denying, *without reasons*, my August 13, 2008 vacatur/dismissal motion, which Mr. Mejia had shown me at my request, had not been signed by Justice McCabe, although he was the indicated signator. My letter asked whether the other orders denying my motions had been signed by the judges whose names were indicated thereon and requested copies, these being the November 26, 2008 order which indicated Justice McCabe as the signator, the June 22, 2009 order which indicated Justice Molia as the signator, and the February 19, 2010 order also indicating Justice Molia as the signator.

You have not answered this pivotal question as to whether the originals of those orders were signed by those judges, while simultaneously withholding copies of those original orders, thereby precluding me from answering the question myself. Indeed, the only copy of an original order you have furnished me is of the October 1, 2008 order because “a member of the clerk’s office” showed it to me, ignoring that Mr. Mejia also showed me the original October 1, 2008 decision, a copy of which my March 5, 2010 letter also requested and which you have not furnished. Why is that?

You have also not commented on the evidence of record-tampering by your Clerk’s Office with respect to the October 1, 2008 decision and order, as summarized by my March 5, 2010 letter. Instead, you appear to imply that it was improper for Mr. Mejia to have allowed me to view the original October 1, 2008 order and decision. So that there is no mistake on the subject, I hereby request to view the originals of the aforesaid November 26, 2008, June 22, 2009, and February 19, 2010 orders— and especially if you do not supply me with the copies requested by my March 5, 2010 letter.

Should you not permit me to view the originals of these three orders or not provide me with copies, please plainly state which judges, if any, signed them. As for the October 1, 2008 order, please plainly state who signed it – and by what authority, since CPLR §2219(b) only authorizes signature by a judge, or you as Clerk, or, in your absence, your deputy clerk.

If the originals of the aforesaid November 26, 2008, June 22, 2009, and February 19, 2010 orders are not signed by judges or anyone authorized to sign them pursuant to CPLR §2219(b), please certify, pursuant to Judiciary Law §255, that your “files, papers, records, and dockets” contain no such orders bearing their signatures – which is essentially what my March 5, 2010 letter to you requested.

Additionally, since your letter implies that decisions on motions are also signed, I request that you certify, pursuant to Judiciary Law §255, that your “files, papers, records, and dockets” contain no signed decision underlying the October 1, 2008 order – consistent with what I saw. If the original decisions underlying the November 26, 2008, June 22, 2009, and February 19, 2010 orders are likewise unsigned, I request that you also certify, pursuant to Judiciary Law §255, that your “files, papers, records, and dockets” contain no signed decisions for them.

As for your refusal to provide me with copies of “signed appeal decisions”, why should these be “physically part of “the court’s confidential report”? Isn’t “the court’s confidential report” a euphemism for the draft decision written by court attorneys? My March 1, 2010 (“clarification”) and March 4, 2010 letters asked whether the three February 23, 2010 documents entitled “DECIDED”, to which Justices Molia and Iannacci are “concurring”, are drafts by court attorneys.<sup>1</sup> You have not responded. Are they drafts?

You have also not supplied me with copies of the orders pertaining to “signed appeal decisions”, requested by my March 4, 2010 letter. These are not “physically part of “the court’s confidential report” – and your letter elsewhere concedes this:

“at present, the justices sign a decision, and an order is later drafted by the clerk’s office and signed by the chief clerk or deputy clerk”.

As noted by my March 1, 2010 (“clarification”) and March 4, 2010 letters – and as discussed together in person on March 1<sup>st</sup> – the copies of the three February 23, 2010 orders on my appeals, sent me by the Clerk’s Office, are not signed by you and fail to even indicate who was expected to sign them. The only signature they bear, yours, connotes entry and is a stamp, as you confirmed in our conversation together.<sup>2</sup>

You have not stated that either you or your deputy clerk signed the originals of these three February 23, 2010 orders – and, indeed, it appears from your letter that there has been no deputy clerk since the retirement of the previous deputy clerk in August 2009. Unless the original three February 23, 2010 orders are signed by a judge – which would deviate from what you identified as the “present” practice for orders determining appeals – it would appear that they are violative of CPLR §2219(b) and should not have been stamped with your signature for entry.

Absent signed originals of these three February 23, 2010 orders among your “files, papers, records, and dockets”, I hereby request that you certify, pursuant to Judiciary Law §255, that such cannot be found.

Both my March 1, 2010 (“clarification”) and March 4, 2010 letters expressly asked whether the February 23, 2010 decisions and orders are “consistent with the form and normal and customary procedures followed by the Appellate Term when it adjudicates appeals of other litigants.” You have not responded and have confronted none of the specifics therein set forth.

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<sup>1</sup> In addition to the indicia set forth by those letters, might the numbering of pages preceded by “SM-” on all three February 23, 2010 decisions be further evidence that they are drafts?

<sup>2</sup> You also confirmed that it is your practice, when the signature on a Clerk’s order or letter from you is not your own handwritten signature, to affix your initials to it. The February 23, 2010 orders bear no such initialing, further reflective that the stamped signature is confined to entry.

As for your assertion that you cannot “substantively change, correct, or alter an order or decision of the court”, I have not asked you to correct any “decision of the court”. As for an “order...of the court”, unless there is a different procedure for motion orders than appeal orders, it is your Clerk’s Office which drafted the two February 19, 2010 orders denying my January 2, 2010 motion to disqualify Justice Molia & other relief – one signed by you and the other unsigned. These are the only orders I have requested be recalled, which I did by my February 25, 2010 letter – and the basis for this request was their false recitation of entry for the underlying appealed-from documents.

As your duty as Chief Clerk includes certifying whether “files, papers, records, and dockets” in your possession bear entry for appealed-from documents, please furnish the certifications, pursuant to Judiciary Law §255, requested by my March 1, 2010 letter, *to wit*,

“that you cannot find an entered October 14, 2008 order, nor an entered July 3, 2008 order, nor an entered July 21, 2008 warrant...and...that you cannot find any entry for Judge Hansbury’s October 11, 2007 order, nor for his January 29, 2008 order.”

Finally, obvious from the flagrant falsehoods, perversions, and other deficiencies of the decisions and orders, summarized by my letters – and not denied or disputed by you – is that the Appellate Term’s operations, involving its Clerk’s Office and court attorney staff, are marked by profound incompetence at best, and, more likely, corruption. If – as you purport in response to my March 12, 2010 letter – there is no “‘manual’ or other written document regarding [the Appellate Term’s] internal procedures” for handling appeals and motions – which I find hard to believe – one must be speedily developed so that there is no recurrence of what has happened here, eviscerating justice, perpetuating needless appeals and motion practice, and wrongfully depriving the public purse of more than \$100,000 sanctions to which it is lawfully entitled pursuant to 22 NYCRR §130-1.1 and the Appellate Term’s Rule §730.3(g). I am certain that were you to provide “[i]nformation regarding the staffing of [the Appellate Term’s] Law Department”, which you state is “a matter of public record in the unified court system’s budget report”, it would only underscore the number and supervisory/oversight levels of staff who, actively and passively, jettisoned fundamental adjudicative standards and ethical responsibilities on my appeals. This is a matter requiring immediate and thorough investigation. Do you not agree? And are you not duty-bound, as both an attorney and the Appellate Term’s chief clerk, to take appropriate initiating steps?

Of course, what is not “a matter of public record in the unified court system’s budget report” is what I requested in the penultimate paragraph of my February 25, 2010 letter:

“the names of all Appellate Term court attorneys who handled my January 2, 2010 motion, my prior motions, as well as who have been handling my [] four appeals: #2008-1427-WC; #2009-148-WC; #2008-1433-WC; and #2008-1428-WC – relief explicitly sought by the fifth branch of my motion and denied,

*without reasons and without identifying same*, by Justices Molia's and Iannacci's joint February 19, 2010 decision.”

I herein reiterate my request for the names of these court attorneys – which I now supplement with a request for the names of those in your Clerk's Office who, according to your letter, draft orders for judge-signed decisions – the deficiencies of which are recounted by my February 25, 2010, March 1, 2010 (“clarification”), and March 4, 2010 letters.

I would appreciate your response at your earliest convenience – especially the requested certifications, pursuant to Judiciary Law §255 – so that I may know how to proceed.

Thank you.

Very truly yours,



ELENA RUTH SASSOWER  
Appellant *Pro Se*

cc: Leonard A. Sclafani, Esq.  
Doris L. Sassower  
New York State Attorney General Andrew Cuomo  
ATT: Deputy Solicitor General Benjamin N. Gutman  
Assistant Solicitor General Diana R.H. Winters