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BY HAND

October 17, 2008

White Plains City Court Chief Clerk Patricia Lupi
77 Lexington Avenue
White Plains, New York 10601

FILED CITY COURT OF
WHITE PLAINS, N.Y.
2008 OCT 17 P 2:43

RE: Your Mandatory Duties under Judiciary Law §255 and 255-b

Dear Ms. Lupi:

I refer you to the following statutory provision:

Judiciary Law §255. Clerk must search files upon request and certify as to result:

“A clerk of a court must, upon request, and upon payment of, or offer to pay, the fees allowed by law, or, if no fees are expressly allowed by law, fees at the rate allowed to a county clerk for a similar service, diligently search the files, papers, records, and dockets in his office...and certify that a document or paper, of which the custody legally belongs to him, can not be found.” (underlining added).

Pursuant thereto, request is hereby made that you “diligently search the files, papers, records, and dockets” of the following cases:

- #434/88 (*16 Lake Street Owners, Inc. v. John McFadden, George Sassower and Elena Sassower*);
- #500/88 (*16 Lake Street Owners, Inc. v. John McFadden, George Sassower and Elena Sassower*);
- #652/89 (*John McFadden v. George Sassower*),

and that you certify that there is no “document or paper” closing these cases. In the event you do find such “document or paper”, request is made that you identify it and provide a copy.

EX Q-1

I further refer you to two further statutory provisions:

CPLR 4521. Lack of record:

“A statement signed by an officer or a deputy of an officer having legal custody of specified official records of the United States or of any state, territory or jurisdiction of the United States, or of any court thereof, or kept in any public office thereof, that he has made diligent search of the records and has found no record or entry of a specified nature, is prima facie evidence that the records contain no such record or entry, provided that the statement is accompanied by a certificate that legal custody of the specified official records belongs to such person, which certificate shall be made by a person described in rule 4540.”

CPLR 4540. Authentication of official record of court or government office in the United States

“(a) Copies permitted. An official publication, or a copy attested as correct by an officer or a deputy of an officer having legal custody of an official record of the United States or of any state, territory or jurisdiction of the United States, or of any of its courts, legislature, offices, public bodies or boards is prima facie evidence of such record.

(b) Certificate of officer of the state. Where the copy is attested by an officer of the state, it shall be accompanied by a certificate signed by, or with a facsimile of the signature of, the clerk of a court having legal custody of the record, and, except where the copy is used in the same court or before one of its officers, with the seal of the court affixed; or signed by, or with a facsimile of the signature of, the officer having legal custody of the original, or his deputy or clerk, with his official seal affixed; or signed by, or with a facsimile of the signature of, the presiding officer, secretary or clerk of the public body or board and, except where it is certified by the clerk or secretary of either house of the legislature, with the seal of the body or board affixed. If the certificate is made by a county clerk, the county seal shall be affixed.

(c) Certificate of officer of another jurisdiction. Where the copy is attested by an officer of another jurisdiction, it shall be accompanied by a certificate that such officer has legal custody of the record, and that his signature is believed to be genuine, which certificate shall be made by a judge of a court of record of the district or political subdivision in which the record is kept, with the seal of the court affixed; or by any public officer having a seal of office and having official duties in that district or political subdivision with respect to the subject matter of the record, with the seal of his office affixed.”

Sample forms for a “4521 Certificate of Clerk That a Certain Paper Is Not on File” appear in LEXSTAT at NY CPLR 4521 (New York Consolidated Law Service, 2008, Mathew Bender), including the following:

“Certificate

[Title of court and cause] Index No. ---1---

I, [title of office, as, Chief Deputy Clerk] of the County of ---2--- State of New York, do hereby certify that as part of my official duties I have legal custody of the official records of the [set forth nature of records] for the County of ---4---, that I have made diligent search of the said records of my office, and I have not found therein any record or entry of [set forth record for which search was made].

In Witness Whereof, I have hereunto set my hand and the seal of my office at - --5--- , on ---6--- , 20 -7-.

[Signature, with name printed underneath]
[Title of officer]”.

Finally, inasmuch as **Judiciary Law §255-b. Dockets of clerks to be public**”, states,

“A docket-book, kept by a clerk of a court, must be kept open, during the business hours fixed by law, for search and examination by any person.” (underlining added).

I request immediate access to the “docket-book” for each of the above three cited cases, #434/88, #500/88, and #652/89, as well as for each of the following four additional cases:

- #504/88 (*John McFadden v. Doris L. Sassower and Elena Sassower*);
- #651/89 (*John McFadden v. Doris L. Sassower and Elena Sassower*);
- #2008-1474 (*John McFadden v. Doris L. Sassower and Elena Sassower*);
- #1502/07 (*John McFadden v. Elena Sassower*).

If you have no "docket-book" for any of these seven cases, I hereby request that you so-certify, pursuant to Judiciary Law §255.

Thank you.

Yours for a quality judiciary,

A handwritten signature in black ink, appearing to read "Elena Ruth Sassower". The signature is written in a cursive style with a long horizontal flourish at the end.

ELENA RUTH SASSOWER