

Elena Ruth Sassower

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May 26, 2009

Appellate Term Chief Clerk Paul Kenny
141 Livingston Street, 15th Floor
Brooklyn, New York 11201-5079

RE: Enlargement of Appellant's Time for Reply Brief
John McFadden v. Doris L. Sassower and Elena Sassower
Appellate Term: #2008-1427-WC; #2009-148-WC
[White Plains City Court: #SP-651/89, #SP-2008-1474]

Dear Mr. Kenny,

Pursuant to the Appellate Term's Rules 731.8(d)(2), 732.8(d)(2), or other applicable provisions, this is to request a 10-day enlargement of time for the filing of my reply brief to the Attorney General's "Brief for Non-Party Respondent Patricia Lupi" in my above appeals, currently due today, May 26, 2009.

Such extension is necessary because the Attorney General's May 12, 2009 non-party brief, signed by Assistant Solicitor General Diana R.H. Winters, is based on flagrant falsification and omission of material facts. This requires either that Ms. Winters withdraw her non-party brief – as I am hereby demanding she do by copy of this letter to her – or that I be burdened with a reply brief lest her materially false and deceptive non-party brief mislead the Court.

As illustrative, Ms. Winters' non-party brief claims that White Plains City Court Clerk Lupi was "represented by the Attorney General under Executive Law §63(1)" when she cross-moved in White Plains City Court to dismiss my September 18, 2008 motion. This appears at page 4 of her non-party brief – a copy of which is enclosed for your convenience.

The foregoing assertion – for which Ms. Winters furnishes NO record reference – is without denying or disputing page 62 of my appellant's brief, a copy of which I also enclose. I there state:

"the Attorney General's appearance on behalf of Clerk Lupi was unlawful, as Clerk Lupi was not a party to the proceeding for which representation was

EXR-1

available to her under Public Officers Law §18. Nor was her challenged conduct ‘in the interest of the state’, nor even alleged to be – the predicate for representation under Executive Law §63.1.^{fn.50}” (underlining added).

My annotating footnote 50 identified my attempts to ascertain the basis for the Attorney General’s representation of Clerk Lupi, including by F.O.I.L. correspondence with the Attorney General’s Office. Such F.O.I.L. correspondence, which I annexed as Exhibit P to my compendium of exhibits accompanying my appellant’s brief, sought:

(1) any and all publicly available records pertaining to the Attorney General’s approval of Clerk Lupi’s request for representation – “including any and all records establishing that the Attorney General made the predicate determination that Clerk Lupi’s requested representation was ‘in the interest of the state’, as Executive Law §63.1 expressly requires, or that the Attorney General’s representation of Ms. Lupi fell within some other statutory provision.” (Exhibit P-2: my November 5, 2008 letter, underlining in the original); and

(2) any and all publicly available records in support of MY request, pursuant to Executive Law §63.1, “for the Attorney General’s representation &/or intervention ‘in ensuring the integrity of court records and the proper functioning of the White Plains City Court Clerk’s Office’” (Exhibit P-2: my November 5, 2008 letter, underlining in the original).

The Attorney General’s Office asserts it has no records pertinent thereto – as may be seen from its letters responding to my F.O.I.L. correspondence, annexed as part of that Exhibit P and by its subsequent April 29, 2009 letter to me, annexed hereto.

I, therefore, demand that Ms. Winters IMMEDIATELY substantiate the bald claim in her non-party brief that the Attorney General’s representation of Clerk Lupi in the White Plains City Court was pursuant to Executive Law §63.1 and that she state, under oath, with accompanying documentary proof, that the Attorney General made the requisite determination that it was Clerk Lupi, and not me, who was advancing “the interest of the state”.

Absent her doing so and withdrawing her non-party brief, as she is duty-bound to do because it is a fraud on this Court and itself *prima facie* proof that the Attorney General’s representation of Clerk Lupi is contrary to “the interest of the state”, I will ask this Court for sanctions and costs against Ms. Winters and her superiors at the Solicitor General’s Office, pursuant to this Court’s Rule 730.3(g), and that it make disciplinary and criminal referrals of them, pursuant to §100.3D(2) of the Chief Administrator’s Rules Governing Judicial

Conduct.

Tellingly, Ms. Winters' May 12, 2009 non-party brief fails to include a certification pursuant to 22 NYCRR §130-1.1 that its content is not frivolous, unlike my April 17, 2009 appellant's brief which so-certifies.

Thank you.

Very truly yours,



ELENA RUTH SASSOWER, *Pro Se*

Enclosures

cc: New York State Attorney General Andrew Cuomo
ATT: Assistant Solicitor General Diana R.H. Winters
By Fax: (212) 416-8962
Leonard Sclafani, Esq.
By Fax: (212) 949-6310
Doris L. Sassower
By Fax: (914) 684-6554

Assistant Solicitor General Winters'
May 12, 2009 Non-Party Brief

*

The Chief Clerk, represented by the Attorney General under Executive Law § 63(1), cross-moved to dismiss the motion on the ground that the City Court lacked subject matter jurisdiction over the claim. On October 14, 2008, the court denied Sassower's motion and granted the Chief Clerk's cross-motion. The court found that because the relief Sassower sought could only be furnished through an article 78 proceeding brought in Supreme Court, it lacked jurisdiction to hear the motion to compel.

This appeal followed.

ARGUMENT

THE CITY COURT LACKED JURISDICTION OVER SASSOWER'S MOTION TO COMPEL THE CHIEF CLERK TO PERFORM HER DUTIES

Sassower moved in the City Court for an order compelling the Chief Clerk to furnish various documents to this Court. That motion alleged that an officer of the City Court failed to perform a duty that she was enjoined to do by law. For example, in opposing the Chief Clerk's cross-motion to dismiss, Sassower argued that the Chief Clerk was required by law to produce the documents she requested (Ex. O,

Sassower's April 17, 2009
Appellant's Brief

and criminal authorities, as compelled by the record herein.”

* Sassower asserted (at ¶¶7-8) that the Attorney General’s appearance on behalf of Clerk Lupi was unlawful, as Clerk Lupi was not a party to the proceeding for which representation was available to her under Public Officers Law §18. Nor was her challenged conduct “in the interest of the state”, nor even alleged to be – the predicate for representation under Executive Law §63.1.⁵⁰ Sassower then demonstrated that it was to conceal the unlawfulness of the Attorney General’s representation of Clerk Lupi that Ms. McCullough’s cross-motion was fashioned on “materially contradictory and misleading claims and falsehoods and on NO APPLICABLE LAW.” Sassower showed (at ¶¶12-14) that the cross-motion, pursuant to CPLR §3211(a)(2), had to be denied, *as a matter of law*, as there was no complaint or petition with causes of action that could be “dismissed” for lack of subject matter jurisdiction, nor “denied” as Ms. McCullough thereafter sought by an amended notice.

Sassower highlighted (at ¶15) that the Attorney General had not purported that the City Court did not have jurisdiction over its own Clerk and could not order her compliance with the relief requested by Sassower’s motion within the landlord-tenant proceeding, as opposed to an Article 78 proceeding. Moreover, after demonstrating (at ¶¶18-23) that the

*⁵⁰ Footnote 4 of Sassower’s October 10, 2008 affidavit (Exhibit O: p. 4) summarized her attempt to ascertain the basis for the Attorney General’s representation of Clerk Lupi – appending her FOIL correspondence with the Attorney General’s Office. The Attorney General answered that a response would be “forthcoming”. As such “forthcoming” response did not issue until October 28, 2008, it could not be appended to Sassower’s October 10, 2008 affidavit. It is now furnished in the accompanying Compendium of Exhibits as Exhibit P-1, followed by the subsequent exchange of correspondence thereon: Sassower’s November 5, 2008 appeal and further FOIL request (Exhibit P-2); the Attorney General’s April 7, 2008 letter (Exhibit P-3); and Sassower’s April 8, 2008 letter (Exhibit P-4). These further evidence the unlawfulness of the Attorney General’s representation of Clerk Lupi.



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

AMY C. KARP
Records Access Officer
Assistant Counsel

April 29, 2009

Via Email elenaruth@aol.com

Ms. Elena Ruth Sassower
Box 3002
Southampton, NY 11969

RE: Freedom of Information Law (FOIL) #08991

Dear Ms. Sassower:

This letter responds to your correspondence dated April 8, 2009, which, pursuant to the New York Freedom of Information Law, requested:

"[A]ny and all publicly-available records pertaining to the Attorney General's review and determination of my September 29, 2008 letter [to Ms. McCarthy], "wherein I invoked Executive Law §63.1 to not only challenge the legitimacy of the Attorney General's representation of Clerk Lupi, but to support my own request for the Attorney General's representation &/or intervention 'in ensuring the integrity of court records and the proper functioning of the White Plains City Court Clerk's Office'"."

Please be advised that the Office of the Attorney General has conducted a diligent search and does not possess any records that respond to your request.

Thus, your FOIL request is closed.

Sincerely,

Amy C. Karp
Assistant Counsel