



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

Diana.Winters@oag.state.ny.us
(212) 416-6390

BARBARA D. UNDERWOOD
SOLICITOR GENERAL

May 15, 2009

Honorable Kenneth Rudolph
9th & 10th Judicial District Appellate Term
Supreme Court Presiding Justice
Clerk's Office
141 Livingston St.
15th Floor
Brooklyn, NY 11201

Re: *McFadden v. Sassower*
Index No.: 2009-148 WC

Dear Justice Rudolph:

I represent non-party respondent Patricia Lupi, the Chief Clerk of the City Court of the City of White Plains, in the above referenced appeal. This letter is in response to appellant Elena Sassower's May 11, 2009 Motion to Direct the White Plains City Court Clerk to Furnish a Proper Clerk's Return on Appeal & Other Relief. In her motion, Sassower again seeks to compel the Chief Clerk to perform duties required by law — the same relief she seeks in the underlying appeal. This Court does not have jurisdiction over such a demand because it must be adjudicated in a C.P.L.R. article 78 proceeding brought in Supreme Court. For a thorough discussion of this issue, please see the brief, dated May 12, 2009, filed on behalf of the Chief Clerk in response to appellant's brief in this appeal.

Thank you.

Very truly yours,

Diana R.H. Winters
Assistant Solicitor General

cc: Elena Sassower
c/o Karmel
25 East 86th Street
New York, NY 10028