

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPARTMENT

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APPELLATE DIVISION  
SECOND DEPARTMENT

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ELENA RUTH SASSOWER and DORIS L. SASSOWER,  
Individually and as Director and President, respectively,  
of the Center for Judicial Accountability, Inc., and  
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.,  
Acting *Pro Bono Publico*,

Plaintiffs-Appellants,

App. Div. #: 2012-00126

App. Div. #: 2012-05360

Suffolk Co. # 10-12596

-against-

NOTICE OF MOTION

GANNETT COMPANY, INC., The Journal News, LoHud.com  
HENRY FREEMAN, CYNDEE ROYLE, BOB FREDERICKS,  
D. SCOTT FAUBEL, KEITH EDDINGS, DOES 1-10,

Defendants-Respondents.

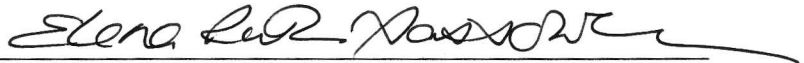
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PLEASE TAKE NOTICE that upon the annexed affidavit of plaintiff-appellant *pro se* ELENA RUTH SASSOWER, sworn to on August 20, 2012, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had herein, plaintiff-appellant *pro se* ELENA RUTH SASSOWER will make a motion to the Appellate Division, Second Department at 45 Monroe Place, Brooklyn, New York 11201 on September 7, 2012 at 10:00 a.m., or as soon thereafter as the parties or their counsel may be heard, for an order:

- (1) permitting plaintiff-appellant *pro se* ELENA RUTH SASSOWER to certify plaintiffs-appellants' Record on Appeal, as is required by Appellate Division, Second Department Rule §670.10.2(f); and
- (2) for such other and further relief as may be just and proper.

Pursuant to CPLR §2214(b), answering papers, if any, are required to be served at least seven days prior to the September 7, 2012 return date.

Dated: August 20, 2012  
New York, New York

Yours, etc.



ELENA RUTH SASSOWER, Plaintiff-Appellant *Pro Se*  
*Individually & Acting Pro Bono Publico*  
10 Stewart Place, Apt. 2DE  
White Plains, New York 10603  
Tel: 646-220-7987

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*Attorneys for Plaintiffs-Appellants Doris L. Sassower,  
Individually and as President of the Center for Judicial  
Accountability, Inc., Elena Ruth Sassower, as Director of the  
Center for Judicial Accountability, Inc, and Center for  
Judicial Accountability, Inc., Acting Pro Bono Publico*

TO: SATTERLEE STEPHENS BURKE & BURKE LLP  
230 Park Avenue  
New York, New York 10169  
Tel: 212-819-9200  
*Attorneys for all Defendants-Respondents except  
Defendant Keith Eddings & Does 1-10*

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPARTMENT

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ELENA RUTH SASSOWER and DORIS L. SASSOWER,  
Individually and as Director and President, respectively,  
of the Center for Judicial Accountability, Inc., and  
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.,  
Acting *Pro Bono Publico*,

Plaintiffs-Appellants,

App. Div. #: 2012-00126

App. Div. #: 2012-05360

Suffolk Co. # 10-12596

-against-

MOVING AFFIDAVIT

GANNETT COMPANY, INC., The Journal News, LoHud.com  
HENRY FREEMAN, CYNDEE ROYLE, BOB FREDERICKS,  
D. SCOTT FAUBEL, KEITH EDDINGS, DOES 1-10,

Defendants-Respondents.

----- x  
STATE OF NEW YORK        )  
COUNTY OF NEW YORK    ) ss:

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

1. I am the first-named plaintiff-appellant herein, *pro se* in my individual capacity and acting *pro bono publico*, and submit this affidavit in support of the within motion to be permitted to certify plaintiffs-appellants' Record on Appeal, required by this Court's Rule §670.10.2(f).

2. I have been informed by this Court's Clerk's Office that the procedure for doing so is to make a motion, on notice to adverse counsel – Satterlee, Stephens, Burke and Burke, LLP – which I have here done.

3. Annexed hereto as Exhibits A and B are the first eleven pages of the Record on Appeal, consisting of plaintiffs-appellants' two notices of appeal, dated December 20, 2011 and May 18, 2012, for the two short-form orders of now-retired Justice Peter Fox Cohalan, dated September

22, 2011 and April 23, 2012.

4. These two appeals have been perfected by a single brief, which I wrote, based on the Record on Appeal, which I assembled. Before doing so, I went to the Suffolk County Clerk's Office to examine the record maintained by it so as to ensure that the papers constituting our Record on Appeal would be "true and complete copies of the originals" on file.

5. Annexed hereto as Exhibit C is the certification I have appended at the end of our Record on Appeal, attesting that the papers therein are "true and complete copies of the originals".

6. That being said, there is one respect in which the papers in our Record on Appeal are not "complete copies of the originals". In the interest of economy, I have not replicated the approximately 146 pages of the sole exhibit to the affidavit of Emily Smith, Esq., which she attested to be "a true and correct copy of the Verified Complaint and its exhibits" [R-208]. Such, however, is identified at page 209 of our Record on Appeal, which states:

"Only a single page of the supposed 'true and correct copy of the Verified Complaint and its exhibits' is herewith attached – the page on which ¶34 appears.

As set forth by ¶¶17-19 of plaintiff Elena Sassower's opposition/cross-motion affidavit [R-249-250, 557, 367, 369] – without contest from Satterlee – the supposed 'true and correct copy of the Verified Complaint', annexed as Exhibit A to Emily Smith's affidavit, had been twice superseded. The superseding Verified Complaint [R-16-162] contained clarifying changes. Among these, the addition at the end of ¶34 [R-32-33] of the words 'contrary to the news article' to highlight that the video of the Common Council meeting reflects that plaintiffs Elena and Doris Sassower left the Council chamber BEFORE Judge Hansbury and, therefore, had not 'pursue[d]' him in leaving the Council chamber, as the article implied [R-108, R-109]."

Page 210 of the Record on Appeal then appends the referred-to single page from attorney Smith's supposed "true and correct copy of the Verified Complaint" for comparison with the corresponding pages of the actual "true and correct" Verified Complaint [R-32-33, at ¶34].

7. Finally, I wish to take this opportunity to attest to what is not in the record – but should be – namely that the April 23, 2012 short-form order is materially misleading in

purporting that plaintiffs' December 21, 2011 motion was orally argued, as it does by the language "after hearing counsel in support of and opposed to the motion" [R-11] (Exhibit B).

8. Annexed as Exhibit D is the exchange of e-mail between myself and Satterlee pertaining to the oral argument, containing Satterlee's advice to me, on April 9, 2012 – two days before the scheduled Wednesday, April 11, 2012 argument, that:

"the Court called us some weeks earlier and advised that there would be no argument taken on the motion. Nonetheless, the Judge would like all parties and their counsel to be present in the courtroom on Wednesday." (Attorney Michael Gibson's April 9, 2012 e-mail, 2:21 p.m.)

then clarified as:

"the Judge directed that all *pro se* parties appear in person on Wednesday, as well as all represented parties through their counsel." (Attorney Michael Gibson's April 9, 2012 e-mail, 2:27 p.m.).

9. As reflected by my responding April 10, 2012 e-mail, this was the first notice I had that there would be no oral argument – and I confirmed with Justice Cohalan's chambers that, in fact, there would be no oral argument, but that appearances were required.

10. What took place on Wednesday, April 11, 2012, was as follows. Justice Cohalan's law secretary, Daniel Murphy, Esq., presided at the call of the calendar and when the case was called, I and James DeFelice, Esq., for the plaintiffs, and Meghan Sullivan, Esq., of Satterlee, representing all defendants except defendants Eddings and DOES 1-10, appeared before him. Mr. Murphy stated he just wanted to be sure he had all the papers on the motion – which he recited: (1) plaintiffs' notice of motion with affidavit and memorandum of law [R-586-588; R-589-750; R-751-758; (2) an opposing affidavit and memorandum of law [R-765-779; R-780-807]; and (3) a reply affidavit [R-810-834]. He then stated that that was all and thanked us – whereupon I asked why there was no oral argument. Mr. Murphy's response was that Justice

Cohalan didn't take oral argument on disqualification motions. When I pointed out that the motion sought relief other than Justice Cohalan's disqualification, Mr. Murphy adhered to the position that there would be no oral argument. As I recollect, I stated that Justice Cohalan was disqualified for actual bias and interest – and that, if he did not disqualify himself, his duty was disclose facts, such as those set forth in the motion [R-592-595], and to make a responsive adjudication – a statement I made loudly so that it could be heard by other court personnel.

11. There was no reason for Justice Cohalan to have required court appearances by the parties and counsel for April 11, 2012 – other than to buttress a false pretense in his April 23, 2012 short-form order that oral argument was held. Obviously, if Mr. Murphy had any doubt as to the papers on the motion, he could have easily ascertained same without wasting our time, energy, and money by having us come to court in Riverhead. All that was necessary was a phone call or letter to us.

  
ELENA RUTH SASSOWER

Sworn to before me this  
20<sup>th</sup> day of August 2012

  
Notary Public

**ALEX E. ZHAO**  
Notary Public, State of New York  
No. 012H6188319  
Qualified in Kings County  
Commission Expires June 09, 2016