

CENTER *for*
JUDICIAL
ACCOUNTABILITY



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BY FAX AND HAND-DELIVERY

February 6, 1994

Hon. G. Oliver Koppell
Attorney General of the State of New York
120 Broadway
New York, New York 10271

RE: Sassower v. Mangano, et al.
A.D. #93-02925

Dear Mr. Koppell:

This letter confirms my conversation with John Sullivan of your office on Friday, February, 4 1994, in which I informed him that I had just received from your judicial clients in the above matter a decision (per Mangano, J.) denying my dismissal/summary judgment motion¹ "in the underlying disciplinary proceeding" under A.D. #90-00315, which is the subject of the above Article 78 proceeding. A copy of such decision, dated January 28, 1994, is enclosed for your convenience.

As discussed with Mr. Sullivan, Respondent Second Department's latest decision irrefutably establishes that the basis on which it dismissed my Article 78 proceeding, i.e., that my "jurisdictional challenge can be addressed in the underlying disciplinary proceeding", was and is an outright lie.

Indeed, it was based on your judicial clients' September 20, 1993 dismissal on that ground that I moved "in the underlying proceeding" for dismissal/summary judgment by reason of, inter alia, lack of jurisdiction.

The record shows that in rendering its January 28, 1994 decision denying my dismissal/summary judgment motion, your clients had full knowledge that there was no factual or legal basis for such decision. This is further reflected by the fact that such decision gives no reasons and cites no law--like all Respondent Second Department's other peremptory decisions under A.D. #90-00315, annexed to my Jurisdictional Statement as Exhibit "D".

¹ Said motion is referred to at fn. 7 of my Jurisdictional Statement.

Supp. Exh. "4"

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I reiterate my request in my February 3, 1994 letter to you that the files under A.D. #90-00315 be requisitioned, since they provide prima facie, if not conclusive, evidence that your judicial clients have wilfully misused their office as part of an on-going criminal conspiracy to use the court's disciplinary powers for ulterior and retaliatory purposes--which their dishonest September 20, 1993 dismissal of my Article 78 proceeding against them was designed to cover up and conceal.

So that you can immediately be apprised of the extent to which your clients' criminal conduct is reflected by the files under A.D. #90-00315, I am transmitting herewith a copy of all papers submitted in connection with my November 19, 1993 dismissal/summary judgment motion--denied by your clients' January 28, 1994 decision. This includes the flimsy, non-responsive December 7, 1993 Affirmation in Opposition of Respondent Casella, typical of his opposition papers on all my motions under A.D. #90-00315, to which I was denied a right of reply by the Court. (see my unresponded-to December 10, 1993 letter to Presiding Justice Mangano)

Examination of my enclosed dismissal/summary judgment motion "in the underlying disciplinary proceeding", read in conjunction with my papers in the Article 78 proceeding, will convince you of the criminality of your clients' wilful and corrupt conduct, which should be the basis for their prosecution and removal from office. For your convenience, an inventory of all papers on the Article 78 proceeding is also enclosed herewith.

May I further suggest that you obtain from your clients a copy of the transcripts of the four days of hearings already held on the February 6, 1990 Petition, described at ¶14 of my Jurisdictional Statement as "devoid of the most rudimentary due process", and at ¶15 thereof as constituting "a separate and additional basis for...Article 78 relief". Transcripts of at least three days of said hearings are in the possession of Respondents Casella and Referee, which Mr. Casella has represented as having cost "approximately \$3,000". On information and belief, that cost has been borne by the taxpayers of this State.

Respondent Second Department's latest decision demonstrates that in order to advance its retaliatory goals, it is directing resumption of what it knows will be protracted and costly hearings--with full knowledge that it has no disciplinary jurisdiction, that there has been no due process afforded at the

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hearings already held², and that I am totally innocent of any disciplinary violation³. That it does so at a time when it is publicly clamoring for creation of a Fifth Department to deal with its so-called "caseload crisis" exemplifies why such crisis exists, namely, because Respondent Second Department chooses to deploy its resources to disregard, rather than to enforce, the law⁴.

That it additionally now threatens me with "criminal contempt" if I make any other motions "in the underlying disciplinary proceeding" without its prior approval--constitutes a sua sponte implied emendation of its September 20, 1993 decision in the Article 78 proceeding and a clear attempt to burden, coerce, harass, and intimidate me so as to deprive me of my legal rights "in the underlying proceeding".

In view of the aforesaid January 28, 1994 decision, it is now incumbent on your office to make known to the Court of Appeals that your clients have repudiated the basis on which your office defended them before themselves in the Article 78 proceeding, to wit, that there was an adequate remedy "in the underlying disciplinary proceeding". That statement, which was a foul lie then--and shown to be such in my detailed opposition to Mr. Sullivan's dismissal motion⁵--must now be disavowed by your office, consistent with your obligation under DR 7-102 of the Code of Professional Responsibility:

² See, inter alia, ¶7 of my November 19, 1993 summary judgment/dismissal motion, as well as my January 10, 1994 motion, by Order to Show Cause, denied by Respondent Second Department in a separate January 28, 1994 decision.

³ See, inter alia, Exhibits "E", "F", "H", "I", "J", and "K" to my 11/9/93 summary judgment/dismissal motion and pp. 32-38 of my affidavit in support of the motion, as well as ¶¶11-14.

⁴ The role of the Second Department in creating its own "crisis", the cost of which it now wants the public to shoulder, is described not only in my Article 78 proceeding (inter alia, my 7/2/93 affidavit in support of my cross-motion, ¶¶44, 50) and Jurisdictional Statement (¶11), but in my enclosed summary judgment/dismissal motion (¶¶62-64).

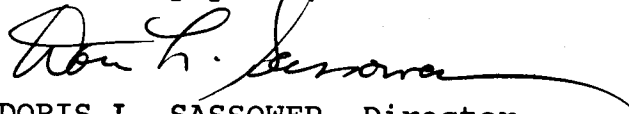
⁵ See, inter alia, pp. 26-30 and pp. 12-13 of my 7/2/93 affidavit in support of my cross-motion, annexed to my Jurisdictional Statement as Exhibits "F-1" and "F-2", respectively.

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"A lawyer who receives information clearly establishing that: 1. The client has, in the course of the representation, perpetrated a fraud upon a person or tribunal, shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, a lawyer shall reveal the fraud to the affected person or tribunal..." (B)1.

Review of the papers herein enclosed, as well as the files under A.D. #90-00315, provides irrefutable proof of your clients' fraud in the Article 78 proceeding. To avoid being chargeable as an accessory thereto and consistent with your duties as Attorney General, you must make known to the Court of Appeals the true facts as to what has transpired. This letter constitutes my formal demand that you do so and that you take all appropriate action to ensure that the Article 78 proceeding is heard de novo by an impartial tribunal. Respondent Second Department has forfeited any claim to such status, since the record under A.D. #90-00315 shows, resoundingly, that any further proceedings before it are a wasteful "exercise in futility" because it has no respect for documented facts or controlling law.

Very truly yours,



DORIS L. SASSOWER, Director
Center for Judicial Accountability

DLS/er
Enclosures:

- (1) January 28, 1994 Decision
- (2) Papers submitted on summary judgment/dismissal motion
 - (a) DLS' 11/19/93 motion with Compendium of Exhibits
 - (b) Respondent Casella's 12/7/93 Affirmation in Opposition
 - (c) DLS' 12/10/94 letter to Presiding Justice Mangano--as to which no response was received
- (3) Inventory of Article 78 file contents

cc: John Sullivan, Esq.
(w/o enclosures except for 1/28/94 Decision)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

75960
Z/nl

(NOT TO BE PUBLISHED)

GUY JAMES MANGANO, P.J.
WILLIAM C. THOMPSON
LAWRENCE J. BRACKEN
THOMAS R. SULLIVAN
VINCENT R. BALLETTA, JR., JJ.

90-00315

In the Matter of Doris L. Sassower, a
suspended attorney.

DECISION & ORDER ON MOTION

Grievance Committee for the Ninth
Judicial District, petitioner;
Doris L. Sassower, respondent.

Motion by the respondent, *inter alia*, (1) to recuse all the Justices of this court and for transfer of this matter to another Judicial Department, (2) to dismiss the supplemental petition, dated March 25, 1993, and the petition, dated January 28, 1993, on various stated grounds, (3) for an award of costs and sanctions against the petitioner pursuant to 22 NYCRR 130.1-1 for the institution and prosecution of frivolous disciplinary proceedings, (4) for discovery of the petitioner's July 31, 1989, July 8, 1992, and December 17, 1992, Grievance Committee reports and all other documents which may aid the respondent's defense or materially affect the outcome of the proceeding, (5) for a severance of all unrelated charges, and (6) for appointment of a Special Referee to investigate and report with respect to the respondent's complaints of "prosecutorial judicial misconduct."

Upon the papers filed in support of the motion and the papers submitted in opposition thereto, it is

ORDERED that the motion is denied in its entirety; and it is further,

ORDERED that on the court's own motion, the respondent is directed to submit written answers to the petition, dated January 28, 1993, and the supplemental petition dated March 25, 1993, by February 18, 1994; and it is further,

ORDERED that no further extensions of time will be granted to the respondent with respect to her time to answer the petition and supplemental petition; and it is further,

January 28, 1994

MATTER OF SASSOWER, DORIS L.

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ORDERED that in the event the respondent fails to timely answer the petition and supplemental petition, the petitioner is directed to forthwith move to impose discipline upon her default: and it is further,

ORDERED that the respondent is enjoined from making any further motions to this court in the pending disciplinary proceeding, without leave of a Justice of this court, with the exception of a motion to confirm or disaffirm the report of the Special Referee; applications for leave shall be made by letter addressed to the Clerk of the court, to which shall be attached the proposed motion papers, and shall be delivered to the Clerk for assignment of a Justice to determine the application for leave; no more than one application for leave shall be made with respect to any motion; and it is further,

ORDERED that the making of any motion without leave, or the making of multiple applications for leave with respect to any one motion shall be punishable as a criminal contempt of court pursuant to Judiciary Law § 750(A)(3).

MANGANO, P.J., THOMPSON, BRACKEN, SULLIVAN and BALLETTA, J.J., concur.

SUPREME COURT, STATE OF NEW YORK
APPELLATE DIVISION SECOND DEPT

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on **JAN 28 1994** and that this copy is a correct transcription of said original.

ENTER:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on **JAN 28 1994**

MARTIN H. BROWNSTEIN

Martin H. Brownstein
Clerk

Martin H. Brownstein

INVENTORY: ARTICLE 78 PROCEEDING

SASSOWER v. MANGANO, et al.

A.D. # 93-02925

1. DLS' Notice of Petition, dated 4/28/93
2. Respondents' Notice of Motion to Dismiss the Petition, dated 5/12/93 (John Sullivan, Assistant Attorney General)
3. Respondents' Memorandum of Law in Support of their Motion to Dismiss the Petition, dated 5/13/93 (John Sullivan, Assistant Attorney General)
4. DLS' Order to Show Cause with TRO/Affidavit in Opposition to Respondents' Dismissal Motion and in Support of Omnibus Cross-Motion, dated 7/2/93
5. Respondents' Memorandum in Opposition to Petitioner's Cross-Motion, dated 7/12/93 (Carolyn Olson, Assistant Attorney General)
6. DLS' Affidavit in Further Opposition to Respondents' Dismissal Motion and in Further Support of Omnibus Cross-Motion for a Stay and Other Relief, dated 7/19/93
7. DLS' Memorandum of Law in Opposition to Respondents' Dismissal Motion and in Support of Petitioner's Cross-Motion, dated 7/19/93
8. Second Dept's Decision/Order, dated 9/20/93
9. Order with Notice of Entry, dated 11/29/93
10. DLS' Notice of Appeal, dated 1/3/94
11. DLS' Jurisdictional Statement, dated 1/24/94

INVENTORY:

Papers submitted on summary judgment/dismissal motion
"in the underlying disciplinary proceeding",
A.D. #90-00315

(A-1) DLS' 11/19/93 motion

(A-2) Compendium of Exhibits, accompanying the motion

(A-3) Respondent Casella's 12/7/93 Affirmation in
Opposition

(A-4) DLS' 12/10/94 letter to Presiding Justice
Mangano--as to which no response was received

(A-5) Second Dept's 1/28/94 Decision (per
Mangano, P.J.)