UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
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DORIS L. SASSOWER,

Plaintiff-Appellant,

Docket #96-7805

Motion for Consideration by a Judge Outside the Circuit; *Sua Sponte* Recusal of the Circuit; Vacatur of Orders Granting Motions of Appellees' Counsel for *Pro Hac Vice* Relief, Extension of Time, & Filing of Corrected Briefs; & Dismissal/Denial of Said Motions, Show Cause Order; Sanctions, including Contempt, & Other Relief

-against-

Hon. GUY MANGANO, et al.,

Defendants-Appellees.
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STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

DORIS L. SASSOWER, being duly sworn, deposes and says:

1. I am the Appellant pro se and fully familiar with all the facts, papers, and proceedings heretofore had herein.

2. This Affidavit is submitted, pursuant to F.R.A.P. Rule 27(b) and (c), in support of a motion for consideration of Orders dated March 7, 1997, March 10, 1997, and March 13, 1997 (Exhibits "A-1", "A-2", and "A-3", respectively) by a judge from outside this Circuit, following this Court's sua sponte recusal, as requested herein. In the event that sua sponte recusal is denied, I request four weeks from this Court's Order to file a formal motion for this Circuit's recusal.

3. Upon the granting of recusal and consideration by a judge outside this Circuit, this Affidavit is submitted in support of vacatur of the aforesaid three Orders. The first two Orders (Exhibits "A-1" and "A-2") granted a motion by Jay Weinstein, Esq., counsel for Appellees, dated March

4, 1997 for admission pro hac vice and an extension of time to file his Appellees' Brief (Exhibit "B"). The third Order (Exhibit "A-3") granted Mr. Weinstein's March 11, 1997 motion to file a Corrected Brief (Exhibit "C"). The third Order falls automatically if vacatur is granted as to the first two.

4. In the event of such vacatur, this Affidavit is also submitted in support of an order: (a) dismissing Mr. Weinstein's aforesaid March 4, 1997 motion (Exhibit "B") for lack of jurisdiction by reason of non-service of the motion upon me prior to rendition of the March 7, 1997 and March 10, 1997 Orders; (b) denying the motion on procedural and substantive grounds, hereinafter set forth; (c) denying Appellees the right to orally argue the appeal herein, pursuant to F.R.A.P. Rule 31(c);(d) granting a Show Cause Order against the Attorney-General, pursuant to the Court's own initiative under Rule 11(c)(1)(B), or on this motion, requiring the Attorney General to show cause as to why he and Appellees should not held in contempt for wilful disobedience of the October 23, 1996 Pre-Argument Conference Notice and Order[1], sanctioned for fraudulent and frivolous conduct in defeating the purposes of the November 8, 1996 Pre-Argument Conference, including their bad-faith failure to respond, with reasons, to any of the stipulations proposed therein and reiterated in my January 14, 1997 letter to Attorney General Vacco[2] (Exhibit "D"), among them, immediate vacatur of the Second Department's June 14, 1991 Order suspending my law license, as required by the controlling cases of Matter of Nuey, 61 N.Y.2d 513 (1984)[R-528] and Matter of Russakoff, 72 N.Y.2d 520

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[1] The Order is Exhibit "A" to my February 24, 1997 Affidavit (Exhibit "D" herein).

[2] My letter to Attorney General Vacco is Exhibit "B" to my February 24, 1997 Affidavit (Exhibit "D" herein).

(1992) [R-529-531]; the transfer to another Judicial Department of all matters in the Second Department involving Plaintiff; and disqualification of the Attorney General as attorney for the Defendant-Appellees; (e) granting maximum sanctions and costs pursuant to 28 U.S.C. §1927 and Fed.R.Civ.P. Rule 11, and non-compliance dismissal sanctions under Local Rule 27(a)4, and other sanctions for delay under Local Rule 38; (f) ordering a criminal and disciplinary referral of the Appellees and their counsel, the Attorney General; and (g) granting such other and further relief as may be just and proper.

5. For the convenience of the Court, a Table of Contents for this Affidavit is herein set forth:

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THIS COURT SHOULD *SUA SPONTE* RECUSE ITSELF SO THAT THIS MATTER IS DECIDED BY A JUDGE OUTSIDE THE CIRCUIT

6. At the outset, I submit that this Circuit should recuse itself sua sponte. My recusal request is not only based on the politically sensitive nature of the case, involving powerful state public officials, including high-ranking state court judges with whom judges of this Circuit have personal and professional relationships, but because of the pre-existing animus between this Circuit and my former husband, George Sassower, who has over and again sued judges of this Circuit, filed numerous misconduct complaints against its judges, and widely publicized his criticism of the Circuit as criminally corrupt and "unfit for human litigation". Indeed, this Court has characterized Mr. Sassower as an "abusive litigant for years"[3] for so doing and prohibited him from filing any papers in the Second Circuit unless leave of Court is first obtained. See, In re Martin-Trigona, #93-5008 (1993); In re George Sassower, 20 F.3d 42 (1994).

7. Should this Circuit not recuse itself sua sponte, as requested, based upon facts concerning George Sassower as to which it has superior knowledge to my own, as well as of the facts hereinafter set forth, I will make a formal motion, to include copies of all the relevant documents to which I refer herein.

8. Unfortunately for me, I have direct, first-hand knowledge of this Circuit's intense animus toward George Sassower, having been its innocent victim in the period in which he was "filing an avalanche of

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[3] This characterization of Mr. Sassower, excerpted from In re Martin Trigona, #93-5008 (1993), appeared on the front page of a November 9, 1993 New York Law Journal article about the decision, under the title "'Vexatious Litigants' Procedure Held Lawful".

litigation" against judges within the ambit of the Second Circuit (NYLJ, fn. 3, supra). In 1992, in an appeal of an unrelated civil rights action in which I, along with my daughter, were the plaintiffs, Sassower v. Field, #91-7891, now Chief Judge Jon Newman authored a decision, 973 F.2d 75, sustaining under "inherent power" a $100,000 sanctions award against us for which there was not the slightest factual or legal basis. The record before him showed a pattern of deliberate misconduct by the District Judge, including his falsification of the record and perversion of law and whose decision, rendered without a hearing, directed the $100,000 award monies go to fully-insured defendants for whom it was a "windfall" -- not reimbursement[4] -- and whose egregious litigation misconduct I had documented in an uncontroverted Rule 60(b)(3) motion. This Circuit not only denied my Petition for Rehearing and Suggestion for Rehearing En Banc of Judge Newman's fraudulent, facially-aberrant decision, in which it thereby became complicitous, but, last year, when I filed a §372(c) misconduct complaint against then Chief Judge Newman, based on his retaliatory and corrupt decision in Sassower v. Field, in which I requested transfer to another Circuit by reason thereof, the Circuit refused to recuse itself. The result was that my fully documented, meritorious §372(c) misconduct complaint (#96-8511), which was supported by a copy of my aforesaid Petition for Rehearing En Banc, as well as my cert papers to

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[4] Prior to perfecting the appeal, I made a motion to the Circuit to vacate the $100,000 sanction award based on a jurisdictional objection that the insurer, rather than the defendants were the "real parties in interest", but that the insurer had not only made no claim to the monies before the District Judge, but had expressly declined to intervene. That motion was deferred to the panel hearing the appeal", which, thereafter consisted of Judge Newman, as Presiding Judge, together with Judge Edward Lumbard and Judge Ralph Winter. The decision they rendered (per Judge Newman) ignored my "real party in interest" objection entirely -- much as it did every other issue raised on appeal. See footnote 7 herein. Judge Winter is to succeed Judge Newman as this Circuit's Chief Judge when Judge Newman steps down later this year.

the U.S. Supreme Court, was dumped by Acting Chief Judge Amalya Kearse[5]. The Judicial Council of the Second Circuit thereafter adhered to her dismissal. This, notwithstanding my Petition for Review to the Judicial Council comprehensively demonstrated that Judge Kearse's dismissal was over and again factually and legally insupportable.

9. Although totally unrelated to the instant action, the case of Sassower v. Field apparently is deemed sufficiently relevant by the Court to the instant action for the General Docket herein to include a string of five appellate docket numbers pertaining to it as a "NOTE" (Exhibit "E", p. 3)[6]. #91-7891 is the perfected appeal.

10. It must be noted that the 1993 docket numbers #93-7363 and #93-7311 relate to two appeals in Sassower v. Field that were not perfected as a result of the misconduct of Staff Counsel Frank Scardilli[7]. That misconduct, which included Staff Counsel Scardilli's harassment, coercion, and conduct severely prejudicial to my rights, including altering a signed stipulation, was made the subject of an extensive and fully-documented formal misconduct complaint in January 1994, which characterized his conduct as carrying out the Second Circuit's retaliatory goals.

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[5] Judge Kearse did not recuse herself, albeit, inter alia, the obvious "appearance of impropriety" from the fact that Judge Newman had previously publicly proposed her for nomination to the U.S. Supreme Court, replacing the embattled nominee, Clarence Thomas, in an October 10, 1991 New York Times Op-Ed piece he authored: "A Replacement for Thomas".

[6] There is no correlative listing of every case in which Appellees have been sued for official misconduct in a §1983 action or otherwise, which unlike Sassower v. Field, would be relevant to the issues raised herein.

[7] The issue on those appeals concerned the refusal of the fully-insured defendants, who were the beneficiaries of the $100,000 sanctions award against me, to give said monies to the insurer, who -- after Judge Newman's decision, which ignored my objection as to defendants' "standing" -- then popped up to claim them.

11. Second Circuit Executive Steven Flanders covered up Staff Counsel Scardilli's misconduct by dismissing my documented complaint against him. This encouraged Mr. Scardilli to involve himself on this appeal and prejudice my rights herein. However, immediately upon my discovery of Mr. Scardilli's involvement, I objected to his improper actions. Mr. Scardilli recused himself, rather than face a formal application, with copies of the relevant documents annexed.

12. As detailed in my §372(c) judicial misconduct complaint against Chief Judge Newman, I believe Judge Newman was in some behind-the scenes way involved in the unlawful suspension of my law license from the Southern District of New York, in violation of Rule 4 of its own Rules [R-906-907]. That Rule, which I expressly invoked, explicitly entitled me to a hearing, inasmuch as I demonstrated that my state court suspension had deprived me of due process in that it was issued without written charges, without a hearing, without findings, without reasons, and without any right of appeal. Nonetheless, now Chief Judge of the Southern District Thomas Griesa, without affording me a hearing, as requested in letters to him [R-562; R-568; R-571], signed an order dated February 27, 1992 [R-558], the day before the oral argument of my appeal in Sassower v. Field, suspending my license in the Second Circuit based on my due process-less state court suspension.

13. Thereafter, in the context of this litigation, when I complained to Chief Judge Griesa concerning the District Judge's "manifest bias [which] has caused him to run amok" and requested him to exercise his power of supervision, supplying him with copies of both my recusal and reargument motions [R-730, R-743], he again ignored my letters [R-853, R-901] -- including the final one [R-902-903], wherein I requested his recusal. In such letter, I pointed out that his inaction reflected his own

conflict-of-interest inasmuch as one of the issues before the District Judge was his unlawful suspension of my federal law license[8] (Br. 3).

14. It is obvious that the District Judges of the Southern District have engaged in the demonstrably unlawful conduct that they have precisely because they know they can get away with it. This is because it advances a retaliatory goal of this Circuit to destroy George Sassower and anyone connected with him. This is what happened in Sassower v. Field, where the District Judge trampled on my rights and those of my daughter, and Judge Newman applauded the travesty, with his own monstrous "inherent power" embellishment, secure in the belief that this Circuit would provide a cover-up affirmance.

15. This Circuit and the public at large are aware of my written and oral testimony to numerous bodies concerning this Circuit's retaliation against me, among them, the National Commission on Judicial Discipline and Removal (7/14/93), the Long-Range Planning Committee of the Judicial Conference of the United States (12/9/94), and the Second Circuit's own Task Force on Gender, Racial, and Ethnic Fairness in the Courts (11/28/95) [R-890-900].

16. The Attorney General has been on notice since shortly after issuance of the Scheduling Order last July that I intended to seek the Court's recusal and transfer of this appeal to another Circuit. Such notice was also given at the November 8, 1996 Pre-Argument Conference, at which the basis for such request was discussed before Staff Counsel Stanley

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[8] The papers relating to the constitutionally violative suspension of my federal law license are part of the record herein [R-558-572] -- being part of my Order to Show Cause, with TRO, which sought relief including "such steps as may be required to vacate the February 27, 1992 order of this Court (per Thomas Griesa, J.) [R-558-559] suspending my license to practice law in the District" [R-489]. (See, R-502-503, ¶34, fn. 7).

Bass.

BACKGROUND TO PLAINTIFF'S SANCTION REQUESTS AGAINST MR. WEINSTEIN AND THE NEW YORK STATE ATTORNEY GENERAL

17. As hereinafter shown, Mr. Weinstein's March 4, 1997 motion (Exhibit "B") is not only sanctionable in and of itself, but as part of the larger pattern of litigation misconduct by Mr. Weinstein and the Attorney General's office that has advanced with impunity from the District Court level to taint and sabotage the appellate case management phase. Such misconduct in the appellate case management phase was particularized in my February 24, 1997 Affidavit in opposition to Mr. Weinstein's previous extension motion, wherein I sought issuance of an Order to Show Cause for Sanctions under Rule 11(c)(1)(B), "On the Court's Initiative" against Mr. Weinstein and the Attorney General. A copy of that Affidavit, with exhibits, including my January 14, 1997 letter to Attorney General Vacco, is annexed hereto and made part hereof (Exhibit "D")[9].

18. By Order dated February 25, 1997 (Exhibit "F"), Staff Counsel Bass denied Mr. Weinstein's prior extension motion[10], "without prejudice to a renewed application setting forth particularized reasons for the requested extension of time". However, Mr. Bass, while giving Mr. Weinstein an unrequested second chance to repair his patently defective motion, failed to adjudicate my Show Cause request for sanctions or to make any reference thereto. Such adjudication is even more essential now because the unethical conduct detailed by my February 24, 1997 Affidavit

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[9] My January 14, 1997 letter to Attorney General Vacco is Exhibit "A" thereto.

[10] Mr. Weinstein's prior extension motion, dated February 12, 1997, is Exhibit "C" to my February 24, 1997 Affidavit (Exhibit "D" herein").

(Exhibit "D") plainly disqualifies Mr. Weinstein from the discretionary relief of pro hac vice admission to this Court, which he belatedly requests.

19. Mr. Weinstein's conduct in filing his facially-deficient March 4, 1997 motion and his simultaneously-filed Appellees' Brief further supports my entitlement to a Rule 11 Show Cause Order. Indeed, Mr. Weinstein's Appellees' Brief demonstrates the truth of precisely what I stated in my February 24, 1997 Affidavit (Exhibit "D") and prior thereto at the November 8, 1996 Pre-Argument Conference and in my aforesaid January 14, 1997 letter to Attorney General Vacco: to wit, that there is no legitimate basis for the Attorney General to oppose my appeal, whose central issues revolve around the documented misconduct of Mr. Weinstein and the complicity therein of the District Judge, completely subverting the integrity of the judicial process and requiring reversal as a matter of law. Indeed, Mr. Weinstein's Appellees' Brief ignores those issues entirely -- much as it ignores every other issue my appeal raises. This is particularized in my Reply Brief, incorporated herein by reference.

20. It is respectfully submitted that Mr. Weinstein's credibility, or more accurately, lack thereof, on his March 4, 1997 motion (Exhibit "B") must be seen in the context of: (a) his uncontroverted, fully-documented litigation misconduct before the District Judge, particularized at pages 3-30 of my Brief and at Point II of my Argument therein (Br. 38-50); (b) his non-appearance at the November 8, 1996 Pre-Argument Conference, at which he would have been required to address that record of his and the District Judge's misconduct; (c) his peremptory refusal thereafter to entertain any of the proposed stipulations discussed at the Conference, as more particularly set forth in my February 24, 1997 Affidavit (Exhibit "D"); (d) his prior frivolous extension motion, as

reflected by Staff Counsel's February 25, 1997 Order thereon (Exhibit "F"); and (e) his misconduct in his Appellees' Brief, as particularized by my Reply Brief.

21. Such documented misconduct bars Mr. Weinstein for any discretionary relief -- as is represented by his untimely request for admission pro hac vice and improperly supported request to late file his Appellees' Brief.

THE SUBJECT ORDERS ARE JURISDICTIONALLY DEFICIENT BY REASON OF MR. WEINSTEIN'S NON-SERVICE OF HIS UNDERLYING MARCH 4, 1997 MOTION UPON PLAINTIFF

22. Notwithstanding Mr. Weinstein's March 4, 1997 Notice of Motion purports that he made service upon me (Exhibit "B"), I did not receive Mr. Weinstein's motion papers until after rendition of the March 7, 1997 and March 10, 1997 Orders (Exhibits "A-1" and "A-2"). It was not until March 11, 1997, that he faxed me copy thereof in response to my fax to him of a copy of my March 10, 1997 letter, addressed to Staff Counsel Bass (Exhibit "G"). In that letter, I protested that I had received no motion papers from Mr. Weinstein, although, according to the Clerk's office, his motion had been filed on March 5, 1996.

23. It should be noted that Mr. Weinstein's March 11, 1997 fax coversheet transmitting his extension motion to me did not refer to any prior service (Exhibit "H"). However, when he filed with the Clerk's Office a Motion to File a Corrected Brief (Exhibit "C") and Notice of Appearance (Exhibit "I-2"), his coverletter (Exhibit "I-1") claimed that he had served same on me "by Express Mail on March 4, 1997 along with two copies of appellee's brief".

24. I categorically and unequivocally aver that the Express Mail envelope containing Mr. Weinstein's Appellees' Brief, which was

delivered to me on March 6, 1997, included no Notice of Motion. Nor was any such Motion included in the Express Mail envelope which arrived simultaneously and contained his Corrected Brief.

25. Unlike Mr. Weinstein's previous extension motion, which he had faxed to me in addition to sending it by Express Mail, he did not fax his March 4, 1997 extension motion (Exhibit "B") to me until, as above-stated, March 11, 1997, following his receipt of my aforesaid March 10, 1997 letter (Exhibit "G"). From my vigorous opposition to his prior extension motion (annexed to Exhibit "D"), Mr. Weinstein can be presumed to have known that I would, likewise, assert vigorous opposition to his subsequent, no less sanctionable motion, and for that reason deliberately sought to keep me from knowing about it until it was decided. The frivolous and sanctionable nature of his motion (Exhibit "B") is obvious on its face and he had good reason to anticipate my strenuous opposition.

26. In my March 6, 1997 call to the Clerk's office, I specifically made known my intention to oppose Mr. Weinstein's extension motion, which I stated I had not received. I similarly made such intention known to Staff Counsel Bass' office, which I also telephoned on March 6th and then again on March 10th, when I explained the entire situation to his assistant, Ayeesha, as indicated in my March 10, 1997 letter (Exhibit "G").

27. On information and belief, the Clerk's office failed to notify this Circuit's Administrative Attorney Arthur Heller of my March 6, 1997 telephone call so as to afford me the opportunity to be heard prior to rendition of his March 7, 1997 Order (Exhibit "A-1").

28. However, on information and belief, Staff Counsel Bass was informed, prior to his rendition of his March 10, 1997 Order (Exhibit "A-2"), of my telephone notification that I had not received Mr. Weinstein's motion and that I desired to oppose it.

MR. WEINSTEIN'S *PRO HAC VICE* MOTION REQUEST IS FACIALLY AND SUBSTANTIVELY DEFICIENT

29. Initially, Mr. Weinstein's March 4, 1997 motion (Exhibit "B") is defective in failing to comply with the requirement printed on the Notice of Motion form of a "supporting affidavit". By definition, an affidavit is a document sworn to before a notary public. I am unaware of any exemption given the Attorney General from the notarial requirement when he or his assistants are required to use the affidavit form, particularly by reason of the Attorney General being a party to this litigation. Mr. Weinstein's "Affidavit" (Exhibit "A") purports to be sworn before an Assistant Attorney General. However, his/her signature is illegible, there is no name printed beneath, and there is no statement that such unidentified person is qualified to administer oaths as a notary public, licensed by the State of New York. Such statement is obligatory before an affidavit can be legally effective as such in this State.

30. In seeking admission pro hac vice (Exhibit "B") so that he can orally argue this appeal, Mr. Weinstein implicitly concedes that he cannot meet the minimal requirements for admission to the Second Circuit. Quite apart from the three requisites set forth in Local Rule 46(a), Subsection (b) calls for "the filing required by F.R.A.P. 46". This includes an oath or affirmation, whose text is set forth therein. It reads as follows:

> "I,_____, do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."

31. Local Rule 46(d) provides that "in exceptional circumstances an attorney may be admitted to argue an appeal pro hac vice". However, Mr. Weinstein's "Affidavit" fails to identify a single

"exceptional circumstance" to warrant his being accorded the privilege of argument herein. The Court can take judicial notice that the New York State Attorney General has available a substantial number of Assistants who are members of the bar of this Court and, indeed, who argue with regularity before it. It would empty the meaning from the requirement of "exceptional circumstances" to accord such privilege to Mr. Weinstein, without the slightest showing or even claim thereof in his "Affidavit". It may be noted that one of the differences between his original Appellees' Brief and his Corrected Brief is that the Corrected Brief includes on its cover the name of Assistant Solicitor General Thomas D. Hughes (Exhibit "C", aff. pp. 1-2). Presumably, Mr. Hughes is a member of this Court's bar and able to argue the appeal on which his name appears.

32. Moreover, adding to the facial deficiency of Mr. Weinstein's "Affidavit" (Exhibit "B") -- in and of itself sufficient to vitiate his application -- is that it fails to contain the above-quoted requisite oath of good behavior and fidelity to law and the Constitution. Nothing in this Court's Local Rules suggests that such fundamental oath is not required of attorneys seeking admission pro hac vice, whose inferior qualifications should, if anything, require such oath all the more.

33. In Mr. Weinstein's case, this oath is not a formality, but a pledge of good conduct, which he cannot make because he has not demeaned himself "uprightly" before this Court. On the contrary, he has already repeatedly violated the most elementary standards of behavior so as to cover-up and protect the unlawful and criminally corrupt actions of his clients, the gravamen of my §1983 civil rights action. My February 24, 1997 Affidavit (Exhibit "D", ¶¶12-32) details this fact: Mr. Weinstein, in tandem with the Attorney General's office, has knowingly and deliberately subverted the appellate case management phase. They did this,

inter alia, by violating Staff Counsel's October 23, 1996 Order[11], which required attendance at the November 8, 1996 Pre-Argument Conference by "the attorneys in charge of the appeal", with "full authority to settle or otherwise dispose of the appeal", able to "discuss and evaluate seriously the legal merit of each issue on appeal" and "prepared to narrow, eliminate, or clarify issues on appeal when appropriate". Mr. Weinstein, who handled the defense case before the District Judge, was such attorney, but did not appear at the Conference -- based on a fraudulent representation by the Attorney General's office that he was not handling the appeal. In his stead, the office sent an Assistant Attorney General, who knew nothing the case, stating that it had only been assigned to her the night before, who could not discuss the appellate issues, could not answer Staff Counsel Bass' incisive questions, and who was unable to enter into any stipulations, no matter how minimal or legally called for. Mr. Weinstein thereafter returned to the scene and, without explanation, refused to address the various stipulations discussed at the Conference. His open emergence as the attorney handling the appeal occurred after I wrote my January 14, 1997 letter to Attorney General Vacco and contacted Ron Turbin, Chief of the Attorney General's Litigation Bureau[12], notifying them that the nature and extent of Mr. Weinstein's misconduct before the District Judge rendered any defense of the appeal frivolous and sanctionable and that they were ethically required to take affirmative corrective steps, including joining in the appeal and a Rule 60(b)(3)

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[11] The October 23, 1996 Order is Exhibit "A" to my February 24, 1997 Affidavit (Exhibit "D" herein).

[12] This includes a January 27, 1997 fax to Mr Turbin, which is annexed as Exhibit "E" to my February 24, 1997 Affidavit (Exhibit "D" herein).

motion. Attorney Vacco never responded to my January 14, 1997 letter and the response of Mr. Turbin was to express his view that Mr. Weinstein was doing a "good job". Mr. Turbin refused to provide me with the name of Mr. Weinstein's immediate supervisor, who he assured me was reviewing Mr. Weinstein's work product.

34. Because the misconduct of Mr. Weinstein and the Attorney General's office in the appellate case management stage -- as meticulously detailed and documented by my February 24, 1997 Affidavit (Exhibit "D") -- was not even adverted to by Staff Counsel Bass, let alone adjudicated in his February 25, 1997 Order (Exhibit "F"), it became a virtual "green light" for their continued misconduct in connection with their Appellees' Brief, corrected and uncorrected. Mr. Weinstein not only failed to serve me a copy of his March 4 1997 motion (Exhibit "B"), but his Appellees' Brief is, from beginning to end, knowingly false and misleading in every material respect. As highlighted by my Reply Brief, his Brief repeats on appeal the egregious misconduct that had characterized his defense before the District Judge: misrepresenting the Complaint and the law relative thereto.

35. Such appellate misconduct not only flagrantly violates ethical rules (ABA Model Rules of Professional Conduct: Rule 3.1 "Meritorious Claims and Contentions", Rule 3.3 "Candor Toward the Tribunal) and Fed.R.Civ.P. Rule 11, but rises to a level of fraud and obstruction of justice, warranting criminal, as well as disciplinary referral, pursuant to F.R.A.P. Rule 46(c). Such Rule expressly states:

> "A court of appeals may, after reasonable notice and opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming to a member of the bar and for failure to comply with these rules or any rule of the court."

36. In the context of F.R.A.P. Rule 46(c), which provides for a hearing before discipline is imposed by the Second Circuit, it deserves note that among Mr. Weinstein's frivolous arguments on appeal, for which he provides no legal authority, is that an attorney, such as myself, who controverted the basis for which her suspension was sought, could be suspended by the Second Department without a pre-suspension hearing and thereafter be denied a post-suspension hearing, but that this would, nonetheless, constitute a "full and fair opportunity to litigate" (Op. Br. 19-20).

37. It may be noted that Mr. Weinstein's March 4, 1997 "Affidavit" (Exhibit "B"), in seeking pro hac vice admission, purports that he is familiar with the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure and the Local Rules of the Southern and Eastern Districts of New York and the appellate rules of this Court. Yet, he offers no explanation for his blatant disregard of F.R.A.P. Rule 46 and Local Rule 46(d) by practicing before this Court without being admitted to its bar. He is on record herein as opposing counsel since the summer of last year. His unauthorized practice in this Court since then subjects him to disciplinary sanctions under F.R.A.P. Rule 46(c).

38. Additionally, Mr. Weinstein offers no explanation or excuse for his failure to file a Notice of Appearance until March 11, 1997 (Exhibit "I") -- more than two months after I filed my Appellant's Brief on January 10, 1997. This clearly violates Local Rule 46(d)1, explicitly mandating as follows:

> "A notice of appearance must be filed in each case by counsel of record and, if different, by counsel who will argue the appeal, not later than the date of filing the appellant's brief ...". (emphasis added)

Indeed, Mr. Weinstein did not file the above-mandated Notice of

Appearance until six days after serving and filing his Appellees' Brief and his filing of his March 4, 1997 pro hac vice and extension motion (Exhibit "B").

39. I would also reiterate here, in the context of Mr. Weinstein's pro hac vice application, the conflict-of-interest objection, raised as well by Staff Counsel Bass at the November 8, 1996 Pre-Argument Conference, which Mr. Weinstein did not attend. Such conflict is based on the fact that Mr. Weinstein appears as counsel to all Defendants -- including the Attorney General, a co-Defendant. Perhaps for this reason, in his Notice of Appearance (Exhibit "I-2"), as well as on his Notice of Motion (Exhibit "B") Mr. Weinstein attempts to dissociate himself from the Attorney General's office by identifying his firm as "NYS Dep't of Law".

MR. WEINSTEIN'S EXTENSION MOTION REQUEST IS FACIALLY AND SUBSTANTIVELY DEFICIENT, THERE BEING NO GOOD CAUSE SHOWING

40. By Order dated February 25, 1997 (Exhibit "F"), Staff Counsel Bass denied Mr. Weinstein's prior extension motion, "without prejudice to a renewed application setting forth particularized reasons for the requested extension of time". Mr. Weinstein has not met that requirement.

41. Incorporated herein by reference is the objection made in ¶29 supra, which applies equally to the branch of Mr. Weinstein's March 4, 1997 motion seeking an extension of time.

42. Mr. Weinstein's "Affidavit" (Exhibit "A") confines his extension application to ¶6, where he presents three vague, conclusory, and unsubstantiated reasons for his requested extension. The first two reasons are palpably spurious and entitle the Attorney General to no consideration, being directly attributable to his perversion of the appellate case

management phase, and the third relates to a fundamental supervisory issue, as to which I sought clarification by my aforesaid February 24, 1997 Affidavit requesting a Show Cause Order (Exhibit "D").

43. Before discussing these three reasons, it must be pointed that the compelled conclusion from the standards articulated by Circuit Judge Irving Kaufman in United States v. Raimondi, 760 F.2d 460 (2d Cir. 1985) is that Mr. Weinstein's "Affidavit", on its face, does not make a "good cause" showing. Raimondi also involved an extension motion made by a government attorney. However, Judge Irving Kaufman, himself a former government lawyer, sternly recognized that such status augmented, rather than decreased, the duty owed. Judge Kaufman further indelibly articulated the rule of law to serve as a warning putting the bar on notice that leniency ought not be expected in the future on extension motions:

> "the movant, and all those who practice before this Court, should consider themselves on notice that motions to extend time to file briefs will be carefully scrutinized, and denied unless good cause is shown. Moreover good cause shall not be deemed to exist unless the movant avers something more than the normal, or even the reasonably anticipated but abnormal, vicissitudes inherent in the practice of law. When such a motion is not made in a timely fashion, it will be scrutinized all the more carefully, as will the reasons for its untimely filing."

For other circuits in accord that good cause showing in the context of an extension request means "extraordinary and compelling circumstances", See, Barber v. American Security Bank, 841 F.2d 1159 (D.C. Cir. 1988); Instituto Nacional de Comercialization Agricola, 858 F.2d 1264 (7th Cir. 1988).

44. As to Mr. Weinstein's so called "reasons" for his extension application, tellingly absent is the claim he made in his first

extension motion that he needed time to "oppose the issues raised"[13]. Indeed, his simultaneously filed Appellees' Brief fails to address a single issue raised by Plaintiff's appeal or dispute a single record reference.

A. Reason #1: The Size of Plaintiff's Brief and Record on Appeal:

45. Mr. Weinstein's pretense that the 76 pages of my expanded Brief entitled him to additional time is comparable to the child who kills his parents and throws himself on the mercy of the court because he is an orphan. The size of my Brief was necessitated by Mr. Weinstein's failure and refusal to attend the November 8, 1996 Pre-Argument Conference, for reasons he then and thereafter refused to identify, and by the contemptuous conduct of the Attorney General vis-a-vis the October 23, 1996 Order, in sending an Assistant Attorney General, who knew nothing about the case, following its eleventh-hour claim the day before the Conference that Mr. Weinstein was not handling the appeal (Exhibit "D", ¶6). As a result, the salutary purposes of the Pre-Argument Conference, contemplated by F.R.A.P. Rule 33 and articulated in the October 23, 1996 Order, "to...dispose of the appeal", "to discuss and evaluate seriously the legal merit of each issue on appeal" and "to narrow, eliminate, or clarify issues on appeal", were consciously and deliberately sabotaged, since no meaningful discussion or settlement of any issues could take place, wasting my time as well as that of Staff Counsel Bass.

46. Thus, if anything, Mr. Weinstein's claim that the length of my Brief entitled him to added time should require him and the Attorney General's office to explain their deceitful, fraudulent, and contemptuous conduct in disobeying the October 23, 1997 Order, frustrating any genuine

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[13] See Mr. Weinstein's 2/12/97 "Affidavit", ¶2, which is Exhibit "C" to my February 24, 1997 Affidavit (Exhibit "D" herein).

effort to narrow issues, and, indeed, to obviate the appeal entirely. That is why my February 24, 1997 Affidavit specifically requested sanctions against the Attorney General's Office and Mr. Weinstein personally, reiterating the position I stated at the November 8, 1996 Pre-Argument Conference that they had deliberately subverted its purpose because they knew they could not confront the issues at the heart of this appeal. As hereinabove set forth, this is borne out by the Appellees' Brief Mr. Weinstein actually filed, which is totally vacuous, specious, and fraudulent.

47. Moreover, the length of my Brief is hardly ground for extension, where the first 30 pages are merely a recitation of the Complaint's allegations and the facts relating to the "Course of the Proceedings" -- as to which Mr. Weinstein is fully familiar, having handled the defense case before the District Judge and the 46-page "Argument" section largely repeats those familiar allegations and procedural facts to illustrate the applicability of cited legal authority on fairly basic procedural issues: recusal standards, sanction standards, preliminary injunction standards and summary judgment standards.

48. Nor should Mr. Weinstein be entitled to any consideration by reason of the 900-page Record on Appeal. Having handled the defense before the District Judge, he was already well familiar with the documents therein. Indeed, by contrast to his own fast-and-loose, disingenuous style of lawyering, Mr. Weinstein knows, from past experience, the accuracy of my factual recitation of the Record -- even without the necessity of comparing it to the precise citation references my Brief provides.

B. Reason #2: Insufficient Time to Draft Brief and Other Cases:

49. Mr. Weinstein falsely states that 30 days was insufficient

time for him to write his Appellees' Brief. Yet, Mr. Weinstein was given a week beyond the 30-days allowed appellees under F.R.A.P. Rule 31(a) -- a fact pointed out by ¶8 of my February 24, 1997 Affidavit (Exhibit "D").

50. Mr. Weinstein also notes the "size and complexity" involved in drafting his Brief, without particularizing what he is talking about. In fact, his 27-page Appellees' Brief contains little new material. As detailed by my Reply Brief (Reply Br. 10-19), Mr. Weinstein's "Statement of the Case" (Op. Br. 3-10) is, with minor changes, a verbatim regurgitation of the "Background" section of the Decision [R-6-12], which Mr. Weinstein reformats. As to his "Argument", Mr. Weinstein's Brief largely repeats the Decision's "Discussion" section [R-13-20], to which he combines language and cases cited in his January 17, 1995 Memorandum of Law in support of his dismissal motion [R-141, see, particularly R-157-160], with further cases extracted, doubtless, from briefs the Attorney General's office regularly files in the Second Circuit, invoking the completely standard and customary grounds of Rooker-Feldman, res judicata, immunity, and Eleventh Amendment on behalf of state defendants.

51. The fact that Mr. Weinstein's Appellees' Brief is not only demonstrably frivolous, but knowingly false and deceitful -- a fact highlighted in my Reply -- makes evident that Mr. Weinstein's difficulty in responding to my Brief was not because he had to devote time to "other cases", for which he provides not the slightest particularization or corroborating documentation, but because, as set forth at ¶11 of my February 24, 1997 Affidavit (Exhibit "D"), there were "no non-frivolous grounds" on which to found opposition to the Brief. Moreover, as Judge Kaufman angrily declared in Raimondi, supra, at 461,

> "If a case must occasionally be reassigned to another attorney in order to meet a deadline, so be it. If the staffing pattern in an office or government agency is

insufficient to meet judicially imposed requirements, the office or agency must bear the ultimate responsibility."

C. Reasons #3: Time-Consuming Internal Review Process:

52. As to Mr. Weinstein's claim that he needed an extension because of an alleged "time-consuming" review process involving his "superior and...two other attorneys from the Solicitor General's office", the demonstrably frivolous and fraudulent nature of his Appellees' Brief requires him, as part of his "good faith" showing, to identify, with specificity, the particulars of that review process. This includes the names of the individuals involved, the nature, extent, and time spent on such review, and, specifically, information as to what steps were taken by the Attorney General's office in light of information received through Assistant Attorney General Alpha Sanghvi, who attended the November 8, 1996 Pre-Argument Conference in the absence of Mr. Weinstein and following its receipt of my January 14, 1997 letter to Attorney General Vacco, thereafter, sent to Ron Turbin, Litigation Bureau Chief.

53. As my February 24, 1997 Affidavit states (Exhibit "D", ¶¶17-21), I received no response whatever from the Attorney General's office following either the November 8, 1996 Pre-Argument Conference or my January 14, 1997 letter. Mr. Turbin refused to identify Mr. Weinstein's immediate supervisor and did not return my daughter's subsequent phone message requesting such information and an opportunity to discuss the particulars of the various stipulations discussed at the Pre-Argument Conference.

54. I would add that on Friday, March 21, 1997, my daughter telephoned Mr. Thomas Hughes, the Assistant Solicitor General, whose name appears on the cover of Mr. Weinstein's corrected Appellees' Brief (although, significantly, not on the original Brief (Exhibit "C", pp. 1-

2)). My daughter reported to me that Mr. Hughes initially did not express familiarity with the appeal and that she spent a great deal of time reviewing with him what had taken place in the appellate case management phase. She urged him to obtain a copy of the Brief and Record on Appeal, which Mr. Hughes refused to confirm or deny having reviewed before his name was placed on the cover of Mr. Weinstein's corrected Appellees' Brief. Mr. Hughes was unable to shed any light on the "review process" -- which, plainly, had not involved him -- or to answer my daughter's question as to the identity of Mr. Weinstein's immediate supervisor. Like Mr. Turbin, Mr. Hughes professed confidence in Mr. Weinstein and, like him, was unfamiliar with his professional and ethical duty to verify, in the face of notice, that his "confidence" was misplaced. Mr. Hughes took the position that it was for the Court, rather than himself, to examine the misconduct and fraud issues relative to the Appellees' Brief on which his name appears. He did, however, request that my daughter follow-up by sending him something in writing -- and she told him that she would provide him with a copy of this motion and the Reply Brief (then in draft).

55. The litigation misconduct of Mr. Weinstein and of the Attorney General's office in the proceedings before the District Judge in this appellate case management stage and by its Appellees' Brief supports my view that the Attorney General, a party Defendant herein -- and liable herein -- should be disqualified from representation of his state co-Defendants on conflict of interest grounds. As the record shows, he is more interested in fraudulently covering up than in exposing the true facts as to the horrendous civil rights violations that have been perpetrated against me. This includes the Second Department's retaliatory suspension of my law license without charges, without reasons, without findings, without a pre- or post-suspension hearing, denying all appellate review and

subverting my Article 78 proceeding against it by refusing to recuse itself -- a proceeding in which it was defended by the Attorney General, who, without any legal authority, argued to the Second Department that it was not required to recuse itself. Its legally insufficient, documentably perjurious dismissal motion was then shamelessly granted by the Second Department [R-70-83: ¶¶166-170, 173-178, 182-191, 195-196, 198-209].

56. As my §1983 Complaint [R-27, ¶10] and my January 14, 1997 letter to Attorney General Vacco reflect, it is the Attorney General's misconduct in that proceeding that is the basis of its liability herein. Moreover, as pointed out by my Reply (pp.), after allowing the Second Department, his judicial client, to grant its own dismissal motion in my Article 78 proceeding against it, the Attorney General went on to oppose appellate review of his misconduct and that of his clients when I sought to appeal the dismissal to the New York Court of Appeals and, thereafter, to the U.S. Supreme Court. The office of the Solicitor General, whose name appears on the Opposing Brief to the Supreme Court [R-442], is implicated in its misconduct by wrongfully blocking appellate review of that travesty of justice, which not only trashed the most fundamental rules of judicial disqualification "that no man shall be judge of his own cause", Spencer v. Lapsley, 61 U.S. 264 (1858); In re Murchison, 349 U.S. 623 (1955); Canon 3© of the Code of Judicial Conduct; 103.3(c) of the Rules Governing Judicial Conduct, but which its clients, by its own case law, were without jurisdiction even to adjudicate, Colin v. Appellate Division, First Department, 3 A.D.2d 682, 159 N.Y.S.2d 99 (2d Dept. 1957), citing Smith v. Whitney, 116 U.S. 167 (1986).

57. In Ceramico, Inc. v. Lee Pharmaceuticals, 510 F.2d 268, 271 (1975), this Circuit, citing cases, stated: "the courts have not only

the supervisory power, but also the duty and responsibility to disqualify counsel for unethical conduct prejudicial to his adversaries." The unethical conduct of the Attorney General's office makes manifest the need for exercise of this Court's "supervisory power" and its duty to disqualify the Attorney General's office.

58. In the case at bar, the Attorney General has multiple conflicts: (a) his conflict of interest in representing himself as a party herein with personal interests differing from his public duty; (b) his conflict of interest in representing multiple clients with differing interests; and (c) his conflict of interest in representing the Appellees in both their official and personal capacities. In each of these situations, the actual and potential conflict with the Attorney General's professional independence imposes proscribed limitations on his representation herein as to each client co-Defendant. See ABA Model Rules, Rule 1.7(a); N.Y. Code of Professional Responsibility, Canon 5 ("A lawyer should exercise independent judgment on behalf of a client") EC 5-14, 15; DR 5-101 ("Refusing Employment When the Interests of the Lawyer May Impair His Independent Judgment"); See also DR-5-101C relating to lawyer as witness.

59. Since the question of the Attorney General's conflict of interest was raised at the November 8, 1996 Pre-Argument Conference -- indeed, by Staff Counsel Bass himself (Exhibit "D", ¶15) -- it should be encompassed in the Show Cause Order herein requested. This is appropriate in light of the Attorney General's refusal to address all issues arising out of the Conference.

WHEREFORE, it is respectfully prayed that:

[1] this Court recuse itself sua sponte to permit reconsideration outside the Circuit;

[2] in the event that sua sponte recusal is denied, that Appellant be granted four weeks from this Court's Order to file a formal motion for this Circuit's recusal;

[3] that on such recusal and reconsideration, that an order issue vacating the March 7, 1997, March 10, 1997, and March 13, 1997 Orders;

[4] dismissing Mr. Weinstein's March 4, 1997 motion for lack of jurisdiction by reason of non-service of the motion upon Appellant prior to rendition of the March 7, 1997 and March 10, 1997 Orders;

[5] denying the motion on procedural and substantive grounds;

[6] denying Appellees the right to orally argue the appeal herein, pursuant to F.R.A.P. Rule 31(c);

[7] granting a Show Cause Order against the Attorney-General, pursuant to the Court's own initiative under Rule 11(c)(1)(B), or on this motion, requiring the Attorney General to show cause as to why he and Appellees should not held in contempt for wilful disobedience of the October 23, 1996 Pre-Argument Conference Notice and Order, sanctioned for fraudulent and frivolous conduct in defeating the purposes of the November 8, 1996 Pre-Argument Conference, including their bad-faith failure to respond, with reasons, to any of the stipulations proposed therein and reiterated in Appellant's January 14, 1997 letter to Attorney General Vacco, among them, immediate vacatur of the Second Department's June 14, 1991 Order suspending my law license, as required by the controlling cases of Matter of Nuey, 61 N.Y.2d 513 (1984) and Matter of Russakoff, 72 N.Y.2d

520 (1992); the transfer to another Judicial Department of all matters in the Second Department involving Appellant; and disqualification of the Attorney General as attorney for the Appellees;

[8] granting maximum sanctions and costs pursuant to 28 U.S.C. §1927 and Fed.R.Civ.P. Rule 11, and non-compliance dismissal sanctions under Local Rule 27(a)4, and other sanctions for delay under Local Rule 38;

[9] ordering a criminal and disciplinary referral of the Appellees and their counsel, the Attorney General; and

[10] granting such other and further relief as may be just and proper.

DORIS L. SASSOWER

Sworn to before me on this
1st day of April 1997

Notary Public