

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 8

-----X  
ELENA RUTH SASSOWER, Coordinator of the  
Center For Judicial  
Accountability, Inc., Acting  
Pro Bono Publico,

Petitioner,

- against -

: Index No.  
108551/99

Commission on Judicial Conduct of  
The State Of New York,

Respondent.

-----X  
60 Centre Street  
New York, New York 10007

May 17, 1999

B E F O R E:

HONORABLE DIANE A. LEBEDEFF, JSC

A P P E A R A N C E S:

ELENA RUTH SASSOWER, Pro Se

ELIOT SPITZER, ESQ.

Attorney General

120 Broadway

New York, New York 10271

BY: CAROLYN CAIRNS OLSON, ESQ.

Michele Mallette, RPR  
Official Court Reporter

EX "K"

## Colloquy

1  
2 THE COURT: There are several  
3 issues that were raised with me before  
4 going on the record. The first is that  
5 the respondent counsel maintains that  
6 this matter is, in a sense, a motion to  
7 reargue an opinion of Justice Cahn.

8 Now, is that opinion in the  
9 papers?

10 MS. CAIRNS OLSON: Yes, your Honor,  
11 we attached it as Exhibit 1 to our  
12 application in support of the motion or  
13 application for adjournment under 3012.

14 THE COURT: Now, it appears then  
15 with this additional background which  
16 makes it somewhat easier, perhaps  
17 movant can explain this to me, notice  
18 of right to seek intervention and I  
19 don't quite understand that because I'm  
20 not sure who is seeking to intervene.

21 MS. SASSOWER: Excuse me, your  
22 Honor, may I be heard?

23 THE COURT: Elena Ruth Sassower is  
24 seeking to intervene in the Doris  
25 Sassower case.

## Colloquy

1 MS. SASSOWER: No.

2 MS. CAIRNS OLSON: No.

3 MS. SASSOWER: Absolutely not.

4 THE COURT: Now, you are whom,  
5  
6 please?

7 MS. SASSOWER: I am Elena Ruth  
8 Sassower. I am the petitioner pro se  
9 acting pro bono publico in this public  
10 interest Article 78 proceeding against  
11 the New York State Commission on  
12 Judicial Conduct. I have asked that  
13 these proceedings be on the record  
14 because of the --

15 THE COURT: I put you on the  
16 record.

17 MS. SASSOWER:-- the importance of  
18 the case.

19 THE COURT: Please explain to me  
20 then, first, what are you seeking to  
21 intervene?

22 MS. SASSOWER: I am not seeking to  
23 intervene. I am seeking to have the  
24 attorney general and other public  
25 offices and agencies intervene in this

## Colloquy

1  
2 public interest litigation where the  
3 constitutionality of the statutes are  
4 at issue and rules are at issue as well  
5 as the demonstration in the papers of  
6 the corruption of this essential agency  
7 in covering up judicial misconduct  
8 complaints that are legitimately filed  
9 with --

10 THE COURT: Ma'am, we can start  
11 the basics then. Could you tell me  
12 what's the procedural import of this  
13 piece of paper which you directed to  
14 the New York State Attorney General,  
15 the District Attorney of New York  
16 County, the New York State Ethics  
17 Commission, the United States Attorney,  
18 labeled notice of right to seek  
19 intervention?

20 Usually when someone speaks of  
21 intervention they wish to intervene in  
22 some other proceeding.

23 MS. SASSOWER: Under the statute we  
24 are required to give notice to the  
25 attorney general when an agency such as

## Colloquy

1  
2 the Commission on Judicial Conduct is  
3 sued. We not only gave notice to them,  
4 but we have sought actively that they  
5 should, the attorney general should,  
6 intervene on behalf of ~~this~~<sup>the</sup> public  
7 interest.

8  
9 However, before getting to these  
10 important issues I respectfully request  
11 your Honor to put on the record the  
12 threshold issue of conflict of interest  
13 and potential disqualification that you  
14 ~~probably~~<sup>properly</sup> identified off the record when  
15 we first approached the bench.

16 THE COURT: Certainly. I advised  
17 you that I had been counsel to Daniel  
18 Joy from about maybe 1976 to 1980, and  
19 I was extremely fond of him and you are  
20 suing him as a member of that  
21 commission.

22 MS. SASSOWER: The commission on  
23 judicial conduct is being sued. He is  
24 its now highest ranking judicial  
25 member. The question that you posed  
was whether or not you should

## Colloquy

1  
2 disqualify yourself.

3 THE COURT: That's because I  
4 hadn't particularly focused-- as I told  
5 you, this particular file was brought  
6 up to me on Friday and I saw his name  
7 in the papers, I flipped through it, I  
8 didn't focus on what the nature of the  
9 proceedings was. If you are trying to  
10 do something on a claim against him  
11 then I would recuse myself. If you are  
12 just naming him because he's a member  
13 of the commission and you are just  
14 suing the commission, that's a  
15 different matter, it's not personal.

16 MS. SASSOWER: The particular facts  
17 that give rise to this Article 78  
18 petition are the commission's dismissal  
19 without investigation and without any  
20 determination of facial merit of a  
21 judicial misconduct complaint dated  
22 October 6, 1998, in violation of  
23 Judiciary Law 44.1 which mandates that  
24 the commission shall investigate a  
25 complaint except if it determines that

## Colloquy

1  
2 a complaint is facially lacking in  
3 merit. Absent such determination its  
4 duty under law is to investigate. It  
5 did not investigate. It dismissed  
6 without investigation and without any  
7 findings or reasons.

8 Additionally, you will notice that  
9 among the relief sought is to compel  
10 the commission to receive a judicial  
11 misconduct complaint dated February 3,  
12 1999, directing ~~ing~~ against Justice Joy.  
13 The commission has failed to  
14 acknowledge such complaint and failed  
15 to determine it as it is required to do  
16 under law, including the New York  
17 Constitution Article 22.

18 Now, I don't want to pass over  
19 this threshold issue of whether or not  
20 it is appropriate for your Honor to sit  
21 on this case. You quite properly made  
22 the disclosure that you are required to  
23 make under the law and ethical rules.  
24 I thank you and commend you. Perhaps,  
25 the -- are you asking--

## Colloquy

1  
2 THE COURT: I'm just looking for  
3 the part--

4 MS. SASSOWER: Relief.

5 THE COURT: -- of the petition--

6 MS. SASSOWER: Relating to Justice  
7 Joy.

8 THE COURT: That relates to  
9 Justice Joy.

10 MS. SASSOWER: If I may direct you  
11 to the notice of petition.

12 THE COURT: Certainly.

13 MS. SASSOWER: Number 6 on page 2  
14 of the notice of petition. "Commanding  
15 respondent to formally "receive" and  
16 "determine" petitioner's February 3,  
17 1999, judicial misconduct complaint  
18 against Appellate Division, Second  
19 Department, Justice Daniel W. Joy."

20 MS. CAIRNS OLSON: Your Honor, the  
21 written complaint against Judge Joy  
22 dated February 3, is attached to the  
23 petitioner's Exhibit F-6. The  
24 commissioner reply to that letter is  
25 from Mr. Stern, attached is Exhibit



## Colloquy

F-7.

MS. SASSOWER: Yes. My response to Mr. Stern's letter is Exhibit G dated March 11, 1999, which as detailed in the petition I received no response from Mr. Stern whatsoever and, indeed, the last factual allegation of the petition on page-- bottom of page 15 going to 16-- paragraph 46, Respondent <sup>"Neither</sup> ~~its Administrative~~ <sup>its Administrator</sup> nor administrative have responded to petitioner's March 11, 1999, letter including acknowledging petitioner's prior February 3, 1999, letter as a judicial misconduct complaint against Justice Joy."

THE COURT: Now, could I ask you what is your relationship to Doris L. Sassower?

MS. SASSOWER: I am her obvious adult daughter.

THE COURT: And have you filed a complaint with the commission?

MS. SASSOWER: Yes, the complaints, the two complaints here at issue in

## Colloquy

1  
2 this litigation, the October 6, 1998,  
3 judicial misconduct complaint is signed  
4 by me. It appears at C-1. It is so  
5 reflected in the factual allegations  
6 that this was my complaint as likewise  
7 was my complaint against Justice Joy.

8 THE COURT: Then I believe the  
9 best course would be for me to recuse  
10 myself. I will return this case for  
11 reassignment. I will advise motion  
12 support that it should be reviewed,  
13 including appropriate contact with  
14 administrative Judge Crane, for  
15 possible reassignment to Justice Cahn  
16 or to be put on the wheel. That will  
17 be a determination made by somebody  
18 else.

19 MS. CAIRNS OLSON: We have a  
20 pending application for extension of  
21 time to respond to the petition  
22 itself. That was the application we  
23 made before the referee on Friday. We  
24 are asking for an extension of time.

25 We had agreed that we would have

## Colloquy

1  
2 papers served in opposition on Friday  
3 of this week and that we had hoped to  
4 have it returnable on the 28th of May,  
5 but if it is going to be reassigned  
6 then it should be returnable before the  
7 new justice assigned, whatever date he  
8 or she has motions.

9 MS. SASSOWER: Excuse me. May I be  
10 heard, your Honor?

11 THE COURT: Yes.

12 MS. SASSOWER: Not only have you  
13 rightfully recognized that you have  
14 personal and professional relationships  
15 that input, impact upon your  
16 impartiality, but it is respectfully  
17 submitted that there are <sup>innumerable</sup> ~~enumerable~~  
18 justices in this court who are likewise  
19 disqualified for both apparent and  
20 actual bias --

21 THE COURT: I really don't know of  
22 anybody who has been counsel to one of  
23 the respondents.

24 MS. SASSOWER: Justice Crane--

25 THE COURT: Excuse me, ma'am. It

## Colloquy

1  
2 is something which is unusual and it is  
3 an unusual relationship and rather than  
4 getting into it now I think that  
5 recusal is appropriate. But, I'm not  
6 saying that I would have necessarily  
7 been biased. It's just in the interest  
8 of appearance of justice that I do that  
9 and no other judge would appreciate  
10 getting a case after it had been on my  
11 calendar for awhile so I think taking  
12 everything into accountability --

13 MS. SASSOWER: I recognize your  
14 disqualification from this case which  
15 you have voluntarily held--

16 THE COURT: Yes.

17 MS. SASSOWER:-- is simply to  
18 insure the appearance of impartiality  
19 that must be attached to those  
20 proceedings. However, every justice in  
21 this state is under the jurisdiction,  
22 disciplinary jurisdiction *of* the  
23 commission on judicial conduct and as  
24 such there are legitimate reasonable  
25 questions as to their ability to be

## Colloquy

1  
2 fair and impartial and particularly in  
3 a case of this magnitude where what --

4 THE COURT: Ma'am, let me refer  
5 you to the late Justice Leff. There  
6 are many people who are not admirers of  
7 that particular system. However, I  
8 don't think there's anything further I  
9 can do on this point.

10 You had asked for an extension to  
11 answer for what date?

12 MS. CAIRNS OLSON: This Friday,  
13 your Honor. We'll mail them opposing  
14 papers on Friday.

15 MS. SASSOWER: They have to have  
16 standing.

17 Excuse me, your Honor. I have  
18 asked Miss Olsen by what authority, by  
19 what legal authority is she here  
20 representing the Commission on Judicial  
21 Conduct.

22 Now, I understand that it is  
23 accepted almost as a matter of course  
24 that the attorney general pops up  
25 whenever a public officer or agency is

## Colloquy

1  
2 sued. However, there is law that  
3 requires that the attorney general  
4 appear only in litigation on which the  
5 state is interested to advance the  
6 state interest and that requires that a  
7 determination be made as to where that  
8 interest is. I have asked--

9 THE COURT: Ma'am, let me tell you  
10 it's very common for the attorney  
11 general to represent people and  
12 agencies even though they have their  
13 own counsel and maybe they are still  
14 sorting that out.

15 MS. SASSOWER: There is--

16 THE COURT: May 24th is the date  
17 that you wanted?

18 MS. CAIRNS OLSON: Fine.

19 MS. SASSOWER: Excuse me. You have  
20 no jurisdiction to grant any  
21 extension.

22 Let me show-- in addition--

23 THE COURT: Ma'am, you can take  
24 that up with the next judge. I do have  
25 a full courtroom.

## Colloquy

1  
2 MS. SASSOWER: In addition to  
3 disqualification the procedure is laid  
4 out in Article, in the CPLR, Section  
5 7804. Interestingly, their application  
6 was not made pursuant to 7804. This is  
7 an Article 78 proceeding. 7804  
8 specifically says, subparagraph E,  
9 "Should the body or officer fail  
10 either to file and serve an answer or  
11 to move to dismiss, the court may  
12 either issue a judgment in favor of the  
13 petitioner or order that an answer be  
14 submitted."

15 They have -- there is no  
16 jurisdiction.

17 MS. CAIRNS OLSON: It is our intent  
18 to make application under 7804 after  
19 dismissing the petition.

20 MS. SASSOWER: You already  
21 disqualified yourself. Having  
22 disqualified--

23 THE COURT: I have said I am  
24 remanding the case for assignment. The  
25 time to answer is extended to May 24.

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25

Colloquy

MS. CAIRNS OLSON: It was our  
opposition of 7804 after.

THE COURT: Thank you. You have  
to follow reassignment through the Law  
Journal.

MS. SASSOWER: You are saying that  
having disqualified yourself you could  
extend their time--

THE COURT: Yes, it's not going to  
be before another judge--

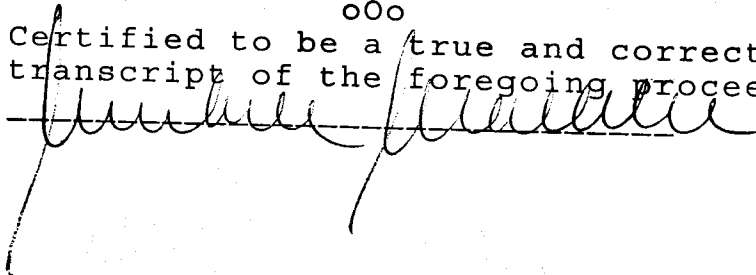
MS. SASSOWER:-- and relieve them  
of default?

THE COURT: Ma'am, I made my  
ruling. It's on the record. You are  
free to order the transcript.

MS. SASSOWER: They are in default.

THE COURT: Thank you very much

oOo  
Certified to be a true and correct  
transcript of the foregoing proceedings



Michele Mallette, RPR  
Official Court Reporter