

COURT OF APPEALS
STATE OF NEW YORK

-----X
In the Matter of DORIS L. SASSOWER, :
 :
 Petitioner-Appellant, :
 :
 - against - :
 :
 HON. GUY MANGANO, as Presiding Justice :
 of the Appellate Division, Second :
 Dept., HON. MAX GALFUNT, as Special :
 Referee, and EDWARD SUMBER and GARY :
 CASELLA, as Chairman and Chief Counsel :
 respectively of the Grievance Committee :
 for the Ninth Judicial District, :
 :
 Respondents-Respondents. :
-----X

MEMORANDUM OF LAW IN OPPOSITION TO
PETITIONER'S MOTION FOR REARGUMENT
OR IN THE ALTERNATIVE, FOR LEAVE
TO APPEAL TO THE COURT OF APPEALS

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**MEMORANDUM OF LAW IN OPPOSITION TO
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Preliminary Statement

This memorandum of law is submitted in opposition to petitioner's motion to reargue this Court's decision, dated May 12, 1994, dismissing petitioner's appeal from an order of the Appellate Division, Second Department. This memorandum of law is also in opposition to petitioner's motion for leave to appeal to this Court from the Appellate Division decision and for various ancillary relief.

Statement of the Case

In this Article 78 proceeding, petitioner sought judgment prohibiting further prosecution of a disciplinary proceeding against her for alleged acts of professional misconduct. Petitioner claimed,

inter alia, that the disciplinary proceeding was jurisdictionally and constitutionally infirm because the Grievance Committee for the Ninth Judicial District ("Committee") failed to follow the administrative procedures prescribed by the Second Department's Rules Governing the Conduct of Attorneys, 22 NYCRR § 691.4(e).

Respondents moved to dismiss the petition for failure to state a cause of action and as barred by the statute of limitations. Specifically, respondents argued that Article 78 relief was unavailable because petitioner had an adequate remedy at law and that a "clear legal right" did not exist because the pertinent administrative procedures were properly complied with and petitioner received adequate notice and opportunity to be heard.

Petitioner then cross-moved for an order seeking, inter alia, to stay prosecution of the disciplinary proceeding, recusing the Second Department and compelling discovery of various documents.

By a decision, order and judgment dated September 20, 1993, the Appellate Division, Second Department granted respondents' motion to dismiss, denied petitioner's cross-motion and dismissed the Article 78 proceeding on the merits.

Subsequently, petitioner noticed an appeal of the Appellate Division decision and this Court, by letter dated January 28, 1994, invited the parties' views as to this Court's subject matter jurisdiction over the appeal. See 22 NYCRR § 500.3. By order dated May 12, 1994, this Court dismissed the appeal "insofar as it is taken from that part of the Appellate Division order that denied petitioner's cross-motion sua sponte, upon the ground that that part of the order

does not finally determine the proceeding within the meaning of the Constitution" and dismissed the appeal to the extent "it is taken from the remainder of the Appellate Division order ... sua sponte, upon the ground that no substantial constitutional question is directly involved." (A copy of this Court's order is annexed as Exhibit "I" to petitioner's moving papers herein). Petitioner then brought this motion for reargument, or, in the alternative, leave to appeal to this Court.

ARGUMENT

**PETITIONER PRESENTS NO FACTORS WARRANTING
REARGUMENT NOR ANY QUESTION WHICH MERITS
REVIEW BY THIS COURT.**

Petitioner's motion for reargument should be denied. It is well-settled that "[a] motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided..." Foley v. Roche, 68 A.D.2d 558, 567 (1st Dep't 1979).

Petitioner points to no significant or relevant facts, or to any controlling principles of law, that were overlooked by this Court, in its May 12, 1994 order. Rather, this motion simply rehashes the extensive arguments previously made before this Court. A motion to reargue is an improper vehicle to again present those arguments

previously made. Accordingly, the motion for leave to reargue should be denied.

Petitioner's application for leave to appeal to this Court should also be denied. Petitioner has failed to raise any questions which merit review to this Court. The issues presented are not novel or of substantial public importance, nor do they involve a conflict with prior decisions of this court or a conflict among the Appellate Divisions. To the contrary, the Appellate Division's order dismissing the petition is consistent with, and mandated by, well-established principles of law.

As noted in respondents' papers below, the extraordinary remedy of prohibition was unavailable because petitioner had an adequate remedy at law in the underlying disciplinary proceeding, or by way of a motion to confirm or disaffirm a referee's report, on an appeal. Moreover, as respondents noted below, "a clear legal right" to Article 78 relief did not exist because the pertinent administrative procedures were properly complied with and petitioner received adequate notice and an opportunity to be heard.

The Appellate Division's judgment, dismissing the petition on the merits, was explicitly grounded on the court's application of well-settled state law to the facts of the case. The court below rejected petitioner's jurisdictional challenge to the underlying disciplinary proceeding based on the unavailability of Article 78 relief where, as here, petitioner has an adequate remedy at law. The court below held that "[i]nasmuch as the petitioner's jurisdictional challenge can be addressed in the underlying disciplinary proceeding,

or by way of a motion to confirm or disaffirm a referee's report, the petitioner is not entitled to the extraordinary remedy of prohibition."

Because petitioner has not shown that the Appellate Division's order regarding the purported question of law presented here is in conflict with any precedent of this Court or with any decision of the other Appellate Divisions, or that the question sought to be raised is novel or of such public importance as to merit review by this Court, the motion for leave to appeal should be denied. Insofar as petitioner seeks ancillary relief, namely, "referral of the Second Department, their at-will appointees, and the Attorney General of the State of New York for criminal and disciplinary investigation," Pet. Affidavit, Wherefore Clause, at (c), this should also be denied as baseless.

CONCLUSIONS

For all the foregoing reasons, it is respectfully requested that petitioner's motion for reargument and/or leave to appeal to this Court be denied.

Dated: New York, New York
August 4, 1994

Respectfully submitted,

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