DORIS L. SASSOWER

283 Soundview Avenue, White Plains, NY 10606-3821 • TEL: 914/997-1677 • FAX: 914/684-6554

VIA FAX:
212-416-8942
518-474-8995

BY CERTIFIED MAIL/RRR:
P-571-752-151

January 14, 1997

Attorney General Dennis Vacco
120 Broadway
New York, New York 10271

RE: Sassower v. Mangano, et al.
Second Circuit Docket #96-7805

Dear Attorney General Vacco:

This is to put you on notice of the criminally fraudulent and unethical conduct of your office in the above-entitled federal action before the U.S. District Court, Southern District of New York. Your office defended all the defendants therein, sued in both their official and personal capacities, including Attorney General G. Oliver Koppell, a named party.

By reason of your office's litigation misconduct, my appellate Brief to the Second Circuit seeks criminal and disciplinary penalties, as well as civil damages -- entitlement to which the Brief details and the Record on Appeal fully documents.

The gravamen of my federal action is the vicious retaliation to which I have been subjected by the high-ranking judges of the Appellate Division, Second Department, who, aided and abetted by their at-will appointees, all defendants herein, have used their judicial offices for ulterior, politically-motivated purposes to punish me for my judicial whistle-blowing public advocacy. This retaliation has included the Second Department's wholly unlawful suspension of my law license, by Order dated June 14, 1991, without charges, without findings, without reasons, and without a hearing -- either before or in the more than five-and-a-half years since. There is no legal authority that permits such heinous deprivation of my federally and state-guaranteed constitutional rights. Indeed, the June 14, 1991 Suspension Order contravenes New York State's attorney disciplinary statute, Judiciary Law §90, the Second Department's own operative disciplinary court rule pursuant to which I was purportedly suspended, 22 NYCRR §691.4(l), and the controlling decisional law

of the highest court of our State, as reflected in Matter of Nuey, 61 N.Y.2d 513 (1984), and Matter of Russakoff, 72 N.Y.2d 520 (1992).

The basis upon which your predecessor, then Attorney General Koppell, was named as a party-defendant was his complicity in the Second Department's subversion of the Article 78 remedy, to wit, he defended its refusal to recuse itself from the Article 78 proceeding I brought against its justices for their knowing misuse of their disciplinary power in the clear absence of jurisdiction -- as to which they had wrongfully deprived me of all appellate review.

As alleged by ¶178 of my Verified Complaint, the Attorney General's office provided no legal authority for the proposition that Second Department judges were free to decide an Article 78 proceeding to which they were parties and in which the lawfulness of their conduct was directly at issue. Nor did it provide any evidentiary substantiation for the false factual representations made in its motion to dismiss the Article 78 proceeding, unsupported by any affidavit from its clients or other proof (¶¶168-170). Instead, Attorney General Koppell blocked review by the New York Court of Appeals of the Second Department's dismissal of my Article 78 proceeding (¶¶195-208).

This is not the first time that the unlawful, retaliatory conduct of the Second Department and the Attorney General's monstrous perversion of the Article 78 remedy have been brought to your personal attention. While you were still a candidate for the office of Attorney General, a letter, dated September 29, 1994, was sent to your campaign headquarters, as well as to your own law office, certified mail, return receipt requested. That letter, a copy of which is annexed (Exhibit "A"), not only provided you with a detailed statement of the relevant facts, but transmitted a full set of papers comprising the submissions to the New York Court of Appeals on my then pending appeal from the Second Department's unlawful dismissal of the Article 78 proceeding in its own favor. Such transmittal of the relevant court papers was to enable you to meet your legal and ethical duties, in the event you became Attorney General, and to permit you to raise in the campaign the profound issues involved. It included: (a) a full set of the correspondence with then Attorney General Koppell, as reflected by ¶¶200-208 of my Complaint; (b) two affidavits, which I submitted to the Second Department, and, thereafter, to the New York Court of Appeals, showing that my suspension is in every respect a fortiori to that in Russakoff, entitling me to immediate vacatur of the Second Department's finding-less Suspension Order, as a matter of law, and that I alone, among twenty interimly-suspended attorneys in the Second Department, have been deprived of a hearing as to the basis for my suspension, as recited at ¶148 and ¶159 of my Complaint; and

(c) a 56-page "Chronology", cross-referenced to documents from the disciplinary file, establishing that the retaliatory Suspension Order and the bogus disciplinary proceedings commenced against me were without compliance with jurisdictional and due process prerequisites of 22 NYCRR §691.4, et seq., and without any factual basis -- said "Chronology" being, in essence, the 50-page "Factual Allegations" section of my Complaint ¶¶28-209[1].

The following month, on October 26, 1994, the Second Department's retaliatory suspension of my law license and the Attorney General's complicity in subverting the Article 78 remedy was recounted in a quarter-page ad on the Op-Ed page of The New York Times, entitled "Where Do You Go When Judges Break the Law?". On November 1, 1994, the ad was reprinted in the New York Law Journal. A copy is annexed as Exhibit "B".

Such widely-circulated ad, "in the closing days before the election", specifically called upon candidates for Attorney General to "address the issue of judicial corruption", which was described as "real and rampant in this state."

Thus, your personal knowledge of the facts, giving rise to the defendants' liability, including that of Attorney General Koppell, can be reasonably imputed to you. This is in addition to your liability for the litigation misconduct of your office, once you became Attorney General, of which this letter is intended to give you personal notice.

At this juncture, with the benefit of my appellate Brief and Record on Appeal in hand, you are hereby requested to take immediate remedial steps. These would include your stipulating to the immediate vacatur of the Second Department's unlawful June 14, 1991 Order suspending my law license or, at very least, to an immediate TRO pending appeal, staying: (a) enforcement of the Suspension Order; (b) all further adjudication by the Second Department in cases in which I am involved, directly or indirectly and, in particular, in the Wolstencroft case, the subject of ¶¶122-124, 131, 140, 142, 146(b), 151, 153 of my federal Complaint); (c) such steps as necessary to vacate the suspension of my federal law license by the District Court for the Southern District of New York.

My entitlement to such relief was meticulously delineated in my Order to Show Cause for a Preliminary Injunction, with TRO,

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[1] For the significance of the "Chronology" in establishing the litigation misconduct of the Attorney General's office by its filing of Defendants' Answer, see my appellate Brief, pp. 11, 13, 17, 23, 44, 46-47, 62.

filed with the District Judge on September 26, 1996, which appears at pages 488-623 of the Record on Appeal and is discussed at pages 50-56 of my appellate Brief (Point III). Subsequent events have reinforced my entitlement to a stay of the Second Department's continued adjudication of matters involving me, most particularly, the Wolstencroft case. Indeed, on December 23, 1996, the Second Department, which denied my prior written and oral applications for its recusal therefrom, issued a Decision & Order on the very Wolstencroft appeal that ¶¶54-56 of my supporting affidavit had indicated had to be perfected [R-510-512]. Just as predicted at ¶¶55-56 therein [R-511-512], the Second Department upheld Justice Colabella's lawless conduct by a decision which, when compared to the appellate record and the brief therein, is in every respect knowingly false, fraudulent, and violative of the most fundamental standards of adjudication. This includes the Second Department's claim that "the record supports the Supreme Court's determination that the Ninth Judicial Committee is an alter ego of the defendant."

I respectfully request that you obtain a copy of the appellate papers in the aforesaid Wolstencroft appeal, A.D. #95-09299, in the previous related Wolstencroft appeal under A.D. #92-03928/29, as well as in the two Article 78 proceedings against Justice Colabella, #92-01093, #92-03248, as referred to at ¶123 of my Complaint, so that you can verify for yourself the Second Department's on-going criminal and larcenous conduct in rendering legally insupportable, factually fabricated adjudications against me.

You should be aware that the December 23, 1996 Decision & Order has just been served upon me by adverse counsel, thereby starting my time running for reargument and appeal. Ordinarily, I would move for reargument, with a request for leave to appeal to the Court of Appeals. However, based upon the Second Department's official misconduct, documented its fraudulent suspension of my law license, its commencement of bogus disciplinary proceedings against me, the appellate record in my two Wolstencroft appeals, as well as in the appeals expressly referred to at ¶57 of my affidavit in support of my Preliminary Injunction/TRO Order to Show Cause [R-512], any application to that wrongdoing court would be a vain act.

Under Rule 8 of the Federal Rules of Appellate Procedure, injunctive and stay relief may be obtained from the Second Circuit pending appeal. Since review of my appellate Brief and Record on Appeal herein should convince you that it would be frivolous and unethical for your office to oppose my motion for such relief, I specifically request that you stipulate thereto. This would avoid or mitigate the sanctions and costs that I would be entitled to have assessed against your office and you

personally, including increased criminal and disciplinary liability.

As you know, your paramount responsibility is to protect the public from governmental misconduct -- not to cover up for and protect judicial miscreants, who have flagrantly corrupted the judicial process and usurped disciplinary power for their own political and personal advantage.

Indeed, the documented evidence of your clients' violations of my constitutionally-protected due process and equal protection rights, which your office fraudulently sought to conceal before the District Judge, is such as to require you to take steps beyond the limited stipulation hereinabove requested. Based upon the record in the federal action, and the clear and plain meaning of Judiciary Law §90(2), 22 NYCRR §691.4(l), Nuey, and Russakoff, your responsibility as Attorney General is to affirmatively acknowledge that my constitutional rights have been wrongfully violated.

Moreover, as highlighted in the September 29, 1994 letter to you (Exhibit "A", p. 2), it is the Attorney General's duty to opine as to the constitutionality of state laws, whose constitutionality is impugned. The Attorney General failed to defend the constitutionality of New York's attorney disciplinary law in the Article 78 proceeding and failed to do so before the District Judge in this action. It has thereby conceded the unconstitutionality of §691.4(l), reflected by the New York Court of Appeals' decisions in Nuey and Russakoff. This is over and above the unconstitutionality of New York's attorney disciplinary law, as a whole, delineated in my Petition for a Writ of Certiorari to the U.S. Supreme Court, with citation to legal authority [R-303-439].

Your office did not respond to the constitutional arguments set forth in my Petition for a Writ of Certiorari in the context of the Article 78 proceeding and did not do so in this action, where those arguments were incorporated by reference in my summary judgment application [R-478]. Indeed, in this action, the Attorney General, by Defendants' Answer, deferred to the federal court for interpretation of Judiciary Law §90(2), 22 NYCRR §691.4 et seq., Nuey and Russakoff (see my appellate Brief, p. 14, fn. 9).

Having so failed to defend the constitutionality of New York's attorney disciplinary law, the Attorney General is mandated to take the affirmative steps required from the outset, to wit, to protect the public and this tax-paying plaintiff from enforcement of an unconstitutional law. Your obligation on this appeal is to belatedly recognize that paramount duty to the public, as well as to me.

Plainly, if performance of such paramount duty places you in a conflict of interest position by reason of your representation of the defendants, you must withdraw as their counsel. The fact that your office found it necessary to defend them by fraud, misrepresentation, and other litigation misconduct here, as well as in the Article 78 proceeding, only demonstrates that defendants have no legitimate defense and that the Attorney General improperly provided them with representation in the first instance. Indeed, my federal action would have been obviated had the Attorney General recognized its paramount duty when I brought the Article 78 proceeding and not engaged in litigation misconduct in connection therewith.

It should be further obvious that over and above the unconstitutionality of New York's attorney disciplinary law, as written and as applied, the Attorney General cannot justify defense of an appeal where the incontrovertible record shows documented fraud and dishonesty by its own office. Nor can the Attorney General justify the District Judge's Decision [R-4-21], shown by pages 30-75 of my appellate Brief (Points I-V) to be fraudulent and wholly dishonest as well.

Unless I hear from you in response to this letter by next Tuesday, January 21, 1997, I will move before the Second Circuit for injunctive, stay, and other appropriate relief. At that time, I will also move to amend the caption of my federal Complaint so as to reflect that you are the successor to Attorney General Koppell and that Janet Johnson has succeeded Edward Sumber as Chair of the Grievance Committee for the Ninth Judicial District -- in the event you do not voluntarily stipulate to such proposed amendments. I would point out that at the November 8, 1996 Pre-Argument Conference, Second Circuit staff counsel Stanley Bass himself suggested the appropriateness of such stipulation.

To complete the picture of your office's pattern of litigation misconduct, you should know that your office acted in contempt of the October 23, 1996 Notice and Order relative to the Pre-Argument Conference (Exhibit "D"). The purposes for such conference, explicitly set forth on the face of the Notice and Order, were completely defeated by your office's wilful disobedience of such court mandate in that the attorney who attended the conference, on your behalf, Assistant Attorney General Alpa J. Sanghvi, not only lacked the required authority, but also familiarity with any aspect of the case either before the District Judge, in the prior state court proceedings, or with any relevant aspect of New York's attorney disciplinary law, as to which Mr. Bass specifically questioned her.

This was in face of the fact that the day before the conference Mr. Bass telephoned the Attorney General's office to confirm that

an attorney "fully familiar" with the case and able to answer questions would be present. Mr. Bass did so following my notification to him that Assistant Attorney General Jay Weinstein, who had handled the case before the District Judge, had just then informed me, in response to my phone call to him, that he was not planning to attend the Pre-Argument Conference. I told Mr. Bass that when I had asked Assistant Attorney General Weinstein for an explanation, he had laughed at the idea that he should have to explain.

By reason thereof, no appellate issues could be narrowed, let alone settled or resolved, thereby wasting Mr. Bass's valuable time, as well as my own. Mr. Bass stated, in the presence of Assistant Attorney General Sanghvi, that Rule 38 sanctions are available against appellees for bad-faith, frivolous conduct in defense of appeals.

Should you, notwithstanding the foregoing, nonetheless oppose the requested immediate injunction and stay relief pending appeal or oppose the appeal itself, I will seek all possible sanctions, including contempt for violation of the October 23, 1996 Order.

I await your prompt response.

Very truly yours,

DORIS L. SASSOWER

Enclosures: 4 exhibits

cc: Stanley Bass, Second Circuit Staff Counsel

Doris L. Sassower

283 SOUNDVIEW AVENUE
WHITE PLAINS, N.Y. 10606-3821
TEL: (914) 997-1677
FAX: (914) 684-6554

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FROM: Doris C Sassower

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Second Circuit Docket # 96-7805

Sassower v. Mangano, et al

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