

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

----- X
JOHN McFADDEN,

-against-

DORIS L. SASSOWER,

ELENA SASSOWER,

Appellant.

Appellate Term:
#2008-1427-WC
#2009-148-WC
(White Plains City Court:
#SP-651/89 & SP-1474-2008)

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**NOTICE OF MOTION
FOR REARGUMENT
#2010-09890**

JOHN McFADDEN,

-against-

ELENA SASSOWER,

Appellant.

Appellate Term:
#2008-1433-WC
#2008-1428-WC
(White Plains City Court:
#SP-1502/07)

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PLEASE TAKE NOTICE that upon the annexed affidavit of appellant *pro se* ELENA SASSOWER, sworn to on June 14, 2011, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had herein, appellant ELENA SASSOWER will make a motion before the Appellate Division, Second Department at 45 Monroe Place, Brooklyn, New York 11201 on June 30, 2011 at 10:00 a.m., or as soon thereafter as the parties or their counsel may be heard, for an order granting reargument pursuant to CPLR §2221 of the Court's November 26, 2010 decision & order on motion so as to render a disposition responsive to the facts, law, and legal argument of appellant's October 4, 2010 motion:

- (1) for an appeal to this Court by leave, if not by right, or alternatively, leave to appeal to the Court of Appeals, so as to afford appellate review of the

Appellate Term's July 8, 2010 decision & order, purportedly by Justices Denise F. Molia and Angela G. Iannacci, denying, without reasons and with no disclosure, appellant's April 25, 2010 motion for their disqualification and disclosure;

- (2) referring the record to authorities within the New York State judiciary charged with recommending, promulgating, and amending rules, procedures, and laws governing judicial disqualification, including the Chief Judge of the Court of Appeals, the Chief Administrative Judge, the Judicial Conference, the Administrative Board, the Judicial Institute, and the Judicial Institute on Professionalism in the Law – pursuant to §100.1 of the Chief Administrator's Rules Governing Judicial Conduct;
- (3) referring the record to disciplinary and criminal authorities based on the evidence of corruption presented by appellant's April 25, 2010 disqualification motion and reinforced by the Appellate Term's July 8, 2010 decision & order – pursuant to §100.3D of the Chief Administrator's Rules Governing Judicial Conduct;
- (4) granting such other and further relief as may be just and proper and, in particular, if the foregoing is denied, disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of facts bearing upon the fairness and impartiality of this Court's justices.

Pursuant to CPLR §2214(b), answering papers, if any, are required to be served at least seven days prior to the June 30, 2011 return date.

Dated: June 14, 2011
Bronx, New York

Yours, etc.



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TO: Leonard A. Sclafani, Esq.
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Two Wall Street, 5th Floor
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Doris L. Sassower, *Pro Se* [#2008-1427-WC; #2009-148-WC]
283 Soundview Avenue
White Plains, New York 10606

New York State Attorney General Eric Schneiderman
Attorney for Non-Party White Plains City Court Clerk Patricia Lupi [#2009-148-WC]
ATT: Deputy Solicitor General Benjamin N. Gutman
120 Broadway, 25th Floor
New York, New York 10271

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

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JOHN McFADDEN,

Appellate Term:
#2008-1427-WC
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-against-

DORIS L. SASSOWER,

ELENA SASSOWER,

Appellant.

-----X **MOVING AFFIDAVIT**
-----X **#2010-09890**

JOHN McFADDEN,

Appellate Term:
#2008-1433-WC
#2008-1428-WC
(White Plains City Court:
#SP-1502/07)

-against-

ELENA SASSOWER,

Appellant.

----- X
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the appellant *pro se* herein, fully familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in support of my accompanying notice of motion for reargument of this Court’s November 26, 2010 decision & order on motion denying my October 4, 2010 motion, *without reasons* (Exhibit A). Said decision & order, *unsigned by any judge*, was purportedly rendered by a four-judge panel consisting of Peter B. Skelos, as Justice Presiding, and Associate Justices Randall T. Eng, Priscilla Hall, and Plummer E. Lott.

2. This motion is timely. The November 26, 2010 decision & order has not been served upon me with notice of entry (CPLR §5513(b)).

3. No fair and impartial tribunal, let alone four appellate judges, each with mandatory supervisory responsibilities to ensure the integrity of the judicial process, could deny my October 4, 2010 motion – as each of its four branches were “legally-compelled”. This was so-stated and particularized by my March 16, 2011 letter to the four-judge panel, entitled “Verifying your knowledge of, & assent to, the November 26, 2010 Decision & Order bearing your names, but not your signatures” (Exhibit B), which I sent to the Court’s Deputy Clerk, Mel Harris, for distribution to the justices. The letter called upon the four justices to recall the Decision & Order. Mr. Harris thereafter advised that he had distributed the letter to the justices, that they had read it, and that their response was that I should follow proper procedure by filing a reargument motion.

4. I, therefore, am filing this reargument motion to enable the justices, individually and collectively, to discharge their mandatory appellate, administrative, and disciplinary responsibilities, detailed by my October 4, 2010 motion and reinforced by my March 16, 2011 letter (Exhibit B), whose presentation I incorporate by reference, in the interest of judicial economy.

5. To further aid the justices, annexed hereto is the Request for Appellate Division Intervention (Exhibit C) I was required to complete before I could file my October 4, 2010 motion – and which could not have been clearer as to the mandatory nature of what was before the Court:

“The threshold issue is whether an appeal lies of right to this Court to review the legal sufficiency of the April 25, 2010 motion to disqualify Justice Iannacci, as likewise the legal sufficiency of a January 2, 2010 motion to disqualify Justice Molia, embodied therein – both motions having been denied by the subject justices themselves without reasons and without the disclosure, alternatively requested.

Secondarily, this Court's duty – appellate and supervisory – to grant leave to appeal to the Court or alternatively to the Court of Appeals so as to afford appellate review not only of the legal sufficiency of the two motions to disqualify Justices Molia and Iannacci, but the legal sufficiency of the two motions to disqualify City Court Judges Brian Hansbury and JoAnn Friia, dated Nov. 8/9, 2007 & July 18/21, 2008, whose legal sufficiency was the threshold issue on the 4 appeals taken to the Appellate Term, but not adjudicated by Justices Molia & Iannacci, as likewise all other appellate issues raised by appellant except one.” (underlining added, except for the underlining of not, which was in the original).

6. As detailed by my October 4, 2010 motion and summarized by my March 16, 2011 letter, this Court's mandatory duty – appellate, administrative, and disciplinary – arises from the fact that the subject motions to disqualify Appellate Term Justices Iannacci and Molia and to disqualify White Plains City Court Judges Hansbury and Friia are NOT for the “appearance” of their bias, but for its actuality, as manifested by their decisions:

“obliterating anything resembling the rule of law and “so totally devoid of evidentiary support as to render [them] unconstitutional under the Due Process Clause’ of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961), *Thompson v. City of Louisville*, 362 U.S. 199 (1960)”.

7. Presumably impacting on the panel's fairness and impartiality are its personal and professional relationships with the four judges whose actual bias is the subject of these disqualification motions, most particularly Justices Molia and Iannacci, who – like the panel – are Supreme Court justices. Consequently, upon reargument, should the panel not grant the “legally-compelled” first three branches of my October 4, 2010 motion, the “legally-compelled” fourth branch should be expanded to include disclosure of those relationships.

8. Simultaneous with my filing this reargument motion, I have hand-delivered to Chief Administrative Judge Ann Pfau a June 14, 2011 letter requesting that she revoke the Appellate Term designations of Justices Molia and Iannacci, consistent with her own mandatory

administrative and disciplinary responsibilities and Article VI, §8 of the New York State Constitution. Pursuant to Article VI, §8, Chief Administrative Judge Pfau is empowered to revoke these Appellate Term designations, with the approval of Presiding Justice Prudenti – for which reason I suggested that Presiding Justice Prudenti assist with “necessary fact-finding”. The easiest way for Presiding Justice Prudenti to do this – and I so-stated it in my letter (at p. 4) – is by her discharging her own mandatory supervisory responsibilities over this panel with respect to my October 4, 2010 motion, which she can readily do by virtue of this reargument motion. A copy of my June 11, 2011 letter to Chief Administrative Judge Pfau – to which Presiding Justice Prudenti and this panel are indicated recipients – is annexed hereto as Exhibit D.

9. Whether an appeal lies of right to review the orders of Justices Molia and Iannacci, denying, *without reasons* and *without* requested disclosure, my April 25, 2010 and January 2, 2010 motions for their disqualification is the threshold issue presented by my October 4, 2010 motion, concealed by this panel’s November 26, 2010 decision & order (Exhibit A). The panel cannot properly determine this issue, upon the granting of reargument, without addressing the arguments presented by ¶¶5-17 of my October 4, 2010 motion. The first of these is whether, pursuant to Article VI, §4k of the State Constitution, there is any law “limit[ing] or condition[ing]” the right to appeal from “a judgment or order which does not finally determine an action”.

10. Should the panel not deem me to have an appeal of right – and, upon the granting of reargument, also not grant leave to appeal, despite my showing at ¶¶18-46 of my October 4, 2010 motion that the record herein resoundingly meets the criteria for exercise of the Court’s supervisory appellate responsibilities, its decision & order must articulate – and constitutionally

defend – the proposition thereby established that the Appellate Division, Second Department will not afford appellate review of judges within its jurisdiction denying motions for their *own* disqualification – even where such denials are *without reasons, without requested disclosure*, and where the disqualification at issue is for actual bias so extreme as to manifest interest. Such decision & order must thereupon be furnished to:

“authorities within the New York State judiciary charged with recommending, promulgating, and amending rules, procedures, and laws governing judicial disqualification, including the Chief Judge of the Court of Appeals, the Chief Administrative Judge, the Judicial Conference, the Administrative Board, the Judicial Institute, and the Judicial Institute on Professionalism in the Law – pursuant to §100.1 of the Chief Administrator’s Rules Governing Judicial Conduct” –

as sought by the second branch of my October 4, 2010 motion. Indeed, unless the panel disputes the documentary evidence of corruption, presented by my April 25, 2010 disqualification motion and reinforced by Justices Molia and Iannacci’s July 8, 2010 decision & order thereon, its duty, pursuant to §100.3D of the Chief Administrator’s Rules Governing Judicial Conduct, is to refer the record to disciplinary and criminal authorities, as sought by the third branch of my October 4, 2010 motion.



ELENA RUTH SASSOWER

Sworn to before me this
14th day of June 2011

Notary Public

TABLE OF EXHIBITS

- Exhibit A: Appellate Division, Second Department's November 26, 2010 decision & order on motion, signed by Clerk Matthew G. Kiernan
- Exhibit B: March 16, 2011 letter to Appellate Division, Second Department Justices Peter B. Skelos, Randall T. Eng, L. Priscilla Hall, Plummer E. Lott
- Exhibit C: October 4, 2010 Request for Appellate Division Intervention
- Exhibit D: June 14, 2010 letter to Chief Administrative Judge Ann Pfau, with its annexed enclosures, excepting the March 16, 2011 letter, hereinabove annexed

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