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

JOHN McFADDEN,

Appellate Term:
#2008-1427-WC
#2009-148-WC

-against-

(White Plains City Court:
#SP-651/89 & SP-1474-2008)

DORIS L. SASSOWER,

ELENA SASSOWER,

Appellant.

AFFIDAVIT IN REPLY & IN FURTHER SUPPORT OF REARGUMENT MOTION #2010-09890

JOHN McFADDEN,

Appellate Term:
#2008-1433-WC
#2008-1428-WC

-against-

(White Plains City Court:
#SP-1502/07)

ELENA SASSOWER,

Appellant.

STATE OF NEW YORK)
BRONX COUNTY) ss.:

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

1. I am the appellant *pro se*, fully familiar with all the facts, papers, and proceedings in this history-making case and submit this affidavit in reply to the untimely June 29, 2011 opposing affirmation of Leonard Sclafani, Esq., attorney for respondent John McFadden[1], and in

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[1] As set forth by my July 1, 2011 letter to this Court's Clerk, Matthew G. Kiernan (Exhibit E), Mr. Sclafani's untimely affirmation should have been rejected by the Clerk's Office pursuant to CPLR §2214(b). By July 14th, having received no response, I telephoned the Clerk's Office and was transferred to Jeannine Padro, Supervisor of the Motions Department, for whom I left a voice mail message. She called me back on July 22nd, informing me that I had been granted until Friday, July 29, 2011 for my reply papers. According to Ms. Padro, such disposition was by a judge – not by Clerk Kiernan, who she stated had not seen the letter – an acknowledgment she made when I protested Mr. Kiernan's failure to furnish a written response to my letter's

further support of my June 14, 2011 reargument motion. There is no opposition from the Attorney General.

Mr. Sclafani's Fraudulent Opposing Affirmation

2. As with each of Mr. Sclafani's prior court submissions spanning the past four years, his instant opposing affirmation is not just frivolous, but fraudulent – entitling me now, as previously, to sanctions and costs pursuant to 22 NYCRR §130-1.1 *et seq.*, triple damages pursuant to Judiciary Law §487(a), and disciplinary/criminal referrals pursuant to §100.3D of the Chief Administrator's Rules Governing Judicial Conduct – relief I herein seek.

3. Mr. Sclafani's scant 1-1/2 page opposing affirmation, purporting (at ¶3) that my motion "must be denied for several reasons", rests on bald assertions, devoid of specificity.

4. Mr. Sclafani's first "reason" is his one-sentence claim (at ¶4) that my motion "is a rehash of the same baseless arguments and facts as [I] had reargued (sic) and presented on [my] original motion". This is false. My reargument motion is based on my March 16, 2011 letter to the four justices who purportedly rendered the November 26, 2010 decision denying my October 4, 2010 motion *without reasons* – demonstrating why no fair and impartial tribunal could have rendered it. Mr. Sclafani does not identify any "baseless arguments and facts" in that letter's analysis of the November 26, 2010 decision, or in the balance of my reargument motion, or in my October 4, 2010 "original motion"[2] – reflective that there are no "baseless arguments and

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request that he clarify "the procedures the Clerk's Office is supposed to follow when presented with untimely opposing papers." Ms. Padro assured me that she would transmit the letter to Clerk Kiernan for his response to the procedural question I had raised.

[2] It must be noted that none of the facts, law, or legal argument presented by my October 4, 2010 "original motion" were denied or disputed by Mr. Sclafani's opposition thereto, which was by a 2-1/2 page October 21, 2010 affirmation that was both frivolous and fraudulent. It was also untimely – and should have been rejected by the Clerk's Office because it was not in conformity with CPLR §2214(b), invoked by my notice of motion. Indeed, as a result of the untimeliness of Mr. Sclafani's October 21, 2010 affirmation, I was

facts".

5. Mr. Sclafani's second "reason" is his one-sentence claim (at ¶5) that "to the extent [my reargument motion] is not a rehash of prior presented and considered arguments and facts, it injects new factual allegations and documents that were not part of the record and [my] original motion." Again, Mr. Sclafani's provides no specificity – reflective of the frivolousness of this objection. Indeed, the unidentified "new factual allegations and documents" pertain to the judicial misconduct manifested by the November 26, 2010 decision – and Mr. Sclafani does not deny or dispute the accuracy of my analysis of that decision in any respect – nor my entitlement, *as a matter of law*, to expanded disclosure by the four-judge panel in the event, upon reargument, they deny the "legally-compelled" first three branches of my October 4, 2010 motion. Such expanded disclosure, amplifying the "legally-compelled" fourth branch of my October 4, 2010 motion which the November 26, 2010 decision ignored *without determination and without revealing its content*, pertains to their relationships with White Plains City Court Judges Hansbury and Friia and Appellate Term Justices Molia and Iannacci, whose actual bias and interest was the basis of the disqualification motions for which independent, appellate review by this Court or by the Court of Appeals was sought.

6. Mr. Sclafani's third "reason" is his one-sentence claim (at ¶6) that:

> "to the extent that this Court determines to consider [my] motion as one for renewal as opposed to reargument despite [my] express identification in [my] motion as one for reargument, the Court must nevertheless deny the motion inasmuch as [I have] failed to provide reasonable justification for [my] failure to present those facts and documents on [my] prior motion as the law requires."

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unable to reply. I do so now, and specifically point out that it is a telling reflection of the fraud that Mr. Sclafani sought to perpetrate therein that he purported (at¶6), without specificity, that "To the extent that appellant would now attempt to appeal on the orders identified in her motion, the appeals would not be timely (a matter that will be discussed at the appropriate time, if ever)." Plainly, the "appropriate time" for him to have "discussed" his timeliness objection was then. That he did not do so – and has not done so in his instant June 29, 2011 affirmation – reflects the fact that it was a deceit.

This is nonsense. My motion does not seek renewal and the reason it does not is because the "facts and documents" I did not present on my prior motion did not then exist, as they arose from the judicial misconduct manifested by the November 26, 2010 decision, chronicled by my March 16, 2011 letter. As to this, the law affords me the remedy of reargument – to which I have availed myself by my June 14, 2011 motion.

7. This is the extent of Mr. Sclafani's opposition to my motion – whose deceitfulness reinforces my entitlement to reargument, *as a matter of law*. That Mr. Sclafani has the temerity to seek, by his "WHEREFORE" clause, "costs, disbursements and attorneys' fees" mandates that such be imposed on him.

In Further Support of Reargument

8. As stated by my October 4, 2010 motion (at ¶36), under the section heading:

> "THIS APPEAL PRESENTS THE COURT WITH THE OPPORTUNITY AND OBLIGATION TO LEAD NECESSARY 'RECUSAL REFORM' IN NEW YORK STATE & THE NATION",

this case is "the perfect vehicle for this Court to enunciate clear rules and procedures" for judicial disqualification and disclosure – the necessity of which has been the subject of law review commentary, judicial decision, and recusal reform advocacy by the Brennan Center for Justice, Justice at Stake Campaign, and the American Bar Association (ABA). Indeed, at the upcoming ABA Annual Meeting in August, its Standing Committee on Judicial Independence will be presenting a report to the ABA House of Delegates, with a resolution that

> "urges states to establish clearly articulated procedures for:
>
> A. Judicial disqualification determinations; and
>
> B. Prompt review by another judge or tribunal, or as otherwise provided by law or rule of court, of denials of requests to disqualify a judge."

A copy of that Resolution is annexed (Exhibit F) in further support of the first and second branches of my October 4, 2010 motion:

> "1. granting 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".

9. Additionally, and in further support of the third branch of my October 4, 2010 motion:

> "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",

Chief Administrative Judge Ann Pfau has already made a referral to the Commission on Judicial Conduct. This, in response to my June 14, 2011 letter to her requesting that she revoke the Appellate Term designations of Justices Molia and Iannacci, annexed as Exhibit D to my June 14, 2011 reargument motion. Chief Administrative Judge Pfau's June 16, 2011 letter to me and the Commission's June 29, 2011 acknowledgment are annexed (Exhibits G-1, G-2).[3]

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[3] As yet, I have received no response from Appellate Division, Second Department Presiding Justice Prudenti to my June 14, 2011 letter, although a copy was hand-delivered to her by Deputy Clerk Mel Harris,

10. Consistent with §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, this Court's mandatory duty is to make its own referral to the Commission, if not to criminal authorities – and especially, should it not discharge its duty of supervisory, appellate review, which is no less mandatory in the circumstances at bar.

11. Finally, inasmuch as today's New York Law Journal belatedly reports – albeit in typically minimalistic, distorted fashion – that I and "[my] allies" testified on July 20, 2011 before the Commission on Judicial Compensation in opposition to judicial pay raises "until procedures are put in place to root out what [we] claim is widespread corruption in the judiciary", my testimony was not about "claim[s]", but about evidence. This commitment to evidence – the benchmark of all my advocacy as the Center for Judicial Accountability's Director and Co-Founder – is reflected by the final paragraph of my June 14, 2011 letter to Chief Administrative Judge Pfau (Exhibit D), which could not have been more explicit in stating that her response and that of Presiding Justice Prudenti to my "fully-documented revocation request":

> "– like the decision & order of Justices Skelos, Eng, Hall, and Lott on my reargument motion – will further test whether there are ANY safeguards within New York's judiciary that actually protect the integrity of the judicial process and ANY glimmer of the supposed 'quality' of New York's judiciary for which pay raises are in order. (p. 6, capitalization in the original)."

12. Although this spectacular case of judicial corruption was not included in my July 20, 2011 presentation of documentary evidence to the Commission on Judicial Compensation, such will be PROMINENT in CJA's future advocacy opposing judicial pay raises should the Commission on Judicial Conduct dismiss the judicial misconduct complaint embodied by my June 14, 2011 letter to Chief Administrative Judge Pfau and should this Court not grant the relief

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under a coverletter of that date (Exhibit G-3).

reasonably requested by my June 14, 2011 reargument motion: "a disposition responsive to the facts, law, and legal argument of [my] October 4, 2010 motion" .

13. In that connection, it is CJA's position that restitution needs to be made to victims of judicial corruption – and that the hundreds of millions of dollars that would go to hiked judicial compensation must be used, instead, to compensate judicial corruption victims. Indeed, if the four-judge appellate panel herein – whose collective cost to the taxpayers is more than $600,000 yearly – disputes the correctness of this position, let it now, nearly a year after my October 4, 2010 motion, confront the evidentiary record of this case, establishing precisely what my June 14, 2011 letter to Chief Administrative Judge Pfau states (at p. 2), *to wit*, that because of the actual bias and interest of White Plains City Court and the Appellate Term – as to which there has been NO independent or appellate adjudication – I was unlawfully evicted from my home of more than 20 years, unlawfully deprived of one million dollars in counterclaims, and unlawfully deprived of my entitlement to tens of thousands of dollars in costs and damages under 22 NYCRR §130-1.1 and Judiciary Law §487.

ELENA RUTH SASSOWER

Sworn to before me this
29th day of July 2011

Notary Public

SARA A RUSSELLO
Notary Public - State of New York
NO. 01RU6205964
Qualified in Bronx County
My Commission Expires 5/1/13

TABLE OF EXHIBITS

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AFFIDAVIT IN REPLY & IN FURTHER SUPPORT OF REARGUMENT MOTION

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