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June 1, 2009

Appellate Term Chief Clerk Paul Kenny
141 Livingston Street, 15th Floor
Brooklyn, New York 11201-5079

RE: *John McFadden v. Doris L. Sassower & Elena Sassower*:
#2008-1427-WC; #2009-148-WC

(1) Opposition to Mr. Sclafani's May 26, 2009 Letter-Application for an Extension of Time;

(2) Request that this Letter be Brought to the Attention of the Panel Deciding my May 11, 2009 Motion for an Order Directing the White Plains City Court Clerk to File a Proper Clerk's Return on Appeal (#2009-148-WC)

Dear Mr. Kenny,

This letter responds – first and foremost – to Mr. Sclafani's May 26, 2009 letter-application for an extension of time to file a respondent's brief in the above appeals.

With the exception of the two additional indicated recipients – the New York State Attorney General and Doris L. Sassower – Mr. Sclafani's instant letter is *verbatim* identical to his May 12, 2009 letter, denied by your May 19, 2009 order "without prejudice to renew upon showing proof that a copy…was sent to all respondents".

Mr. Sclafani's instant letter makes no reference to your May 19th order – nor to my May 15th letter to you, opposing his May 12th letter-application and alerting you to his failure to indicate Doris Sassower and the Attorney General as recipients.

More significantly, Mr. Sclafani's instant letter does not deny or dispute ANY of the facts set forth by my May 15th letter showing that his extension request was "deceitful and in bad-faith" – and constituting the basis for my own request:

> "that if you or the Court give any consideration to his extension request, that he be mandated to certify, in advance, that his respondent's brief will not be frivolous, as defined by 22 NYCRR §130-1.1 *et seq.* and reinforced by this

Ex J

Court's Rule §730.3(g)[fn.2] (underlining in the original)

and for my further request:

"that the Court accompany any extension it gives Mr. Sclafani with an explicit warning that any further violation of his duties, as an officer of the Court, and, specifically, Rules 3.1 and 3.3 of the Rules of Professional Conduct for Attorneys[fn.3], will result in the Court's taking 'appropriate action' against him, consistent with §100.3D(2)[fn.4] of the Chief Administrator's Rules Governing Judicial Conduct and the Court of Appeals' recent decision recognizing 'an attorney's special obligation to protect the integrity of the courts and foster their truth-seeking function'"[fn.5] (underlining in the original).

"fn.2 This Court's Rule §730.3(g) states:

'Any attorney or party to a civil appeal who, in the prosecution or defense thereof, engages in frivolous conduct as that term is defined in 22 NYCRR subpart 130-1.1(c), shall be subject to the imposition of such costs and/or sanctions as authorized by 22 NYCRR subpart 130-1 as the court may direct."

"fn.3 These rules were cited by my appellant's brief (at p. 95) as follows:

'Of particular relevance: Rule 3.1 'Non-Meritorious Claims and Contentions', which subjects an attorney to discipline for frivolous conduct as defined by 22 NYCRR §130.1.1 *et seq*, as well as Rule 3.3 'Conduct Before a Tribunal', whose significance was highlighted in the December 16, 2008 press release of the New York State Unified Court System as follows:

- 'Rule 3.3 requires a lawyer to correct a false statement of material fact or law previously made to the tribunal by the lawyer or the client and to take necessary remedial measures, including disclosure of confidential client information.
- Rule 3.3 requires a lawyer who knows that a person intends to, is or has engaged in criminal or fraudulent conduct related to the proceeding to take reasonable remedial measures, including disclosure of confidential client information.'"

"fn.4 'A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.'"

fn.5 This recent decision, *Amalfitano v. Rosenberg*, 12 N.Y.3d 8, 14, rendered February 12, 2009, is also cited by my appellant's brief (at pp. 95-96).

Enclosed is a copy of my May 15th letter, which I incorporate herein as dispositive of the fact – now reinforced by Mr. Sclafani's May 26th letter – that Mr. Sclafani is not entitled to any extension. Indeed, Mr. Sclafani has not only failed to respond to the serious and substantial content of my May 15th letter – including my express challenge to him (at p. 2) to "identify any aspect [of my appellant's brief] he cannot readily comprehend and respond to"– but his May 26th letter does not even state that he has a meritorious defense to my appeals and that his respondent's brief will not be frivolous, as he readily could have done. Such suffices for denial of his letter-application pursuant to this Court's Rule §732.8[1] – the provision cited by your May 19th order.

It must be noted that on the same May 26, 2009 date as his instant letter, Mr. Sclafani was simultaneously demonstrating the kind of lying, fraudulent respondent's brief he will foist upon me and the Court – should the Court enlarge his time and do so without any of my requested conditions.

By affirmation dated May 26, 2009, Mr. Sclafani responded to my May 11, 2009 motion for an order directing the White Plains City Court Clerk to file a proper Clerk's Return on Appeal for #2009-148-WC. He there purported that any deficiencies of the Clerk's Return were "non-prejudicial" (¶3) and:

> "With respect to appellant's assertions that your affiant has engaged in any form of fraud or deceit in this, or any other matter her allegations are unsubstantiated, untrue and unworthy of any detailed response." (¶5).

These are outright lies. ¶9 of my May 11th motion could not have been more explicit in identifying that the "most prejudicial" of the deficiencies of the Clerk's Return was its omission of Mr. Sclafani's September 25, 2008 affirmation and that such affirmation was:

> "replete with deceit and fraud, entitling me to sanctions and costs under 22 NYCRR §130-1.1 and disciplinary and criminal referral against him – relief I expressly sought by my October 10, 2008 affidavit in reply, whose ¶¶26-38

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[1] In pertinent part, this Court's Rule §732.8 reads:

"(d) *Enlargements of Time.* ...

(2) *For Cause.* Where a party shall establish a reasonable ground why there cannot or could not be compliance with the time limits proscribed by this section...the clerk or a Justice may grant reasonable enlargements of time to comply. An application pursuant to this paragraph shall be made by letter, addressed to the clerk, with a copy to the other parties to the appeal..."

> constituted a virtual line-by-line analysis of Mr. Sclafani's opposing affirmation.[fn.11]"

For Mr. Sclafani to pretend – as his May 26th affirmation does– that my referred-to "virtual line-by-line analysis" of his September 25, 2008 affirmation is "unsubstantiated, untrue and unworthy of any detailed response" – foreshadows how he will confront the issue in his respondent's brief with respect to my second "Question Presented" (at pp. vi-vii) and its corresponding Point II (at pp. 74-79).

Enclosed is a copy of Mr. Sclafani's May 26th affirmation[2] to facilitate the Court's comparison between its ¶5 and the "virtual line-by-line analysis" of ¶¶26-38 of my October 10, 2008 affidavit, which I request. Additionally, I request that the Court examine my April 17, 2009 appellant's brief (beginning with its "Questions Presented" (at pp. vi-ix)) so as to verify the extent to which it particularizes record-based facts documentarily establishing Mr. Sclafani's misconduct.

Based on ¶5 of Mr. Sclafani's May 26th affirmation, there can be no doubt that if the Court grants him an unconditioned opportunity to interpose a respondent's brief on my appeals #2008-1427-WC and #2009-148-WC, he will either ignore such record-based evidence or baldly purport that my "allegations" are "unsubstantiated, untrue and unworthy of any detailed response" – consistent with what he has done throughout the course of this litigation.

As I have demonstrated over and again to this Court – including by my February 2, 2009 reply brief in appeal #2008-1428-WC and by my March 6, 2009 reply brief in #2008-1433-WC, to which my incorporated May 15th letter expressly refers you and the Court (at p. 3) – Mr. Sclafani is "virtually incapable of telling the truth in anything he says"; "his behavior is clearly pathological".

Certainly, if the Court has reviewed these two reply briefs – identified by my May 15th letter as "dispositive" – it knows "how unfair it would be to burden me, yet again, with having to dissect the further fraud and deceit of Mr. Sclafani in a third brief."

"fn.11 My October 10, 2008 affidavit, a full copy of which I also supplied this Court on November 3, 2008 to further support my October 15, 2008 order to show cause for reargument, renewal & other relief..., is most conveniently accessible, albeit without its annexed exhibits, as Exhibit O to my April 17, 2009 appellant's brief. The original, with exhibits, is in Clerk Lupi's January 8, 2009 Clerk's Return on Appeal."

2 Also included is a copy of Mr. Sclafani's accompanying legal back, whose certification pursuant to 22 NYCRR §130-1.1 is unsigned.

Finally, despite the May 26th date on Mr. Sclafani's affirmation, it did not arrive in the mail until Friday, May 29th, the return date of my May 11th motion – and was not received by me until Saturday, May 30th, the same day as I received his May 26th letter. As a result, I had no opportunity to put in a reply to his affirmation. In view of the fraudulence of Mr. Sclafani's ¶¶3 and 5, as hereinabove recited, I would appreciate if – at all possible – you could bring this letter to the attention of the panel deciding the motion so that it is not otherwise misled as to the pertinent facts.

Thank you.

Very truly yours,

ELENA RUTH SASSOWER, Appellant *Pro Se*

Enclosures (2)

cc: Leonard Sclafani, Esq. [Fax: (212) 949-6310]
Doris L. Sassower [Fax: (914) 684-6554]
New York State Attorney General Andrew Cuomo [Fax: (212) 416-8962]
ATT: Assistant Solicitor General Diana R.H. Winters