

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

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DORIS L. SASSOWER,

Plaintiff-Appellant,

-against-

**Affidavit in Opposition to Respondents' Motion  
for Extension of Time to File Opposing Brief and  
in Support of Show Cause Order for Sanctions  
under Rule 11(c)(1)(B), "On Court's Initiative"**

**Docket #96-7805**

Hon. GUY MANGANO, et al.,

Defendants-Respondents.

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STATE OF NEW YORK     )  
WESTCHESTER COUNTY ) ss:

DORIS L. SASSOWER, being duly sworn, deposes and says:

1. I am the Appellant *pro se* and submit this Affidavit in opposition to Mr. Weinstein's last-minute motion for a three-week extension of time to serve and file Respondents' Brief from February 18, 1997 to March 11, 1997. This Affidavit is also submitted in support of a Show Cause Order for sanctions under Rule 11(c)(1)(B) of the Federal Rules of Civil Procedure for the Attorney-General's bad-faith, fraudulent, and frivolous conduct on this appeal in connection with the November 8, 1996 Pre-Argument Conference, including wilful disobedience of this Court's Order dated October 23, 1996 (Exhibit "A"), and for such other and further relief as may be just and proper to punish Respondents, their counsel, the Attorney-General, and Assistant Attorney General Weinstein, *personally*, for needlessly burdening Appellant and the Court with this costly and time-consuming meritorious appeal, to which there is *no* meritorious defense.

2. Prior notice to the Attorney General of its sanctionable appellate conduct was

given by me at the aforesaid Conference, as well as by my January 14, 1997 letter to Attorney General Vacco (Exhibit "B"). The conclusion of that letter stated that that I would seek "all possible sanctions, including contempt for violation of the October 23, 1996 Order".

3. Rule 11(b)(1)(C) explicitly confers upon the Court the authority, on its own initiative, to vindicate its integrity and the judicial process, by issuance of a Show Cause Order. As argued in my appellate Brief (p. 42), such power is particularly appropriate when invoked by the Court on behalf of an unrepresented litigant such as myself, *Haines v. Kerner*, 404 U.S. 519 (1972).

4. As to Assistant Attorney General Weinstein's extension motion, it is, *on its face*, procedurally defective. This Court's pre-printed Notice of Motion form bears a line where the "signature of attorney" is to appear, which Mr. Weinstein has *not* signed. A copy of the Notice of Motion served on me is annexed hereto as Exhibit "C". That the filed original Notice of Motion is likewise unsigned has been confirmed to me by Daniel Mizrachi, Assistant to Staff Counsel Stanley A. Bass.

5. Such omission, having been duly called to Mr. Weinstein's attention by fax notification (Exhibit "D") -- and not remedied since -- should be stricken from the Court's calendar. This is consistent with Rule 11(a).

6. Although Mr. Weinstein's motion papers represent that he is "the Attorney for Appellees in the above-captioned appeal" (¶1 of his supporting Affidavit), on November 7, 1996, the Attorney General's office represented to Staff Counsel Bass that Mr. Weinstein was *not* handling the appeal. Such representation was in answer to Staff Counsel Bass's inquiry as to why Mr. Weinstein was not going to attend the November 8, 1996 Pre-Argument Conference. At or about that time, I requested that a stenographer be present at the Pre-Argument Conference. Staff Counsel Bass declined such request on the ground that Pre-Argument Conferences are "off the record".

7. Mr. Weinstein's supporting Affidavit (Exhibit "C") does not indicate when he was assigned to the appeal. As such, it corroborates that the Attorney General's office perpetrated a fraud and deceit on the Staff Counsel in connection with the November 8, 1996 Pre-Argument Conference.

8. Without prejudice to the aforesaid procedural objection, Mr. Weinstein's motion should be denied on the merits since it wholly fails to comply with applicable legal requirements: it makes *no* showing of good cause for an extension to Respondents nor that the equities in support thereof would outweigh the resultant prejudice to me. Indeed, Mr. Weinstein neither identifies nor shows *any* cause for the Attorney General's failure to file Respondents' opposing brief within the five weeks it had from my January 10, 1997 service of my Appellant's Brief and Record on Appeal. This is one week additional to the 30 days provided for a respondent's brief under Rule 31(a) of the Rules of Appellate Procedure.

9. It is frivolous for Mr. Weinstein to suggest, as he does in his Motion (Exhibit "C"), that the Attorney General's office, with its well-staffed Law Department, should be accorded an extension for no reason other than that I, a *pro se* Appellant, sought and obtained extensions -- and he cites *no* legal authority for such distorted, illogical, and inequitable proposition.

10. In sharp contrast to Mr. Weinstein's motion, my extension requests were always supported by a showing of good cause. Mr. Weinstein does not, for example, claim that he or the Attorney General is *pro se* and physically handicapped, as I showed evidentiarily that I was; that the Attorney General's office suffers from the limited resources and technological inadequacies which afflicted my preparation of legal papers, as depicted in my supporting papers, including mechanical breakdowns of overstrained and antiquated computer and photocopy equipment; or that he had unforeseen difficulties such as I experienced in attempting to complete my legal research over

the Christmas-New Year holidays, when the Westchester County Courthouse Law Library, my main research resource, was closed. Mr. Weinstein does not assert that he has been afflicted with respiratory illness, such as the flu attacks, and other medical conditions I described as having befallen me and others normally assisting me, as I stated had significantly impaired my ability to meet the filing deadline, despite my best efforts, such including even cancelling necessary medical appointments and postponing essential medical care and treatment to do so.

11. Review of my Appellant's Brief exposes that Mr. Weinstein's extension request is in bad-faith and dilatory. Quite simply, the Attorney General's office is stalling because there are *no* non-frivolous grounds on which it can oppose my appeal, fully documenting, as it does, Mr. Weinstein's flagrant litigation misconduct and the complicity of District Judge Sprizzo, protecting Respondents from the disciplinary and criminal consequences of their demonstrably lawless, corrupt, and retaliatory conduct. Conspicuously, Mr. Weinstein's extension motion fails to even allege that Respondents have a good and meritorious defense to my appeal. He well knows there is none.

12. At the November 8, 1996 Pre-Argument Conference, I made known to the Attorney General's office that there is *no* legitimate opposition to this appeal. Only a fleeting sentence at ¶5 of Mr. Weinstein's Affidavit in support of his extension motion (Exhibit "C") mentions that Conference.

13. Assistant Attorney General Alpha Sanghvi attended the November 8, 1996 Conference, after her office represented to Staff Counsel Bass that Mr. Weinstein was *not* handling the appeal. Ms. Sanghvi was given a copy, in draft, of my appellate "Questions Presented" and Preliminary Statement, which focused on the litigation misconduct of Mr. Weinstein and the complicity of District Judge Sprizzo. Among the issues I discussed at the Conference was the

Attorney General's affirmative duty to take remedial steps to dispense with this appeal entirely and, specifically, by a Rule 60(b)(3) motion to vacate Judge Sprizzo's Decision/Order, as based on "fraud, misrepresentation, and other misconduct" of adverse counsel -- i.e. that of Mr. Weinstein. Ms. Sanghvi should be directed to produce those draft pages<sup>1</sup>, as well as the notes she took of that Conference.

14. Notwithstanding the October 23, 1996 Order (Exhibit "A"), which scheduled the November 8, 1996 Conference, explicitly directed attendance by "the attorneys in charge of the appeal or proceeding" so that "each issue on appeal" could be "discuss[ed]", "evaluate[d] seriously" and "narrow[ed], eliminate[d], or clarif[ied]", Ms. Sanghvi was totally unfamiliar with the case. By her own admission, she had only been "handed the file the night before". As a result, she was unable to answer even the most elementary questions posed to her by Staff Counsel Bass at the Conference and could not enter into any stipulations.

15. Following my vigorous protest that the Attorney General's office was in contempt of the October 23, 1996 Order (Exhibit "A"), Staff Counsel Bass directed Ms. Sanghvi to obtain a response from her superiors as to the discussed stipulations. This included a stipulation as minimal as adding Dennis Vacco, present Attorney General, and Janet Johnson, present Chair of Appellee Grievance Committee of the Ninth Judicial District, whose joinder as parties was necessitated by reason of their supervening entry into such official positions. Such stipulation was suggested by Staff Counsel Bass, himself. Additionally, Ms. Sanghvi was instructed to relate Staff Counsel's concern with the conflict of interest in the Attorney General's representaton of Respondents and itself as a party Defendant herein.

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<sup>1</sup> Ms. Sanghvi was also given a draft of the Table of Contents to my Record on Appeal, then being assembled.

16. I never heard from Assistant Attorney General Sanghvi or from anyone else in the Attorney General's office in that regard. By my January 14, 1997 letter to Attorney General Vacco (Exhibit "B"), I recapitulated the issues on my by then perfected appeal, most particularly, Mr. Weinstein's litigation misconduct -- a focal issue at the Conference -- and reiterated my request that he stipulate to the various relief discussed at the Conference. This specifically included a stipulation staying enforcement of Respondent Second Department's unlawful June 14, 1991 "interim" Order, suspending my law license, as well as a stay of Respondent Second Department's continuing adjudications of appeals involving me, among them the *Wolstencroft* appeal, which are the subject of pleaded allegations of my federal Complaint.

17. Despite the fact that my January 14, 1997 letter *explicitly* requested his response by January 21, 1997 (Exhibit "B", at p. 6), the Attorney General's Office failed and refused to respond. As reflected by my letter (pp. 4, 6), the reason for requesting a response by *January 21, 1997* was because my time was already running to make a needed motion in my *Wolstencroft* appeal for reargument and leave to appeal to the New York Court of Appeals.

18. Consequently, my daughter, also my paralegal, telephoned the Attorney General's office and left a detailed message for Ron Turbin, Chief of the Litigation Bureau, concerning the Attorney General's failure to respond to my January 14, 1997 letter (Exhibit "B"). *Immediately* following her message with Mr. Turbin's secretary, in which she vigorously complained of Mr. Weinstein's litigation misconduct, Mr. Weinstein telephoned. In my conversation with him, Mr. Weinstein stated that he was handling the appeal and *peremptorily* refused to consent to any stipulations whatever. In typical fashion, Mr. Weinstein would *not* give any reasons for his refusal or acknowledge whether he had even read my appellate Brief.

19. Two subsequent telephone messages were left for Mr. Turbin by my daughter,

protesting Mr. Weinstein's re-emergence and his continued litigation misconduct, now in connection with the appeal. This is further reflected by my January 27, 1997 fax to Mr. Turbin (Exhibit "E"), which put him on notice that it was "*not* my intention to be subjected to a repeat of Mr. Weinstein's utterly dishonest and sanctionable conduct on appeal" (emphasis in the original).

20. Thereafter, when I received a return call from Mr. Turbin, he reiterated that Mr. Weinstein was handling the appeal and that Mr. Weinstein's actions were with his approval, as well as with the approval of Mr. Weinstein's immediate supervisor, who he *refused* to identify. After dodging my repeated inquiry as to whether he had read my appellate Brief, Mr. Turbin finally purported to have "skimmed it", and that he was "very satisfied" with Mr. Weinstein's job performance. Since my appellate Brief documents flagrant litigation misconduct by Mr. Weinstein, rising to a level of fraud [*See*, Point II: pp. 38-50], such statement by him highlights the need for the "additional inquiry", indicated by the Advisory Committee Notes to Rule 11, so as to ascertain proximate and ultimate responsibility for the Attorney General's misconduct in connection with this appeal<sup>2</sup>.

21. Thereupon, my daughter left a further telephone message for Mr. Turbin, demanding the name of Mr. Weinstein's immediate supervisor, as well as an opportunity to discuss, point by point, the various aspects of the stipulation I sought. That call was *never* returned by Mr. Turbin or anyone else in the Attorney General's Office. Consequently, and so as to protect my position in my *Wolstencroft* appeal, I was burdened with undertaking a motion for reargument, reconsideration, renewal, and leave to appeal to the New York State Court of Appeals. That motion

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<sup>2</sup> See p. 39 of my appellate Brief, quoting the Advisory Committee Notes as recognizing that: "such an inquiry may be appropriate in cases involving governmental agencies or other institutional parties that frequently impose substantial restrictions on the discretion of individual attorneys employed by it"

was completed on February 11, 1997 and signed by me from Florida on February 12, 1997, where it was notarized (Exhibit "F").

22. On February 11, 1997, Mr. Weinstein telephoned and was told by my daughter that I was out of town and that she was authorized to speak on my behalf. Mr. Weinstein stated he was calling to discuss the Record on Appeal. Specifically, he asked why it contained no transcript of the December 23, 1994 conference before District Judge Sprizzo. My daughter referred him to footnote 6 of my appellate Brief (at p. 12), which she read to him, as follows:

"There is no stenographic transcript of the proceedings of December 23, 1994 -- inasmuch as stenographers are only present upon advance arrangement. Plaintiff, thereafter, arranged for a stenographer to record and transcribe *every* court appearance herein [R-183; R-668; R-757]." (emphasis in the original)

23. Mr. Weinstein indicated his belief that there were discrepancies between the Record on Appeal and the print-out of the docket sheet that he had. My daughter expressed her surprise and asked him to identify those discrepancies. This he refused to do -- notwithstanding she expressed complete readiness to resolve any objections he might have on that subject or any other aspect of the appeal so as to minimize, if not eliminate, the serious appellate issues my Brief raised. After some prodding, Mr. Weinstein agreed to fax her a copy of the docket sheet print-out (Exhibit "G"), but stated that he would not be sending it immediately. Indeed, Mr. Weinstein did not fax it until after 5:30 p.m. on Thursday, February 13th.

24. By then, Mr. Weinstein had already faxed his extension motion -- which was sent at 9:30 p.m. on February 12th (Exhibit "C"). Said motion made not the slightest reference to the docket sheet or the filed Record on Appeal. It may be surmised that the true purpose of Mr. Weinstein's February 11th telephone call was to find an objection, based on the Record, which might serve as a ground for delaying his filing. This was foiled by my daughter's responses to him.

Indeed, in that conversation, Mr. Weinstein had not expressed any need for an extension of time to file Respondents' Brief -- or intention to file an extension motion.

25. On Friday morning, February 14th, my daughter, who had been out on February 13th, attending an all-day conference in New York City, discovered Mr. Weinstein's extension motion in the basket of my fax machine.

26. Shortly thereafter, I telephoned my daughter, who told me of Mr. Weinstein's faxed motion. I asked her to convey my position, to wit, that I would oppose such motion as being highly prejudicial -- unless he consented to my requested stipulation, most specifically, to an immediate stay of Respondent Second Department's illegal Order suspending my law license, as well as a stay of its continued adjudication of matters involving me.

27. My daughter called Staff Counsel's office at approximately 9:45 a.m. on Friday, February 14th, leaving a detailed message to that effect on Staff Counsel's voice mail.

28. On Tuesday, February 18th, the first business day after my return from Florida, I telephoned Mr. Weinstein and personally advised him that unless he was prepared to consent to the stay relief I sought by stipulation, I would strenuously oppose his extension request. I advised him that same had to be viewed as frivolous because there was *no* legal defense to my appeal.

29. Mr. Weinstein stated he was not authorized to enter into the stipulations I requested. When I suggested he obtain authority from his superiors and his clients forthwith, he flatly stated that he would not do so.

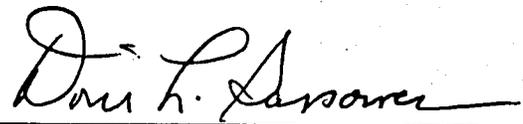
30. It must be emphasized that had Mr. Weinstein been at the November 8, 1996 Pre-Argument Conference, pursuant to the October 23, 1996 Order (Exhibit "A"), he would have been required by Staff Counsel to respond to my oral presentation that there was no defense to my

appeal, nor factual or legal basis for opposing the stipulations I was then proposing. It is obvious that the stratagem evolved by the Attorney General's office was to engage in the pretense that Mr. Weinstein's attendance could be dispensed with because he was not the attorney handling the appeal -- and to then send to the Conference an attorney who knew nothing whatever about the case.

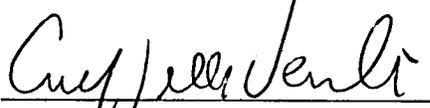
31. The fact that, by the aforesaid stratagem of the Attorney General's office, Mr. Weinstein was able to avoid a personal appearance at the Pre-Argument Conference, should not relieve him, *now that his handling of the appeal is out in the open*, from having to come forward on his instant extension motion and show the merit of his intended defense of Respondents' indefensible appeal, and his reasons for refusing to accede to requested stipulations, which the record shows I am entitled to *as a matter of law*.

32. The foregoing unprofessional and deceitful conduct of the Attorney General's office in connection with the November 8, 1996 Pre-Argument Conference and the stipulations proposed therein should suffice, at very least, to disentitle Mr. Weinstein to the discretionary relief of an extension of time, for which, as hereinabove stated, he has wholly failed to show any good cause. Moreover, under the circumstances herein, where it plainly appears that the Attorney General fraudulently subverted the salutary purpose of the Pre-Argument Conference and evaded his ongoing legal and ethical obligations in connection therewith, a Show Cause Order should issue.

WHEREFORE, it is respectfully prayed that Respondents' instant extension motion be dismissed as procedurally improper and defective; that, failing such dismissal, it be denied on the merits as frivolous and dilatory, in violation of Rule 11; and, in the interests of justice and judicial economy, that a Show Cause Order be issued on the Court's own initiative, pursuant to Rule 11(c)(1)(B), to the Attorney-General, requiring him to show cause why Respondents and their attorneys should not be held in contempt for wilful disobedience of the Court's October 23, 1996 Order and sanctioned for fraudulent and frivolous conduct in defeating the purposes of the November 8, 1996 Pre-Argument Conference, including their bad-faith failure to respond, *with reasons*, to any of the stipulations proposed therein and reiterated in Appellant's January 14, 1997 letter to Attorney-General Vacco, and that Appellant be granted such other and further relief as may be just and proper, including monetary sanctions and a disciplinary referral of the Attorney General and the Assistant Attorneys General involved in Respondents' defense.

  
DORIS L. SASSOWER

Sworn to before me this  
24th day of February, 1997

  
Notary Public

ANTHONY DELLA VECCHIA  
Notary Public, State of New York  
No. 01DE5035676  
Certificate Filed in Westchester County  
Commission Expires 11-27-98