SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

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KATHLEEN C. WOLSTENCROFT,

Plaintiff-Respondent,

A.D. #95-09299

NOTICE OF MOTION FOR REARGUMENT, RECONSIDERATION, RENEWAL, FOR LEAVE TO APPEAL TO THE COURT OF APPEALS, AND OTHER RELIEF

-against-

DORIS L. SASSOWER,

Defendant-Appellant.

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PLEASE TAKE NOTICE that upon the annexed affidavit of Defendant-Appellant DORIS L. SASSOWER, sworn to February 12, 1997, the Decision & Order and Decision & Order on Motion, each dated December 23, 1996, and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court, at the courthouse located at 45 Monroe Place, Brooklyn, New York, on March 14, 1997 at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order granting:

(a) reargument, reconsideration, and renewal and, on granting thereof, that it vacate its December 23, 1996 Decision & Order, and disqualify itself and transfer this appeal to another Judicial Department; and, if this relief is denied;

(b) leave to appeal to the Court of Appeals; and, if this relief is denied;

Ex "F"

(c) leave to appeal to the Court of Appeals on certified questions:

(i) Whether a court, whose justices are defendants in a federal civil rights action by Appellant herein, is disqualified from adjudicating her appeals, where, in addition, the case on appeal forms part of the gravamen of her federal civil rights action, the adverse outcome of which appeal directly benefits the defendant justices therein?

(ii) Whether an application to obtain property out of court under CPLR §2606, which is not brought by a separate plenary proceeding resting on original process and notice of petition served on all parties with an interest that might be affected by a judgment therein, is jurisdictionally void?

(d) such other and further relief as may be just and proper.

Pursuant to CPLR §2214(b), answering papers, if any, shall be served at least seven (7) days before the return date of this motion and, pursuant to CPLR §2103(b)(2), twelve (12) days before the return date if such answering papers are served by mail.

Dated: White Plains, New York
February 12, 1997

Yours, etc.

DORIS L. SASSOWER
Defendant-Appellant *Pro Se*
283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

TO: Clerk, Appellate Division, Second Department
45 Monroe Place
Brooklyn, New York 11201

Joel Aurnou, Esq.
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New York, New York 10270

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

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KATHLEEN C. WOLSTENCROFT,

Plaintiff-Respondent,

-against-

DORIS L. SASSOWER,

Defendant-Appellant.

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A.D. #95-09299

SUPPORTING AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF BROWARD) ss.:

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

1. I am the above-named Defendant-Appellant and personally familiar with the facts, papers, and proceedings herein.

2. This affidavit is submitted in support of my motion for reargument, reconsideration, and renewal of this Court's Decision & Order, dated December 23, 1996 [herein "the Decision"], leave to appeal to the Court of Appeals, leave to appeal to the Court of Appeals on certified questions, and for such other and further relief as may be just and proper.

3. By the Decision (Exhibit "A"), this Court *sua sponte* dismissed my timely appeal from Supreme Court Justice Colabella's April 4, 1995 Order as having been superseded by his April 10, 1995 Order, which it *sua sponte* dismissed as untimely, and affirmed Justice Colabella's July 18, 1995 Decision/Order. By an appended Decision & Order on Motion [herein "the Motion Decision"], this Court, *inter alia*, denied as "moot" Plaintiff's cross-motion to dismiss the April Orders on grounds identical to those upon which the Decision dismissed them *sua sponte*.

4. The Decision and Motion Decision were served upon me by adverse counsel Notice of Entry by ordinary mail on January 8, 1997 (Exhibit "B"). Consequently, this motion is timely.

MY ENTITLEMENT TO REARGUMENT, RECONSIDERATION, RENEWAL, AND LEAVE TO APPEAL TO THE COURT OF APPEALS

A. The Decision is Facially Erroneous

5. The Decision (Exhibit "A") is facially erroneous in that it omits material facts. It recites that the appeal herein was orally argued on November 22, 1996, but fails to recite that: (a) *immediately* prior to the oral argument, I made an oral application for this Court's recusal; and (b) this Court summarily *denied* such oral application, without reasons[1].

6. The basis for my oral recusal application, over and apart from this Court's statutorily and ethically-proscribed self-interest by reason of my pending §1983 federal action against its justices, *Sassower v. Mangano, et al.*, (as particularized at pages 1-8 of my incorporated by reference written motion for recusal/transfer, dated March 15, 1996 [Exhibit "C"], reiterated at the November 22, 1996 oral argument), was that the four-judge panel herein, consisting of Presiding Justice Copertino and Justices Joy, Krausman, and McGinity, had already manifested their actual bias against me by factually and legally insupportable and retaliatory adjudications in my prior consolidated *Wolstencroft* appeals, in my Article 78 proceedings against Justice Colabella prior thereto, and in other cases in which I was involved before this Court. I contended that such adjudications, together with this Court's unlawful suspension of my law license, have been part of

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[1] Additionally, the appended Motion Decision conceals, by its use of an *inter alia*, that my motion to the Court specifically requested its recusal.

a politically-motivated vendetta to punish me for my judicial whistle-blowing, in violation of my First Amendment rights.

7. I specifically identified Justice Krausman's participation in the panel which unlawfully decided my prior *Wolstencroft* appeals against me; Justice Copertino's participation in at least one of my Article 78 proceedings against Justice Colabella; as well as the fact that Justice McGinity's blatant misconduct in the Supreme Court, Nassau County in the case of *Blaustein v. Sassower*, had been the subject of an appeal by me to this Court, which, although reversing his decision as lower court judge, failed to accord me the full relief to which I was entitled.

B. The Appellate Panel Has Failed to Make Requisite Disclosure as to its Participation in Prior Adjudications Involving Me

8. At the November 22, 1996 oral argument, the four-judge appellate panel failed and refused to meet its ethical duty to disclose facts bearing upon its impartiality -- notwithstanding I *expressly* requested that the judges acknowledge and set forth their participation in prior adjudications involving me in this and other cases.

9. At that time, I did not know the extent of Presiding Justice Copertino's involvement in my Article 78 proceedings against Justice Colabella, wherein he participated in *both* the first and second Article 78 proceedings (A.D. #92-24343, A.D. #92-03248). This included *sua sponte* amending the Court's *without-reasons* dismissal of the second Article 78 proceeding to deny my application for leave to appeal to the Court of Appeals, and, again, *without reasons*, dissolving my stay pending appeal.

10. The Court's denial of my absolute entitlement to Article 78 relief against Justice Colabella and subsequent use of his fabricated, jurisdiction-less, due-process-less

decision/orders to unlawfully authorize disciplinary charges against me comprise essential allegations in my §1983 federal action against its justices for knowingly abusing their judicial and disciplinary powers to retaliate against me. Justices Krausman, Copertino, and Joy were served with their own copies of my civil rights complaint in *Sassower v. Mangano, et al.* [R-77-78].

11. By reason thereof, following dismissal of my Article 78 proceedings, this Court had a palpable self-interest in ensuring that Justice Colabella's decision/orders were not reversed on my consolidated appeals. Such self-interest was manifested by this Court's affirmance of those decision/orders, in which Justice Krausman participated [R-37]. Conspicuously, the affirmance failed to make *any* finding as to Justice Colabella's compliance with due process requirements and failed to identify *any* of my specific contentions as to his lack of jurisdiction. As to such fundamental constitutional objections, the Court made no particularized findings[2]. This, despite the fact that Justice Colabella's wholesale denial of due process and lack of jurisdiction were ***central*** issues on those consolidated appeals, as they had been on my prior Article 78 proceedings.

12. As set forth in my Notice of Appeal [R-13-14] and demonstrated by my Brief herein [pp. 1-9], as well as by my Reply Brief [p. 2], this Court's misconduct in aiding and abetting Justice Colabella's perversion of the judicial process and his collusion with adverse counsel, Joel Aurnou, Esq. are issues on *this* appeal. An appellate panel, half of whose members were involved in my two Article 78 proceedings against Justice Colabella and in my prior *Wolstencroft* appeals, has an interest in preserving those insupportable adjudications. This is quite apart from its prohibited

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[2] Justice Krausman, additionally, participated in denying, *without reasons*, my motion to reargue the Court's legally and factually unfounded decision on my prior *Wolstencroft* appeals, denying, as part thereof, my request for leave to appeal to the Court of Appeals.

self-interest by reason of my pending §1983 federal action, in which all of this Court's justices are charged with individual and collective liability [R-94-173], as well as its self-interest in ensuring that an organization crusading against judicial corruption and political manipulation of judgeships not receive the stipulated $100,000 at issue on this appeal[3].

13. As in my prior *Wolstencroft* appeals, this Court, by its affirmance Decision (Exhibit "A"), has once again manifested its disqualifying bias. As demonstrated hereinbelow, it has followed its usual *modus operandi* for dishonest judicial decisions: *obliterating* the very legal issues upon which the appeal was taken, failing to make specific findings relative thereto, and falsifying, distorting, and suppressing material facts from the record.

14. Such *modus operandi* has been a standard feature of this Court's adjudication of other appeals involving me. At the November 22, 1996 oral argument, I did not know which specific judges of the panel had participated in such other cases involving me. However, the names of the cases were before the Court, having been part of my March 15, 1996 recusal/transfer motion (Exhibit "C"). Indeed, annexed thereto (as Exhibit "C") was a copy of my September 26, 1995 Order to Show Cause in *Sassower v. Mangano, et al.*, which, after summarizing this Court's cover up of Justice Colabella's misconduct in my prior consolidated *Wolstencroft* appeals and in the Article 78 proceedings (at pp. 16-22) and anticipating what it would do on this appeal, stated as follows:

> "57. The judicial Defendants, have, likewise, torpedoed numerous other cases in which I have been a party or had an interest, by knowingly rendering unsupported and insupportable decisions. Just to name a few other cases which are part of the pattern of biased,

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[3] *See*, Exhibit "C" to Exhibit "C" hereto, paragraph 56.

> dishonest decision-making by the judicial Defendants, wherein I lost appeals which black-letter law and the facts in the record entitled me to win, I would mention: *Blaustein v. Sassower*; *Weininger v. Sassower*; *Ward Carpenter v. Sassower*; *Malamut v. Sassower*; *Baer v. Lipson*. Should Defendants dispute the wholesale abandonment of fundamental due process and legal standards reflected in those cases, as well as in *Breslaw v. Breslaw*, I request that they produce for the Court, on the return date of the motion, a copy of the appellate record and the briefs in those cases." (at p. 22)

15. Since rendition of this Court's Decision (Exhibit "A"), I have examined my files relating to the *Weininger*, *Ward-Carpenter*, and *Breslaw* cases[4]. Apart from Justice McGinity, who was only recently appointed to the Appellate Division, Second Department, and whose deliberately unlawful and retaliatory conduct as a Nassau Supreme Court judge I have documented in connection with the *Blaustein* case, *including by a formal motion for his recusal*, the participation of Justices Joy, Copertino, and Krausman has been as follows:

a. In *Weininger v. Sassower*, A.D. #92-04066, Justice Joy, participating on the Second Department panel, affirmed a decision of the Westchester Supreme Court, shown on appeal to be fraudulent and the product of collusive misconduct between the plaintiff and the lower court, and, thereafter, denied my motion for leave to appeal, recusal/transfer, and, alternatively, for reargument and renewal. The panel's denial of my motion was *without reasons*, notwithstanding my particularized showing, wholly undenied by plaintiff-respondent therein, that its decision of affirmance falsified the factual record and was legally unsupported.

b. In *Ward Carpenter v. Sassower*, A.D. #91-06950, Justices Copertino and Joy both participated on the Second Department panel which affirmed the decision of the Westchester

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[4] The other cases are not immediately accessible to me, but obviously are part of this Court's files, readily accessible to it.

Supreme Court, shown on appeal to be legally and factually unfounded, and, thereafter, denied my motion, for recusal/transfer, reargument/renewal, and other relief, including leave to appeal to the court of appeals. Denial of my motion was *without reasons*, notwithstanding my particularized showing, wholly undenied by plaintiff-respondent therein, that the panel's decision of affirmance was legally unprecedented and that it falsified the factual record.

c. In *Breslaw v. Breslaw* [R-79], Justice Krausman participated on the Second Department panel, which, although granting me trifling appellate relief, *on the law*, ignored and entirely disregarded the *uncontroverted* documentary record, including affidavit and transcript evidence, showing fraudulent, retaliatory, and pathologically-depraved conduct by Justice Fredman and his collusion with defense counsel. Such adjudication -- covering up for Justice Fredman, whose misconduct is the subject of specific allegations in my federal complaint -- was presented by me as part of my January 10, 1995 written application for the recusal and transfer of my consolidated *Wolstencroft* appeals [R-74-75]. This Court, by a panel on which Justice Krausman sat, denied such recusal/transfer, without reasons [R-69][5].

16. As with the subject Decision (Exhibit "A"), the aforesaid decisions of this Court, when compared to the record, demonstrate flagrant judicial misconduct by its judges -- not good-faith decision-making or innocent "error". Overwhelmingly, they establish my entitlement to recusal and transfer, since this Court can in no way be considered "a fair and impartial tribunal"...

17. In repeatedly denying my recusal/transfer applications, including at the

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[5] That parallels between the lower court misconduct in the *Breslaw* and *Wolstencroft* cases and this Court's cover-up and complicity -- all allegations in my federal complaint -- are summarized at pages 16-18 of my Order to Show Cause for a Preliminary Injunction in *Sassower v. Mangano, et al.*, which is part of Exhibit "C".

November 22, 1996 oral argument, this Court has *never* articulated its reasons. I submit that this is because this Court is unable to justify its denial of my evidentiary and legal showing of its disqualification for bias, apparent and actual.

18. By this motion, I request that if this Court actually believes that it is not statutorily required to recuse itself for self-interest in this appeal that it set forth such fact in a reasoned decision or, alternatively, certify the following question to the Court of Appeals:

> Whether a court, whose justices are defendants in a federal civil rights action by Appellant herein, is disqualified from adjudicating her appeals, where, in addition, the case on appeal forms part of the gravamen of her federal civil rights action, the adverse outcome of which appeal directly benefits the defendant justices therein?

C. The Decision is *Prima Facie* Evidence of this Panel's Disqualification under Judiciary Law §14 for Self-Interest

19. By its Decision (Exhibit "A"), this Court has deliberately violated elementary standards of adjudication so as to once again cover up Justice Colabella's egregious, criminally corrupt conduct which obliterated any semblance of judicial process. Thus, the Decision does *not* identify a single issue raised by me on appeal, does *not* cite legal authority other than CPLR §5513 to dismiss as "untimely" my appeal from the irrelevant April 10, 1995 Order, and does *not* particularize any facts to support the conclusory assertions upon which it bases its predictably biased adverse disposition.

20. Such wholesale omissions reflect this Court's knowledge that, individually and collectively, the due process and jurisdictional issues presented by my appeal mandated reversal, *as a matter of law*, and disciplinary and criminal referral of the collusive and fraudulent conduct of Justice Colabella and Mr. Aurnou, as I expressly requested. These appellate issues were outlined in my Notice of Appeal [R-13-4], delineated by five "Questions Presented" at the very outset of my

Brief and then developed in the five "Points" of my Brief [pp. 22-42], based on a myriad of legal authority and record references. They were then reinforced by my Reply Brief, which highlighted that the law and specific evidentiary facts upon which my appellate issues rested were entirely uncontroverted by Mr. Aurnou's demonstrably bad-faith and frivolous opposition.

21. The Court attempts to obscure that not a single appellate issue is addressed by its Decision by its cursory final sentence:

> "We have considered the defendant's *remaining* contentions and find them to be without merit" (emphasis added),

which is designed to give an impression that some "contentions" were addressed. Yet, examination of the Decision shows *no* evidence that my appellate contentions were in any way "considered". Quite the contrary.

22. Unlike the affirmance decision on my prior *Wolstencroft* appeals, where the Court falsely claimed that I had "failed to identify any ground upon which Justice Colabella's impartiality might reasonably be questioned" [R-38] -- and whose falsity I exposed on my reargument motion and which was part of this record [R-60-62] -- the Decision herein entirely omits the threshold issue of Justice Colabella's disqualification for bias, *actual* and apparent, the first and foremost issue. Indeed, because the facts on this appeal relating to Justice Colabella's *apparent* bias are essentially the same as those presented by me on my prior *Wolstencroft* appeals and on my *two* Article 78 proceedings against Justice Colabella prior thereto, this Court has a palpable self-interest in once again disregarding those facts -- since to address them would not only establish my right on this appeal to his disqualification, but my identical right on my prior appeals and in the Article 78 proceedings to such ruling from this Court, which it knowingly and wrongfully deprived me of [Br.

pp. 3-4, 23-24]. Among the evidentiary facts establishing the *appearance of impropriety* in Justice Colabella's participation in *Wolstencroft* -- consistently "ignored" by this Court -- are those identified at paragraphs "121" (twice repeated) in my §1983 federal action [R-130].

23. As in my Article 78 and prior appeals submissions, Justice Colabella's disqualification for ***actual*** bias is established by the documentary record showing deliberately lawless and malicious conduct. Thus, the very *first* paragraph of the first Point of my Brief [p. 22], under the subheading "The Subject Orders Demonstrate Justice Colabella's Actual Bias", points out that neither his April Orders [R-2-4] nor is July Decision/Order [R-6-7] cite ***any*** legal authority for the procedures he employed to grant relief to Mr. Aurnou. This was relief for which Mr. Aurnou himself had cited *no* legal authority and for which he had utterly failed to comply with explicit statutory prerequisites. Indeed, the *final* sentence of my Reply Brief [p. 19] explicitly stated:

"There is no law which could possibly support an affirmance of the appealed-from Orders".

24. Indeed, the Decision on its face bears out that there is *no* law to support the appealed-from July 18, 1995 Decision/Order or the April 4, 1995 Order. As highlighted by my Brief [p. 41] and Reply Brief, there also are *no* facts.

As to the *Ex Parte* April 4, 1995 Order:

25. Without the slightest discussion of any facts or legal authority, the Decision dismisses my appeal from Justice Colabella's April 4, 1995 Order on a bald assertion that it "was "superseded by the April 10, 1995 Order. Such bald assertion is not only *not* substantiated by the April 10, 1995 Order itself [R-3], which makes *no* reference whatever to the April 4, 1995 Order [R-2], but is rebutted by the July Decision/Order [R-6], which refers *only* to the April 4, 1995 Order and *not* at all to the April 10, 1995 Order.

26. These *dispositive* evidentiary facts were pointed out by me even before my appeals herein were perfected. My March 27, 1996 affidavit in opposition to Mr. Aurnou's cross-motion demonstrated (at ¶11) that Mr. Aurnou's attempt to dismiss my appeal from the April 4, 1995 Order as having been "superseded" was not only unsupported, but based upon a palpably perjurious and pivotal misrepresentation to the Court.

27. This Court's April 4, 1996 Decision & Order on Motion, by a panel which included Justices Krausman and McGinity, deferred the issue for determination to the panel hearing the appeal. Consequently, *both* my appellate Brief [pp. 16-17, 19] and my Reply Brief [pp. 5, 8] reiterated the evidentiary facts showing that Justice Colabella's *ex parte* April 4, 1995 Order was *not* superseded by the *ex parte* April 10, 1995 Order. Indeed, my Reply Brief *physically* annexed a copy of my March 27, 1996 affidavit to support sanctions and disciplinary referral against Mr. Aurnou, who *without* denying or disputing *any* of the facts presented by that affidavit, nonetheless continued his false claims in his Opposing Brief.

28. Thus may be seen that the Decision's failure to address the *specific* and *irrebuttable* evidentiary facts in the record showing that the ***ex parte*** April 4, 1995 Order was *not* superseded, is not inadvertent. Rather, it is a deliberate act of judicial misconduct, designed to achieve a disposition the Court knows to be factually and legally unsupported and for which its Decision offers neither facts nor law[6].

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[6] As to the April 10, 1996 Order, it is will necessarily fall with my timely appeal from the never-served, never-superseded April 4, 1995 Order. *See* my argument in my March 27, 1996 affidavit [SA-5], as well as in my Reply Brief (p. 9), including that Mr. Aurnou's service of the April 10, 1995 Order was improper in that he had by then already executed upon it, which purported service could not validate his prior nugatory execution.

As to the July 18, 1995 Decision/Order:

29. The Decision recites the proceedings before Justice Colabella as if controlling statutory procedural requirements do *not* exist, as if compliance therewith is of *no* consequence, and as though these were are *not* central appellate issues. Thus, the Decision states "plaintiff moved to obtain the releases and sanctions","plaintiff cross-moved for an order directing that the $100,000 be returned to her" and makes reference to plaintiff's affidavit -- *without* the slightest comment as to whether plaintiff's motion, cross-motion, and affidavit were legally sufficient, authorized, and proper for obtaining the relief she sought. That they were *not* was meticulously detailed by my Brief, particularizing by record references and legal authority that:

(a) Mr. Aurnou's motion did *not* comply with the requirements of CPLR §2606 for obtaining property deposited into court or with the requirements of CPLR §1001 for joinder of necessary parties [*See* Br. 26-30];

(b) Mr. Aurnou's cross-motion to my cross-motion was procedurally unauthorized by the CPLR, which does not permit a cross-motion to a cross-motion; it was untimely; it was legally insufficient on numerous specified grounds; it was unsupported by any affidavit from Plaintiff; and it could not be belatedly received by Justice Colabella on April 3, 1995 because it lacked an affidavit of service [Br. 34-37]; and

(c) Plaintiff's affidavit, of disputed authenticity, was non-probative of her alleged fraud claim [Br. 37-38] and could not effect a partial rescission of settlement, which required a plenary action, meeting the specificity requirements of CPLR §3016(b) for a cause of action for fraud [Br. 25, 41-43] and joining all necessary parties, including my insurer, AIG [Br. 28-31].

30. As to the joinder issue, the Decision has not only ignored all my appellate

arguments, but AIG's September 20, 1996 letter, a copy of which it sent directly to the Court and a copy which I annexed to my Reply Brief [SA-1]. In that letter, AIG expressly concurred with pages 28-32 of my Brief that AIG should have been joined based on its funding of the $800,000 settlement of the *Wolstencroft* malpractice action, including the $100,000 gift to the Ninth Judicial Committee. Indeed, my Brief detailed [pp. 10-11] that both Justice Colabella and Mr. Aurnou *knew* that AIG had asserted a claim to the $100,000 if the stipulation were not to be enforced in its entirety -- and had opposed Mr. Aurnou's prior attempt to obtain those monies.

31. As to my cross-motion [R-27], the Decision, rather than making findings as to the sufficiency of its separate branches of relief, substitutes a palpably improper characterization that these were "more roadblocks" by me (Exhibit "A", p. 2). Baldly claiming that the issues raised by my cross-motion "either had already been resolved against [me], or which I had no standing to raise, or were completely without merit" (Exhibit "A", p. 2), the Decision conspicuously does not identify which branches of the cross-motion were denied by Justice Colabella on what grounds, not all of which branches it even identifies[7]. This omission is to conceal what the record reveals: I was entitled to all relief requested by me, *as a matter of law.*

32. Moreover, as to that branch of my cross-motion seeking to amend the releases, the July Decision/Order *on its face* [R-6] shows that Justice Colabella did not deny me that relief for *any* of the three reasons asserted by this Court's Decision, but, rather, because the releases had not been appended to my cross-motion and additionally that "it was unclear which of the releases" I was

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[7] Among the unidentified branches to which I was entitled to relief were: a stay pending appeal, as to which there was *no* prejudice; the residence address of the out-of-state Plaintiff, with a posting of security; and an evidentiary hearing as to disputed facts. [*See*, Br. 39-40]

referring to. As argued by my Brief [R-32], such denial demonstrates the prejudice to me of Justice Colabella's unrequested severance of my cross-motion from Mr. Aurnou's motion seeking those very releases -- and which were granted to him under the April Orders [R-2,3]. Since Mr. Aurnou had not denied or disputed that the releases were erroneously dated, there was no question as to my entitlement to that relief [Br. p. 40].

33. Inasmuch as the last three branches of my cross-motion were reserved by Justice Colabella's April Orders [R-2,4] for subsequent decision [R-6], this Court, in affirming his July Decision/Order was required to make specific findings as to those three branches. The Decision conspicuously does not do this.

34. In addition to amendment of the releases, which is branch #5 of my cross-motion, there is the substituted branch #6, namely, enforcement of the $100,000 payment to the Ninth Judicial Committee, pursuant to the stipulation of settlement, and branch #7, my request for:

> "other and further relief...including a trial on any and all issues raised on this motion and cross-motion, pursuant to CPLR §2218, before another judge outside this judicial Department".

35. As pointed out by my Brief [p. 40], the July Decision/Order [R-6] identifies the sixth branch, which originally sought return of the $100,000 monies to the insurer, as having been "withdrawn", *without* identifying that it was substituted and that my showing of entitlement in support thereof was entirely undenied and undisputed. Indeed, this Court's Decision (Exhibit "A") identifies ***none*** of the evidence in the record supporting my cross-motion entitlement for payment of the $100,000 to the Ninth Judicial Committee -- evidence which included detailed affidavits from *four* members of the Ninth Judicial Committee, attesting to their membership and the Committee's activity prior to the date of the stipulation of settlement and thereafter, culminating

in its growth and development as a component of the Center for Judicial Accountability, Inc. [R-255-267], as well as other substantiating documentation as to its tax I.D. number [R-268], bank account [R-269], and Certificate of Incorporation [R-270].

36. *Only* by obliterating all this record evidence does the Decision pretend, without the slightest elaboration, that: "the record supports the Supreme Court's determination that the Ninth Judicial Committee *is* an alter ego of the defendant." Indeed, more than obliterating the evidence in the record, such statement actually ***misrepresents*** Justice Colabella's July Decision/Order. Such Decision/Order [R-7] explicitly recognized the jure separate existence of the Ninth Judicial Committee, but summarily held -- without evidentiary or legal support -- that it was "irrelevant":

> "The fact than an entity known as the Ninth Judicial Committee has since been established by defendant with the formal trappings of an independent organization, to wit, incorporation, a tax identification number, a bank account, and additional identified members, is irrelevant to whether such an entity formally existed independently of defendant at the time of the settlement." [R-7]

37. As pointed out by my Brief [p 37], there is *no* evidence in the record, including Plaintiff's non-probative affidavit [R-290-1, Br. pp. 20, 37-38], that the subsequent development and expansion of the Ninth Judicial Committee is "irrelevant" to my cross-motion entitlement that the $100,000 be turned over to it. This is over and apart from the fact that the November 21, 1991 court transcript [R-227-247] establishes that weeks *before* the stipulation of settlement, the small and informal nature of the Ninth Judicial Committee was known to Plaintiff, Mr. Aurnou, and Justice Colabella and the December 13, 1991 stipulation transcript[8] nowhere

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[8] The stipulation of settlement appears at pages 35-68 of the Appendix of my prior consolidated *Wolstencroft* appeals.

imposed any requirement of "formal trappings" upon the Ninth Judicial Committee, either then or at any point thereafter.

38. As to that the Decision's out-of-context reference to my characterization of the $100,000 as "a form of a bribe" -- a statement which was part of an extensive written submission setting forth specific facts showing that the December 13, 1991 settlement was *not* voluntarily agreed to by me[9], as the Decision purports, but, rather, the product of extreme coercion, intimidation, and extortion upon me, created by the deliberate and collusive misconduct of Justice Colabella, Mr. Aurnou, and AIG -- such would not entitle Plaintiff to such monies. As demonstrated by my Brief [pp. 10-11] and hereinabove recited, AIG had previously claimed its right to the recovery of those monies. This claim was recognized in Justice Colabella's June 30, 1992 Decision/Order [R-176], which had stated that AIG's right thereto was "premature" in that such "gift" to the Ninth Judicial Committee had not been "invalidated". Plainly, by his July 1995 Decision/Order [R-6], that issue, as well as the other paramount issue recognized by his June 30, 1992 Decision/Order -- the impact of such invalidation on the balance of the stipulation -- were ripe for adjudication [Br. 21, 41-43].

39. Finally, as to the seventh branch of my cross-motion, my right to a trial as to issues raised, my Brief [p. 19] pointed out that such fundamental due process right was conspicuously unadjudicated by Justice Colabella's July Decision/Order [R-6]. My entitlement to a hearing was the fifth of the appellate "Question Presented", set forth at the outset of my Brief, and was developed at Point V of my argument [Br. pp. 41-43]. Plainly this issue, as every other, are of

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[9] *See* my February 5, 1992 affidavit at pages 257-286 of the Appendix of my prior *Wolstencroft* appeals, incorporating by reference my January 17, 1992 affidavit in support of my cross-motion to vacate the stipulation of settlement, appearing at pages 86-101.

constitutional magnitude, reflecting, as they do, wholesale and deliberate violation of my Fourteenth Amendment rights of due process and equal protection and counterpart rights under the New York State Constitution.

WHEREFORE, it is respectfully prayed that this Court grant Appellant:

(a) reargument, reconsideration, and renewal and, on granting thereof, that it vacate its December 23, 1996 Decision & Order, and disqualify itself and transfer this appeal to another Judicial Department; and, if this relief is denied;

(b) leave to appeal to the Court of Appeals; and, if this relief is denied;

(c) leave to appeal to the Court of Appeals on certified questions:

(i) Whether a court, whose justices are defendants in a federal civil rights action by Appellant herein, is disqualified from adjudicating her appeals, where, in addition, the case on appeal forms part of the gravamen of her federal civil rights action, the adverse outcome of which appeal directly benefits the defendant justices therein?

(ii) Whether an application to obtain property out of court under CPLR §2606, which is not brought by a separate plenary proceeding resting on original process and notice of petition served on all parties with an interest that might be affected by a judgment therein, is jurisdictionally void?

(d) such other and further relief as may be just and proper.

DORIS L. SASSOWER

Sworn to before me this
12th day of February 1997

Notary Public

Phone I.D. N.Y.S
Division etc.

Murry Sharan
Notary Public, State of Florida
Commission No. CC 530643
My Commission Expires 04/28/00
1-800-3-NOTARY - Fla. Notary Service & Bonding Co.

ACKNOWLEDGEMENT

State of FLORIDA:

County of BROWARD:

On February 12, 1997, Doris L.Sassower came before me and acknowledged that she signed the foregoing Affidavit in Support of Reargument and Other Relief.

MURRY SHARAN

FEB 12 1997

Murry Sharan
Notary Public, State of Florida
Commission No. CC 530643
My Commission Expires 04/28/00
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