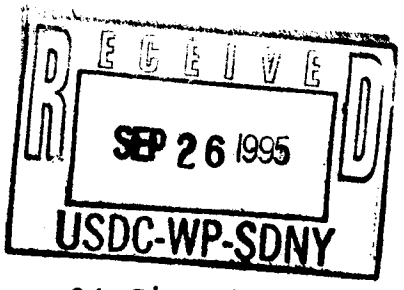

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

DORIS L. SASSOWER,

Plaintiff,

94 Civ. 4514 (JES)

-against-

Hon. GUY MANGANO, PRESIDING JUSTICE OF THE APPELLATE DIVISION, SECOND DEPARTMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK, and the ASSOCIATE JUSTICES THEREOF, GARY CASELLA and EDWARD SUMBER, Chief Counsel and Chairman, respectively, of the GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT, GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT, Does 1-20, being present members thereof, MAX GALFUNT, being a Special Referee, and G. OLIVER KOPPELL, Attorney General of the State of New York, all in their official and personal capacities,

Defendants.

----------x

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Doris L. Sassower
Plaintiff Pro Se
DLS-7257
283 Soundview Avenue
White Plains, New York 10606

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

DORIS L. SASSOWER,

Plaintiff,

94 Civ. 4514 (JES)

-against-

HON. GUY MANGANO, PRESIDING JUSTICE OF THE APPELLATE DIVISION, SECOND DEPARTMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK, and the ASSOCIATE JUSTICES THEREOF, GARY CASELLA and EDWARD SUMBER, Chief Counsel and Chairman, respectively, of the GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT, GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT, Does 1-20, being present members thereof, MAX GALFUNT, being a Special Referee, and G. OLIVER KOPPELL, Attorney General of the State of New York, all in their official and personal capacities,

Defendants.

----------x

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY INJUNCTION AND TRO

THE FACTS

Briefly summarized, this is a §1983 action seeking declaratory, injunctive, and monetary relief to redress a multitude of flagrant deprivations of constitutional rights to due process, equal protection, and free speech. The Verified Complaint of Plaintiff, a distinguished, actively practicing lawyer and leader of the bar (Compl. ¶¶13-16) (Exhibit "B")[1] until the judicial Defendants' wrongful June 14, 1991 "interim" Order, suspending her law license (Exhibit "A"), alleges that such suspension was accomplished in the complete absence of all jurisdiction--without any charges on which the suspension was

---

[1] Exhibits referred to herein are annexed to Plaintiff's accompanying Affidavit.

based, without a hearing, without a finding that she was guilty of any professional misconduct immediately threatening the public interest, and without reasons--all contrary to law and the judicial Defendants' own rules (22 NYCRR §691.4(l)).

Plaintiff's Verified Complaint further alleges that the judicial Defendants and their appointees, agents, and employees have deliberately, maliciously, invidiously, and collusively abused their powers in a Dombrowski[2]-like campaign of harassment and retaliation against her. This has included their unlawful perpetuation of the June 14, 1991 "interim" suspension Order, notwithstanding decisional law of the state's highest court, Matter of Nuey, 61 N.Y.2d 513 (1984) (Exhibit "G-1"), and Matter of Russakoff, 79 N.Y.2d 520 (1992) (Exhibit "G-2"), required that it be immediately vacated for lack of findings, as well as their prosecution of a series of unlawful, legally groundless, and factually fabricated disciplinary proceedings against Plaintiff. As more fully set forth in the Affidavit accompanying this motion, the judicial Defendants have further viciously retaliated against Plaintiff by dishonest, legally insupportable appellate decisions which aid, abet, and encourage heinous violations of her constitutional rights by Supreme Court judges of the Ninth Judicial District.

Plaintiff alleges that Defendants' retaliation against her results from her judicial "whistleblowing" activities, i.e, speaking out against and challenging the political manipulation

---

2 Dombrowski v. Pfister, 380 U.S. 479 (1965).

of judicial elections (Compl. ¶¶7, 75, 90, 248).

Due to the aforesaid judicial animus against her and conspiracy among the Defendants (Compl. ¶234)--detailed by the specific allegations of the Verified Complaint--Plaintiff has no state legal remedies available to redress the violation of her federally-protected constitutional rights.

All Defendants herein are represented by the Attorney General of the State of New York, sued herein as a named co-defendant based on his complicity and collusion with Defendants to cover-up their official misconduct (Compl. ¶10).

By post-Answer motion pursuant to Rule 12(c), the Attorney-General moves for judgment on the pleadings on behalf of himself and his co-Defendant clients on the asserted grounds that the complaint fails to state a cause of action and lacks subject matter jurisdiction. Plaintiff has disposed of the Attorney-General's spurious arguments in her June 23, 1995 Memorandum of Law and her accompanying Affidavit of the same date. To avoid needless duplication, the Court is respectfully referred to both documents, incorporated herein by reference.

This Memorandum of Law is specifically directed to Plaintiff's application for a preliminary injunction pending ultimate disposition of this action and a temporary restraining order pending hearing and determination of Defendants' dismissal motion, scheduled for oral argument on October 27, 1995.

POINT I

THE RECORD BEFORE THE COURT ENTITLES PLAINTIFF TO A PRELIMINARY INJUNCTION AND A TEMPORARY RESTRAINING ORDER AS A MATTER OF LAW AND IN THE INTERESTS OF JUSTICE

Standards for Granting A Preliminary Injunction:

As reiterated in Gruby v. Brady, 92 Civ. 3888 (Dec. 9, 1994), Lexis 17649, per Kram, J., "in this circuit, a preliminary injunction may be issued only when the party seeking relief can make:

> "a showing of (A) irreparable harm and (B) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." (at p. 7),

citing numerous Second Circuit cases. Plaintiff easily meets all three of the aforesaid criteria for granting injunctive relief--albeit only two are required in this Circuit.

A. IRREPARABLE HARM

As noted in the recent case of Haley v. Pataki, 863 F. Supp. 816 (N.D.N.Y., decided May 3, 1995), reviewing the cases in this Circuit, irreparable harm "means an injury for which a monetary award cannot be adequate compensation."

This Circuit's decision in Erdmann v. Stevens, 458 F.2d 1205 (2nd Cir. 1972), recognizes the profound non-compensable nature of the injury represented by imposition of discipline upon an attorney:

> "...in our view a court's disciplinary proceeding against a member of its bar is

> comparable to a criminal rather than to a civil proceeding. A lawyer is not usually motivated by the prospect of monetary gain in seeking admission to the bar or in practicing his chosen profession. However, it cannot be disputed that for most attorneys the license to practice law represents their livelihood, loss of which may be a greater punishment than a monetary fine. See Bradley v. Fisher, 80 U.S. [13 Wall.] 335, 355, 20 L.Ed. 646 (1872); Spevack v. Klein, 385 U.S. 511, 516, 87 S.Ct. 625, 17 L.Ed.2d 574 (1976). Further more, disciplinary measures against an attorney, while posing a threat of incarceration only in cases of contempt, may threaten another serious punishment--loss of professional reputation. The stigma of such a loss can harm the lawyer in his community and in his client relations as well as adversely affect his ability to carry out his professional functions, particularly if his branch of the law is trial practice. Undoubtedly these factors played a part in leading the Supreme Court to characterize disbarment proceedings as being 'of a quasi-criminal nature,' In Re Ruffalo, 390 U.S. 544, 551, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968)."

In the case at bar, the judicial Defendants' charge-less, hearing-less, finding-less so-called "interim" suspension Order (Exhibit "A") forced Plaintiff to close her law practice of 35-years overnight and dissolve her professional corporation--in which she had invested her lifetime career--and has deprived her of all professional income for more than four years.

Yet as enormous as is the on-going financial loss to Plaintiff--the damage for which Defendants claim they are immune[3]--far more irreparable is the ostracism, humiliation, and social stigma that Plaintiff daily suffers in the community as a

---

[3] See, Point IV of Defendants' Memorandum of Law in support of Judgment on the Pleadings.

"suspended attorney", whose important pro bono activities as Director of the Center for Judicial Accountability, Inc. are discredited by reason thereof.

Plaintiff's accompanying Affidavit graphically details the foregoing, as well as the fact that the June 14, 1991 suspension Order (Exhibit "A") is constantly being used against her in unrelated litigation, both federal and state, to prejudice and defeat her rights.

Thus, there is no question as to the massive and on-going injury to Plaintiff caused by the June 14, 1991 suspension Order--which is "not remote or speculative." Reuters Ltd. v. United Press Inte'l, Inc., 903 F.2d 904, 907 (2d Cir. 1990).

Moreover, in view of Defendants' argument that they are immune from damages in this §1983 action, as urged in their dismissal motion, the incalculable monetary loss resulting from their unlawful and retaliatory actions could not even, according to them, be "rectified by financial compensation" Tucker Anthony Realty Corp. v. Schlesinger, 888 F. 2d 969, 975 (2d Cir. 1989). This is all the more reason for granting her injunctive relief.

B. LIKELIHOOD OF SUCCESS ON THE MERITS

Although only a "reasonable likelihood" of success is required for a preliminary injunction, Abdul Wali v. Coughlin, 754 F.2d 1015, 1025 (2d Cir. N.Y. 1985), in the case at bar, there is an absolute likelihood of success. Quite simply, there is no law, state or federal, which would permit the "interim" suspension of an attorney's license where, as here, there is no

finding that the attorney is guilty of professional misconduct immediately threatening the public interest, no reasons stated for the suspension, and where, in addition, the attorney has been denied any hearing, pre- or post-suspension, as to the basis of her suspension.

Black-letter law articulated by New York's highest court in Matter of Nuey (Exhibit "G-1") and affirmed in Russakoff (Exhibit "G-2") holds that a finding-less "interim" suspension order must be immediately vacated.

Indeed, the judicial Defendants own court rules (22 NYCRR §691.4(l)) (Exhibit "G-3") expressly require "a finding that the attorney is guilty of professional misconduct immediately threatening the public interest" as a prerequisite for "interim" suspension thereunder (§691.4(l)(1) and, additionally, expressly require the court to "briefly state its reasons" for suspension in such "interim" orders (§691.4(l)(2).

Yet, notwithstanding the June 14, 1991 "interim" suspension Order (Exhibit "A"), on its face, makes no findings, is not based on findings, and states no reasons, the judicial Defendants continue to disregard the explicit requirements of their own court rules (Exhibit "G-3), Matter of Thalheim, 853 F.2d 383 (5th Cir. 1988)[4] and, have repeatedly--and without

[4] "Attorney...suspension cases are quasi-criminal in character...Accordingly, the court's disciplinary rules are to be read strictly, resolving any ambiguity in favor of the person charged. Moreover, the same principle of construction follows from the fact that it was the curt that drafted these rules. The court wrote its own rules; it must abide by them." (at 388) (See cert petition, Point IV).

reasons--denied Plaintiff protection of the law, as guaranteed under the Fourteenth Amendment to the U.S. Constitution, equal to that afforded attorneys Nuey and Russakoff.

Our nation's highest court has repeatedly held that a hearing is a prerequisite for suspension of a license, Bell v. Burson, 402 U.S. 535, 539 (1971), citing numerous cases--and that where the narrowest circumstances of extreme exigency make the holding of a hearing unfeasible--after a probable cause finding of guilt immediately threatening the public interest--that a post-suspension hearing must be afforded "without appreciable delay", Barry v. Barchi, 443, U.S. 55, 66 (1979).

Yet, the uncontroverted pleaded allegations show that in the case at bar, there was no findings, no hearing afforded to Plaintiff prior to issuance of the finding-less "interim" suspension Order, and that during the more than four years that have since elapsed she has been repeatedly denied a hearing as to its basis. Indeed, as alleged in Plaintiff's Verified Complaint, the judicial Defendants have not only denied her motions for a post-suspension hearing, but have denied them with imposition of maximum costs against her (Compl. ¶¶146(b), 165).

Added to these aforesaid blatant violations of Plaintiff's fundamental constitutional rights is that, as conceded by the New York Court of Appeals in Nuey (Exhibit "G-1"), there is no statutory authority in Judiciary Law §90 for orders of "interim" suspension--which are entirely the product of the rule-making by the Appellate Divisions (Compl. ¶¶211-216)--

and that, as implied by its decision in Russakoff (Exhibit "G-2"), the judicial Defendants' "interim" suspension rule (22 NYCRR §691.4(l)) is constitutionally infirm (See, cert petition, Points IV and I).

Plaintiff's request for conversion of their dismissal motion into a summary judgment motion is not opposed by Defendants. Nor have they controverted the material facts set forth in her June 23, 1995 submissions, including her Rule 3(g) Statement. That uncontroverted Rule 3(g) Statement (Exhibit "C") not only repeated, realleged, and reiterated the material allegations of the Verified Complaint, but specifically highlighted the constitutionally violative nature of the June 14, 1991 "interim" suspension Order. It also highlighted that the October 18, 1990 Order directing Plaintiff's medical examination was not a "lawful demand" of the court--as 22 NYCRR §691.4(l)(1)(i) expressly requires.

Therefore, for such reason as well, Plaintiff's prospect of success on the merits for the pleaded violations of her federal and state constitutional civil rights is more than "likely", it is unassailable. Plaintiff easily meets the standard enunciated in Haley v. Pataki, supra, citing Unicorn Management Corp. v. Koppers Co., 366 F.2d 199, 204 (2d Cir. 1966).

As Plaintiff's June 23, 1995 Memorandum of Law demonstrates, Defendants, in moving for judgment on the pleadings under Rule 12(c), have gone beyond the pleadings by disputing,

rather than admitting, as required for purposes of the motion, the truth of the pleaded allegations. Consequently, the Court is empowered, as such rule provision expressly authorizes, to convert such motion into one for summary judgment under Rule 56. Kramer v. Time Warner Inc., 937 F.2d 767, 773 (2d Cir. 1991):

> "A motion for summary judgment under Rule 12(c) is to be treated exactly like one under Rule 56.... There is no need for a trial of the liability issues involved herein, since this is not a case where there is any genuine issue of material fact upon which reasonable men might reach different conclusions." Government of India v. Cargill, Inc., 445 F. Supp. 714 (S.D.N.Y. 1978).

In failing to rebut Plaintiff's legal arguments in her June 23, 1995 Memorandum of Law, Defendants have conceded that they have no defense to this litigation. Likewise, Defendants have failed to rebut Plaintiff's evidentiary showing, contained in detailed record references annexed to her June 23, 1995 Affidavit, that the factual allegations in her Verified Complaint are not only true for purposes of the motion, Merrill Lynch, Pierce, Fenner & Smith, Inc., 450 F.Supp. 69 (S.D.N.Y. 1978), but are TRUE IN FACT.

C. THE BALANCE OF HARDSHIPS TIPS DECIDEDLY IN PLAINTIFF'S FAVOR

Plaintiff further meets the second prong's alternative requirement for attaining injunctive relief: that there exist sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of the hardships tipping decidedly toward her as the movant for such relief. American Cyanamid v. Campagna Per Le Farmacie, 847 F.2d 53, 55

(2d Cir. 1988).

Even apart from Plaintiff's absolute entitlement to summary judgment in her favor, there can be no good faith challenge that Plaintiff's Verified Complaint raises transcendingly important constitutional questions which must be addressed by a federal court. Apart from blatant denial by the state courts of Plaintiff's right to due process and equal protection of the laws, New York's attorney disciplinary law is clearly unconstitutional--as more fully detailed in Plaintiff's cert petition (See, "Questions Presented", "Reasons for Granting the Writ", Points I-IV).

In light of the irreparable injury to Plaintiff and her entitlement to success on the merits, there is no need for equity balancing. However, the equities are overwhelmingly in Plaintiff's favor. As seen from Nuey and Russakoff and the judicial Defendants' own court rules (22 NYCRR §691.4(l)) (Exhibits "G-1", "G-2", "G-3"), no public interest is served by the interim suspension of an attorney's license, where, as here, there is no finding that the attorney is "guilty of professional misconduct immediately threatening the public interest", as required by §691.4(l)(1) itself.

POINT II

THE JUDICIAL DEFENDANTS MUST BE ENJOINED FROM ADJUDICATING MATTERS INVOLVING PLAINTIFF

By failing to controvert Plaintiff's 3(g) Statement (Exhibit "C"), Defendants have conceded the truth of her serious allegations of heinous retaliatory conduct, to wit, that they

have engaged in a retaliatory vendetta against her, inter alia, by issuing and perpetuating a fraudulent and unlawful suspension of her license and authorizing multiple disciplinary proceedings against Plaintiff, which they know to be completely unfounded--legally and factually. Consequently, on the state of the record before this Court, such judges must be enjoined from any adjudication of matters involving Plaintiff since they are plainly not an "impartial tribunal".

The shocking appellate record in Wolstencroft, herein transmitted (File Folders I-III), only further confirms the exigent need for this Court to disqualify the judicial Defendants. In the face of Plaintiff's formal motion in Wolstencroft to disqualify the judicial Defendants under Judiciary Law §14 based on their patent self-interest in the appeals (Exhibit "O"), the judicial Defendants not only refused to recuse themselves, but went on to abandon all adjudicatory standards by its demonstrably dishonest and insupportable decision on the appeals (See, Affidavit in Support of Resettlement, Reargument, Renewal (File Folder II-A).

There is no more sacrosanct right under our law than that of a fair hearing before an impartial tribunal. As our highest Court has stated:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires the absence of bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness... But to perform its high function in the best way 'justice must satisfy the appearance of justice.'"

(citation omitted). In re Murchison, 349 U.S. 133, 134 (1955).

Aetna Life Insurance Co. v. La Voie, 475 U.S. 813, 106 S.Ct. 1580 (1986), citing Oakley v. Aspinwall, 3 N.Y. 547 (1850); Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988).

The issue before this Court, however, is not simply the appearance of impropriety in the judicial Defendants continuing to adjudicate matters involving Plaintiff, but the actuality, proven by unassailable documentary evidence, of a venomous and "invidiously discriminatory animus", aimed at depriving Plaintiff of her due process rights and the equal protection of the law. Griffen v. Breckenridge, 403 U.S. 88, 102-03 (1971); Orshan v. Anker, 489 F. Supp. 820, 823-24 (E.D.N.Y. 1980).

CONCLUSION

PLAINTIFF'S ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION AND TRO SHOULD BE GRANTED IN ALL RESPECTS, AS A MATTER OF LAW AND IN THE INTERESTS OF JUSTICE

Respectfully submitted,

DORIS L. SASSOWER
Plaintiff Pro Se
283 Soundview Avenue
White Plains, New York 10606

White Plains, New York
September 25, 1995