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VIA FAX AND MAIL

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December 19, 1991

Hon. Thomas P. Griesa
Chairman, Grievance Committee
Southern District, U.S. Courthouse
New York, New York 10007

Re: M-2-238

Honorable Sir:

This follows up my December 11, 1991 letter. I respectfully request a 60 day extension by reason of the circumstances therein described as well as facts hereinafter set forth.

Alternatively, I would ask that the matter be set down for a hearing based on the enclosed copy of my motion for leave to appeal to the Court of Appeals. Although the Court of Appeals denied such leave, my application fully reflects the fact that I was denied my constitutional rights and that I was entitled to an evidentiary hearing prior to suspension.

It may be noted that only recently the Court of Appeals indicated that it may reevaluate its standards for the type of "immediate suspension" I was subjected to because of the substantial question raised as to whether they conform to constitutional requirements (NYLJ 12/13/91 p.1, cols. 3-5 "Challenge to Rules on Lawyer Suspensions"). I might note that my case is far stronger than the one presently under consideration by the Court. As my attorney's supporting Affirmation points out (at p.21), the Appellate Division, Second Department, ignored the mandatory requirements of its own rules, which are clearly intended to protect attorneys from immediate suspension without the uncontroverted or admitted showing of serious misconduct required under Padilla, 67 N.Y.2d at 448. Neither of those prerequisite facts existed in my case.

The extension herein requested would permit time for a decision by the Court of Appeals on the matter presently before it which might permit me to seek relief based thereon by way of renewal.

Your kind consideration is much appreciated.

Most respectfully,

Doris L. Sassower
DORIS L. SASSOWER

Enclosures (2)

568 Ex "J-5"

New York Law Journal

Friday, December 13, 1991

Challenge to Rules on Lawyer Suspensions

BY MARTIN FOX

THE NEW YORK Court of Appeals indicated this week it may re-evaluate standards it laid down five years ago allowing "immediate suspension" of attorneys by the Appellate Divisions pending completion of formal disciplinary proceedings.

The action came Wednesday when Judge Richard D. Simons issued a temporary restraining order lifting an Oct. 31 suspension by the Appellate Division, Second Department, of Queens attorney Norman F. Russakoff, who is accused of the conversion of a client's funds. In the order, Judge Simons directed that the Grievance Committee for the Second and 11th Districts submit its brief on the show-cause order by Monday, indicating the matter would be resolved expeditiously by the full Court.

Robert H. Straus, the committee's chief counsel, vigorously defended the suspension and predicted it would be reinstated and leave to appeal denied by the full Court.

According to Nicholas C. Cooper, who represents Mr. Russakoff, the Court could use the opportunity to redefine its 1986 ruling that spelled out circumstances under which the Appellate Divisions may temporarily suspend attorneys accused of "serious" misconduct until their cases are resolved. The present process, he argued, denies attorneys their Equal Protection and Due Process rights.

Specifically, he maintained in his papers that his client "clearly controverted" the charge of conversion, there

was no showing of "venal intent," which he maintained was a "necessary element of conversion" and a standard used in the First Department, and that Mr. Russakoff was entitled to a full hearing before he was suspended.

Mr. Cooper added that while the action stemmed from a complaint and examination of bank records which showed an account that "contained less funds than due the client," no claims were raised that persons involved in

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§ 691.4 Appointment of Grievance Committees: Commencement of Investigation of Attorney Misconduct; Complaints; Procedure

(a) This court shall appoint three grievance committees for the Second Judicial Department. One of these grievance committees shall be charged with the duty and power to investigate and prosecute matters arising in or concerning attorneys practicing, or currently residing or having resided in the second and eleventh judicial districts at the time of their admission to practice by the Appellate Division; another shall have the duty and power to

Lawyer Suspension

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a real estate transaction did not receive their funds "in a timely fashion."

Mr. Cooper said his client had invoked the Fifth Amendment in appearing before the Grievance Committee because any admission that the funds in the escrow account were missing, for whatever reason, even accounting errors, would constitute "uncontroverted evidence."

In *Matter of Padilla*, 67 NY2d, 440, the Court of Appeals held the Appellate Divisions can immediately suspend attorneys "when serious misconduct is admitted or uncontroverted and the public interest is threatened."

Mr. Cooper, who previously had been the chief counsel for both disciplinary committees in the city, also challenged the failure of the Appellate Division to provide for "a prompt hearing" after the suspension, which will result in a lengthy delay of months until a final disposition of the charges.

'Absolutely Amazed'

Mr. Straus said he was "absolutely amazed" when he learned of the Court's action. He said the suspension of Mr. Russakoff was in line with the *Padilla* case and insisted his adversary's "facts were inaccurate." If he had been given an opportunity to reply before issuance of the order — one he described as "ex parte" — by Judge Simons, Mr. Straus said, the suspension would not have been lifted.

Mr. Straus asserted the finding of conversion was based on "uncontroverted evidence" because the examination of bank records showed the funds "fell below" the required level. While not disputing Mr. Cooper's contention that there was no loss of funds to any persons involved in the case, the chief counsel maintained that even if the charges arose from "incompetence," they still supported the need for "protection of the public interest."