

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x  
: DORIS L. SASSOWER, : Index No.  
: : 109141/95  
: Petitioner, :  
: :  
: -against- :  
: :  
: COMMISSION ON JUDICIAL CONDUCT OF :  
: THE STATE OF NEW YORK, :  
: :  
: Respondent. :  
: :  
-----x

60 Centre Street - Room 309-M  
New York, New York 10007  
May 11, 1995

B E F O R E :

HON. JULIUS BIRNBAUM,  
Special Referee

A P P E A R A N C E S :

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

OFFICE OF THE ATTORNEY GENERAL OF THE  
STATE OF NEW YORK  
Attorney for Respondent  
120 Broadway  
New York, New York 10271  
BY: OLIVER W. WILLIAMS, ESQ.  
Assistant Attorney General

ALSO PRESENT: ELENA SASSOWER

FREDERIC C. CANTOR,  
Official Court Reporter

Ex "O"

1  
2 THE REFEREE: I have before me the  
3 original Article 78 of the Petition for  
4 Doris L. Sassower which is directed to  
5 various agencies, particularly the Attorney  
6 General of New York State, District  
7 Attorney of New York County, New York State  
8 Ethics Commission, United States Attorney  
9 for the Southern District of New York,  
10 which requests that those agencies to  
11 intervene in the proceeding. And I'm  
12 looking at the Notice of Right to Seek  
13 Intervention dated April 10, 1995 from the  
14 petitioner to those aforementioned  
15 agencies.

16 Now this matter was originally on the  
17 calendar on May 3rd, 1995. And on that  
18 day, as I recall, an application was made  
19 to adjourn the matter by the Assistant  
20 Attorney General, Mr. Williams. And he  
21 appeared before me downstairs in Room 130  
22 at which time I heard him and I adjourned  
23 the matter to a date in June. I can't see  
24 the exact date, because it's been crossed  
25 out, and I directed that the Attorney

1  
2 General serve all opposing papers in hand  
3 upon the petitioner by a date also blacked  
4 out.

5 Subsequent to that matter, I received  
6 a telephone call from the law secretary to  
7 Justice Herman Cahn, who advised me that  
8 Justice Cahn had had a communication from  
9 the petitioner, who was, we will say, upset  
10 about the adjournment granted by me to a  
11 date in June. And it was at the direction  
12 of Justice Cahn's Chambers that this matter  
13 was put on the motion calendar for May 11,  
14 1995.

15 I appeared downstairs this date, and I  
16 was asked by the petitioner to have this  
17 argument or this application put on the  
18 record.

19 Is that a fair statement of what has  
20 transpired in the past?

21 MR. WILLIAMS: Yes, sir, it is.

22 MS. SASSOWER: The application being  
23 by the respondent represented by Mr.  
24 Williams for an adjournment of this matter,  
25 which he indicated he wished to make to

1  
2 your Honor.

3 THE REFEREE: Yes. But what I stated,  
4 is that a fair statement of the history of  
5 this matter up until this time?

6 MS. SASSOWER: I did not hear you  
7 identify in any way the basis on which the  
8 adjournment application was made to your  
9 Honor.

10 THE REFEREE: I don't recall the basis  
11 of the application. I saw it was the first  
12 time on, and the Assistant Attorney General  
13 appeared before me as many, many lawyers do  
14 over the years, and they make applications.  
15 I don't note any basis for making when I  
16 adjourn the matter, particularly if it's on  
17 for the first time. So I didn't note it,  
18 and I don't recall exactly about it, except  
19 I would hazard an educated guess that it  
20 appeared that Mr. Williams told me that he  
21 didn't have sufficient time to prepare a  
22 response to the matter, and that it was on  
23 that basis that I adjourned the matter,  
24 undoubtedly. But correct me if I'm wrong  
25 about that, sir.

1  
2 MR. WILLIAMS: You are correct.

3 However, I would like to interject one  
4 other thing that did transpire during our  
5 conversation on May 3rd. As I approach  
6 you, I'll let you know up front that it was  
7 not a consensual request, that the  
8 petitioner did object to it. I did notify  
9 her through her daughter that I would seek  
10 an adjournment. I did not talk to her, but  
11 I did talk to her daughter who said that  
12 she was authorized to speak on her mom's  
13 behalf.

14 THE REFEREE: You recall the  
15 daughter's name?

16 MR. WILLIAMS: Elena, who is here, and  
17 who has been designated as Mrs. Sassower's  
18 paralegal.

19 THE REFEREE: Okay. You've stated the  
20 record, but, of course, since I hear so  
21 many applications downstairs, I don't  
22 recall what happened ten days or maybe I'm  
23 slipping, maybe I don't even recall what  
24 happened yesterday. But I generally have  
25 an excellent memory. So, therefore, we are

1  
2 here today, we are up in my courtroom, and  
3 is it the intention of the Attorney General  
4 to make another application today?

5 MR. WILLIAMS: That's correct, your  
6 Honor. I'm making the application on the  
7 same basis in which I made at the initial  
8 application, which was I told the paralegal  
9 to Mrs. Sassower, the daughter, the night  
10 prior to-- maybe a week or so prior to  
11 seeking the adjournment was that due to  
12 whatever cuts one may consider in our  
13 office, my section was now fifty percent  
14 staffed, half staffed, and that I saw at  
15 that early date that considering the  
16 appellate briefs, the hearing, the trial  
17 and the second circuit briefs that I'm  
18 presently working on right now, that I  
19 would not be able to timely and adequately  
20 prepare a defense to their Article 78  
21 Petition that posed constitutional issues  
22 and several other issues that needed to be  
23 substantially researched and addressed.

24 THE REFEREE: Can I interrupt you for a  
25 moment? One of the agencies mentioned is

1  
2 the Attorney General. Is it the intention  
3 of the Attorney General to appear for the  
4 other agencies mentioned? I probably will  
5 be told no, since I'm sure District  
6 Attorney Morgenthau has people that might  
7 want to step in. But what is the intention  
8 at this time of the Attorney General to  
9 appear for the other parties?

10 MR. WILLIAMS: The Attorney General  
11 will be appearing specifically on behalf of  
12 the Commissioner of Judicial Misconduct, no  
13 other.

14 THE REFEREE: And for itself, since  
15 the Attorney General is mentioned also.

16 MR. WILLIAMS: And for itself.  
17 However, it is my understanding that the  
18 request for intervention was simply to put  
19 the Attorney General on notice that there  
20 is a constitutional challenge to a state  
21 provision.

22 THE REFEREE: But looking through  
23 these papers very quickly this morning, it  
24 would appear that petitioner is asking that  
25 the Attorney General and Morgenthau's

1  
2 office to appear and the U.S. Attorney's  
3 Office here in the Southern District to  
4 appear, concerning the complaints that she  
5 forwarded to the Ethics Commission, which  
6 had been dismissed without investigation or  
7 hearing.

8 MR. WILLIAMS: Correct. That is what  
9 she is saying. However, my appreciation  
10 from the extent of which I read the  
11 Petition is that she seeks our intervention  
12 on her behalf.

13 MS. SASSOWER: On behalf of the public  
14 interests.

15 MR. WILLIAMS: And we are representing  
16 the Commission on Judicial Conduct, which  
17 she alleges refused to investigate  
18 complaints that she had forwarded to it in  
19 regard to certain judges or a particular  
20 judge's alleged misconduct. So we will be  
21 filing papers on behalf of the Commission  
22 on Judicial Conduct.

23 And as I just told the Court and  
24 mentioned to Ms. Sassower when I told her I  
25 thought I would have an adjournment until



1  
2 the 15th of June with the return of the  
3 papers on or about the 5th of June, as I  
4 told her daughter in a previous  
5 conversation prior to applying for the  
6 adjournment on May 3rd, that the case load  
7 and the other responsibilities that we have  
8 throughout the entire office just would not  
9 permit me to give the kind of response and  
10 the kind of defense that I needed to move  
11 forward with the defense of the case.

12 THE REFEREE: So are you making an  
13 application to adjourn this matter to the  
14 very same day that I granted the  
15 application on May the 3rd?

16 MR. WILLIAMS: Yes, your Honor, I am.

17 THE REFEREE: And I directed that you  
18 serve your opposing papers in hand by what  
19 date?

20 MR. WILLIAMS: June 5.

21 THE REFEREE: And the motion was put  
22 over until June the 16th or 15th?

23 MR. WILLIAMS: Returnable on the 15th  
24 with papers to and in the petitioner's hand  
25 on June 5.

1  
2 THE REFEREE: Okay. And the basis for  
3 the application is the very same as you  
4 mentioned, your work load in the Attorney  
5 General's Office?

6 MR. WILLIAMS: Yes, your Honor.  
7 That's the same basis I had before, because  
8 that's the reason for it, and nothing more,  
9 nothing less.

10 THE REFEREE: Is there anything else  
11 you want to say in regard to the  
12 application?

13 MR. WILLIAMS: Yes. The Attorney  
14 General yesterday received a fax, a three-  
15 page fax from Miss Sassower alleging she  
16 was not notified of the previous  
17 adjournment that I requested on the 3rd.  
18 For the purpose of the record, that is  
19 incorrect. Her daughter was aware that we  
20 were going to seek more time. The only  
21 time in which we could do it was on the  
22 return date, which was May 3rd. The day  
23 after or the day of the adjournment that I  
24 thought I had obtained on May 3rd, I called  
25 Miss Sassower to let her know of the

1  
2 adjournment, and at that time, I think it  
3 was the day after, she let me know that was  
4 incorrect, that the matter had been put  
5 back on the calendar for the 11th of May,  
6 which is today. I checked with the Court  
7 Motion Clerk. He said that was an error,  
8 that it was indeed the 15th. I received, I  
9 think it was Monday or yesterday, a notice,  
10 maybe Monday, from the Court saying that at  
11 the Judge's behest, the matter had been put  
12 back on the calendar for the 11th of June--  
13 I'm sorry, the 11th of May.

14 THE REFEREE: For the record, you did  
15 call me a day or two ago and asked me  
16 whether I had anything to do with the,  
17 moving the matter up to May 11.

18 MR. WILLIAMS: Yes, because I had no  
19 knowledge that it had been done. I didn't  
20 have any papers in my hand. No one had  
21 notified me that someone was going to apply  
22 to the Court for a change of date, and I  
23 was trying to find from you the reason for  
24 it. And at that time, you advised that you  
25 didn't know.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE REFEREE: What did I tell you?

MR. WILLIAMS: You said, "I don't know. All I know is what's here, written on the papers."

THE REFEREE: But it was actually Justice Cahn's chambers that moved the matter back on the calendar for today.

Okay, Miss Sassower, what is your statement to the application of the Attorney General to adjourn this matter?

MS. SASSOWER: Before I present my statement, your Honor, inasmuch as Mr. Williams has made reference to a conversation had with my daughter, paralegal assistant, I wish her to be heard so that your Honor can have direct personal knowledge on her part of that conversation, because my understanding is--

THE REFEREE: (Interrupting) What does your daughter, your paralegal wish to say for the record?

State your name, please.

THE WITNESS: Elena, E-L-E-N-A, Ruth R-U-T-H, Sassower, S-A-S-S-O-W-E-R. At

1  
2 approximately 7:30 p.m. on April the 20,  
3 the phone rang and it was Mr. Williams who  
4 identified himself as calling on this  
5 matter. We had a discussion about it,  
6 because due to the lateness of the hour, my  
7 mother was not available, and Mr. Williams  
8 identified the fact that he was  
9 representing the Commission on Judicial  
10 Conduct, and in fact that he had a note  
11 from the Commission from Miss Jean Savanyu,  
12 who is a senior attorney at the Commission  
13 on Judicial Conduct, together with some  
14 notation apparently from Gerald Stern. And  
15 that it was indicated to him that he was to  
16 make a cross motion to dismiss. He  
17 requested additional time. I told him that  
18 as far as we were concerned, we would not  
19 give additional time to make a dismissal  
20 motion to an Article 78 Proceeding, which  
21 was fully meritorious. And I asked him  
22 additionally who was appearing, what was  
23 the position of the Attorney General  
24 insofar as the motion for intervention.  
25 Mr. Williams identified that in his very

1  
2 person, he was passing on both the People's  
3 right to the protection of the Attorney  
4 General's Office in this matter, as well as  
5 the defense of the Commission on Judicial  
6 Conduct. I told Mr. Williams that the  
7 Commission on Judicial Conduct had their  
8 own counsel, and that if they were able to  
9 put in a defense to this Article 78  
10 Proceeding, they should do their own dirty  
11 work, because I didn't think it could be  
12 done.

13 Mr. Williams was quite amiable in his  
14 conversations with me as I was with him,  
15 and he suggested that it might be in the  
16 interest of all concerned that a meeting be  
17 arranged, that there be some sort of, I  
18 think he characterized it, as an informal  
19 conference. I told him that we would be  
20 most agreeable to sitting down with the  
21 Attorney General's Office and to give them  
22 all assistance in understanding the  
23 significance of this Article 78 Proceeding.

24 Mr. Williams told me that he had, at  
25 that point, not had the opportunity to read

1  
2 the papers. He was not in the position to  
3 discuss them per se, and he agreed that he  
4 would be calling sometime during the  
5 following week. Again, the conversation  
6 that we had together was in the evening  
7 hours of April 20, and it was understood  
8 that he would be calling, and he would be  
9 speaking with my mother at that time, but  
10 that our position certainly was that we  
11 would be opposing any adjournment  
12 application. With that expectation that we  
13 would be hearing from Mr. Williams the  
14 following week, we concluded.

15           Thereafter, I received no  
16 communication from Mr. Williams, and to my  
17 knowledge, my mother, likewise, received no  
18 communication from him.

19           MR. WILLIAMS: May I respond to that,  
20 your Honor?

21           THE REFEREE: Yes.

22           Incidentally, did you not once appear  
23 before me downstairs in Room 130 on another  
24 matter?

25           THE WITNESS: Yes, your Honor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE REFEREE: You did. But it wasn't on this?

THE WITNESS: No, it was not.

THE REFEREE: As I recall, you told me you had gone to law school.

THE WITNESS: No, I did not.

THE REFEREE: Well, that was my recollection.

THE WITNESS: I have been working as a paralegal to my mother, but I am not an attorney.

THE REFEREE: But I recall that you did appear before me on some unrelated matter.

THE WITNESS: Absolutely. And perhaps you will recall there were three counsel, three attorneys appearing on the other side, and they were clamoring to you that I should not at all be heard, because I was not an attorney.

THE REFEREE: I know I admitted you to talk, and I granted your application to adjourn, as I recall.

THE WITNESS: No. Actually, your Honor, that was not in fact what happened.



1  
2 THE REFEREE: I granted an  
3 application.

4 THE WITNESS: You initially granted a  
5 week's adjournment, you are absolutely  
6 correct. You initially granted a week's  
7 adjournment on a case of Doris Sassower  
8 against Malamut. However, upon the  
9 objection of defense counsel, you indicated  
10 that an application could be made directly  
11 to the Judge presiding on that case. That  
12 a request could be made--

13 THE REFEREE: (Interrupting) Did they  
14 go up and make an application?

15 THE WITNESS: No. When I got home, and  
16 I informed my mother that you had initially  
17 agreed to a week's adjournment, but then  
18 said no, you were going to mark it  
19 "submitted," but we could put in papers  
20 before the Judge and request oral argument,  
21 the Judge informed us in the Malamut case,  
22 Judge Crane, Judge Crane's Chambers  
23 informed us that he does not take oral  
24 argument. And they marked it a default.  
25 And, as a matter of fact, your Honor, we

1  
2 made the representation in our papers that  
3 you had said that we could put in the  
4 additional submissions before the Court  
5 requesting the additional argument.

6 THE REFEREE: I do recall you having  
7 appeared before me on some other matter  
8 downstairs.

9 THE WITNESS: I would conclude by  
10 saying it was because it was not on the  
11 record, your Honor, that at first counsel  
12 took the position that there was no  
13 reservation made by you that an application  
14 could be made to the Judge directly with  
15 the right to submit an oral argument.

16 THE REFEREE: Actually, I'm giving the  
17 parties in this matter an unusual  
18 opportunity. I think out of a thousand  
19 applications that I've heard within the  
20 last year, I've only had about three on the  
21 record of a thousand.

22 MR. WILLIAMS: Your Honor, for the  
23 sake of clarity, when I spoke with the  
24 paralegal to Mrs. Sassower, it was her  
25 suggestion that I get back in touch with

1  
2 her so that I could read the Petition and  
3 understand it and then have the Attorney  
4 General to change the position of  
5 representing the Judicial, the Commission  
6 on Judicial Conduct. I read the Complaint,  
7 I saw it, I understood what it said. I saw  
8 no reason to contact her. It was my  
9 understanding that she was very much aware  
10 that I was moving forward with a request  
11 for an adjournment. She was representing  
12 her mom, as she said, and I expected her to  
13 tell her, and that's the end of it.

14 THE REFEREE: Okay. Now I'll let you,  
15 Miss Sassower, the petitioner, make a  
16 statement. I take it this will be in  
17 opposition to the application by the  
18 Attorney General to adjourn the matter from  
19 today?

20 MS. SASSOWER: Yes, in strenuous  
21 opposition, your Honor.

22 Before I do that, I would just like to  
23 clarify for your Honor the essential  
24 importance of having a Court Reporter,  
25 because in that other case of Sassower

1  
2 against Malamut, referred to by your Honor,  
3 the consequences of that omission were  
4 disastrous for me, because the Court  
5 accepted the false statement of the three  
6 law firms that were representing defendants  
7 in the case and defaulted me.

8 THE REFEREE: Did you make an  
9 application to the Court so that you could  
10 put papers in to vacate the default?

11 MS. SASSOWER: I did. The Court  
12 disregarded and granted judgment of  
13 dismissal as to a number of the defendants.  
14 And I have-- it has taken almost a year and  
15 thousands and thousands of dollars in legal  
16 time for me to present further motions now  
17 which were filed in February, still pending  
18 before the Court to get to first base, so I  
19 could have my day in Court, so that I could  
20 be heard.

21 THE REFEREE: So let's get back to this  
22 matter now.

23 MS. SASSOWER: Thank you, your Honor.  
24 With respect to this matter, it has  
25 now been conceded by Mr. Williams that he

1  
2 was less than candid with you.

3 THE REFEREE: He's not conceding  
4 anything. What's your opposition?

5 Basically on May 3rd, this was the  
6 first time this matter was on the motion  
7 calendar. And so now we are here eight  
8 days afterwards, and Mr. Williams is again  
9 making a motion or an application to  
10 adjourn the matter. What is your statement  
11 on that?

12 MS. SASSOWER: Well, your Honor,  
13 before I give you my statement on that,  
14 which I fully intend to do, so your Honor  
15 will understand the seriousness of what has  
16 taken place here, I do want to get before  
17 your Honor the lack of candor on the part  
18 of Mr. Williams in his statement, until my  
19 daughter stated what occurred he would have  
20 had your Honor believe, and doubtless gave  
21 that representation to your Honor when he  
22 appeared before you on May 3rd without a  
23 Court Reporter present, that there had been  
24 some communication by him with me relative  
25 to the fact that he was seeking an

1  
2 adjournment of the Court on May 3rd. That  
3 clearly now is conceded not to be the case  
4 at all. What he called at that time on  
5 April 20 for the Commission having been  
6 served on April 11 was my consent to such  
7 an adjournment, such a stipulation of  
8 adjournment. He did not have it. He knew  
9 he did not have it. He knew he told my  
10 daughter he hadn't had time to read the  
11 papers and that he would call me back and  
12 let me know whether or not we could have an  
13 informal conference whether or not we could  
14 resolve this matter without burdening the  
15 Court at all. But at the very least, to  
16 give me whatever notice this Court's rules  
17 require, unequivocally, and I ask that the  
18 rules of this Court, which I have before  
19 me, be marked.

20 THE REFEREE: I'll take judicial  
21 notice of it.

22 MS. SASSOWER: And I quote that, "Oral  
23 requests for adjournments not on consent  
24 shall not be made without prior notice on  
25 adversaries." And this is repeated again

4/95

DATE SAUR 20070412 12:00:00 PM

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

in the next paragraph again, and this is a quote, "Again, notice of an oral application for an adjournment must be given to all parties in advance."

THE REFEREE: But it doesn't say it's got to be done by a written notice to your adversary.

MS. SASSOWER: Not at all, but he didn't give me oral notice. He admitted he never called me back. He never said he was going to go ahead on May 3rd and request the Court to grant an application. That's the whole point of the rule. So that the other side, when the other side, he knows, is not consenting is going to be able to be present to oppose it.

Now the rule has a further statement following that one, and that is emphasized by underscoring, and I quote, "It is the expectation of the Court that counsel will confer with one another and resolve scheduling difficulties on their own and with professional courtesy."

Now that rule is promulgated by this

1  
2 Court, the Administrative Judge, and  
3 disseminated to all parties, litigants,  
4 attorneys, so that the Court will not be  
5 burdened needlessly so that the course of  
6 litigation shall not be needlessly  
7 escalated. This, unfortunately, was not  
8 respected by Mr. Williams.

9 And this was made known to Judge  
10 Cahn's Chambers. And Judge Cahn's Chambers  
11 advised that upon the direction of the  
12 Administrative Judge, this matter would be  
13 restored to the calendar because its rule  
14 had been violated. And thereafter  
15 confirmation of that restoration was  
16 received by me and, as Mr. Williams has  
17 conceded, by him. And I have a memorandum  
18 notification, and I will ask that that be  
19 marked.

20 THE REFEREE: No, I have that in the  
21 folder also. There is a memorandum right  
22 here in the folder.

23 MS. SASSOWER: Very well. To  
24 accomplish that restoration required  
25 several hours' time, burden on the Court,



1  
2 Clerks, etcetera, including the  
3 Administrative Judge's Office. All of that  
4 was, however, disregarded once again by Mr.  
5 Williams when, for the second time, he  
6 violated the rule, and on Monday called me,  
7 and this time informed me that he was going  
8 to make an oral application for an  
9 adjournment once again on May 11, when the  
10 case was restored. And when I asked him to  
11 tell me the details as to the extent of the  
12 adjournment and the basis for it, he  
13 refused to give me that information and  
14 arrogantly hung up on me.

15 As your Honor can imagine, that is a  
16 rather upsetting blatant violation of this  
17 Court's rules.

18 THE REFEREE: Let me ask you a direct  
19 question. Suppose Mr. Williams had asked  
20 you to go back to the original adjournment  
21 that I had granted on May the 3rd. In  
22 other words, that the Attorney General  
23 would be directed to serve their papers in  
24 hand by June the 5th, final, and that the  
25 matter would be adjourned over to June the

1  
2 15th. What would have been your response  
3 to that?

4 MS. SASSOWER: My response would have  
5 been unequivocally, "No."

6 THE REFEREE: Why?

7 MS. SASSOWER: That would be  
8 outrageous, because this is an Article 78  
9 Proceeding. This is pursuant to a statute  
10 that was intended to protect the public  
11 interest in the integrity of the  
12 functioning of its governmental agencies  
13 and which provides for a special proceeding  
14 which is summary in nature, which must be  
15 handled with speed, dispatch and at minimum  
16 cost to the petitioner.

17 THE REFEREE: I understand that. But  
18 it is in the nature of a mandamus, isn't  
19 it?

20 MS. SASSOWER: Mandamus and  
21 prohibition and declaratory relief, because  
22 the Commission is operating under an  
23 unconstitutional rule in violation of the  
24 clear mandate of the statute. They have  
25 converted a mandatory duty to investigate

1  
2 every complaint of judicial misconduct  
3 except those that they determine are  
4 facially frivolous and without merit.

5 THE REFEREE: But your complaint--

6 MS. SASSOWER: (Interrupting)-- into a  
7 discretionary optional right on their part  
8 to simply dismiss fully meritorious  
9 complaints without investigation.

10 THE REFEREE: But your complaints go  
11 back years, don't they?

12 MS. SASSOWER: I actually have--

13 THE REFEREE: (Interrupting) I mean  
14 from a quick reading by me this morning.

15 MS. SASSOWER: I have complaints that  
16 go back years to 1989, a five-year period.  
17 They dismissed every complaint fully  
18 meritorious and documented complaints  
19 without investigation.

20 But in 1994 I made four complaints,  
21 once again fully documented and fully  
22 meritorious, and these complaints were  
23 again dismissed without investigation on  
24 December 13, 1994 and January 1995. That's  
25 quite recent.

1  
2 And in fact those--

3 THE REFEREE: (Interrupting) So you  
4 brought your Article 78. There is no time  
5 limitation to bring on an Article 78 on a  
6 constitutional question, as I recall. And  
7 even if there was a limitation, you brought  
8 it on within four months anyway. So,  
9 therefore, it's not like you have delayed.  
10 You have been very prompt in this Article  
11 78. And again, it goes back to my question  
12 what is the opposition to my original  
13 granting of the adjournment to permit the  
14 Attorney General to put in all opposing  
15 papers by June the 5th in hand, serving  
16 them in hand?

17 Incidentally, I made that stamp up  
18 myself so that it's clear, "Serve all  
19 opposing papers in hand." I created that  
20 stamp when I was assigned to the Motion  
21 Application Part, and I've been stamping  
22 that and telling lawyers that they have to  
23 obey with the directive of myself to oppose  
24 motions.

25 So again, it is, what I did is not

1  
2 unheared of to mark a matter "final" the  
3 first time on-- I mean, that's unusual to  
4 mark it "final." But I did that after I  
5 glanced at your papers on May the 3rd in  
6 the courtroom downstairs, and I  
7 specifically put the word "final" down  
8 against the Attorney General. I did not, I  
9 don't believe that I unduly prejudiced you  
10 by giving the Attorney General at that time  
11 about five and a half weeks to serve their  
12 papers in hand and giving you ten days to  
13 reply.

14 MS. SASSOWER: With all due respect to  
15 your Honor, the standards and procedures  
16 applicable to Article 78 Proceedings are  
17 different from those applicable to ordinary  
18 motions. And perhaps that is where your  
19 Honor strayed from in exercising what you  
20 may regard as your discretion,  
21 inadvertently, I'm sure.

22 Your Honor should understand firstly  
23 that I am performing not only a service on  
24 behalf of myself in connection with my own  
25 complaints, but a service on behalf of the

1  
2 people of this state who have likewise,  
3 many of whom have likewise filed serious  
4 complaints of judicial misconduct with the  
5 Commission on Judicial Conduct, only to  
6 find like myself that complaints that they  
7 have labored over, spent money for counsel  
8 to assist in their preparation, documented,  
9 provided transcripts, have set forth acts  
10 and omissions on the part of judicial  
11 officers of our state which are criminal  
12 and constitute official misconduct under  
13 the Penal Law, Section 195, have  
14 nonetheless gone down the drain by a  
15 commission that includes as a member of its  
16 body a member of the Appellate Division of  
17 the Second Department.

18 Now, my complaints included complaints  
19 against the Second Department and included  
20 specifically that member of the Commission.  
21 I can only tell you that the public is  
22 suffering every day because judges against  
23 whom legitimate complaints exist and  
24 certainly sufficient to warrant  
25 investigation, complaints which are not

1  
2 frivolous on their face, are being  
3 dismissed out of hand by the Commission.  
4 And the Commission's own annual report,  
5 from which I quote in 1993 in my petition,  
6 admits that-- I'm sorry, it was in 1994 the  
7 annual report, the latest report available,  
8 which I quoted from at paragraph 30 of my  
9 petition, "Members of the public filed  
10 1,457 complaints with respondent." And  
11 that report identifies that number. And I  
12 quote their own words, "-- as the largest  
13 number ever," the number increasing every  
14 year. The Commission has dismissed last  
15 year 1,275 complaints of the 1,457  
16 complaints that were filed against judicial  
17 officers without investigation and without  
18 any determination that the complaints on  
19 their face lacked merit. And this number  
20 represents 87 and a half percent of all  
21 complaints filed against it.

22 Now in the first place, with that kind  
23 of volume of complaints ongoing, increasing  
24 steadily and nothing being done about it by  
25 the watchdog agency that the legislature

1  
2 created following constitutional amendment  
3 of our judiciary article in 1978 means that  
4 something has to be done about it, and it  
5 has to be done expeditiously, and a TRO has  
6 to be granted as a condition to any  
7 adjournment request that would be made by  
8 the respondent in this matter, number one.

9 THE REFEREE: TRO?

10 MS. SASSOWER: It would have to be  
11 stayed from continuing these dismissals  
12 without investigation and without any  
13 determination that these complaints are  
14 without merit on their face, which they do  
15 not do at the present time.

16 THE REFEREE: Your Petition doesn't  
17 ask for a TRO.

18 MS. SASSOWER: I expected that speed  
19 and the statutory procedure of special  
20 proceedings, and particularly in Article 78  
21 Proceedings would be followed by the Court.  
22 And I gave, pursuant to the CPLR 7804, I  
23 gave the required time to the respondent to  
24 answer which actually an Article 78 is you  
25 have to serve the respondent twenty days



1  
2 before the return date, at least twenty  
3 days before, and they must answer at least  
4 five days before or move in that time. And  
5 in special proceedings, other than Article  
6 78, you must give only at least eight days'  
7 notice and the respondent must give the  
8 papers at least six days before the return  
9 date. The legislature has already allowed  
10 the state agencies a longer time to address  
11 the complaints, the petitions in Article 78  
12 Proceedings, because everything must be  
13 done, the motion or answer must be done at  
14 least five days before the return date. So  
15 they get fifteen days.

16 It should be borne in mind that  
17 counsel-- the Commission on Judicial  
18 Conduct has its own counsel. And in past  
19 practice, the public agencies that have  
20 their own counsel, when they appear by  
21 counsel, the Attorney General is saved the  
22 necessity of appearing for them and is in a  
23 position to protect the public interest.

24 If it concludes, on the basis of an  
25 independent evaluation, unconflicted by any

1  
2 duty to represent the agency, that the  
3 agency is operating unconstitutionally, it  
4 can spring forward and protect the public  
5 as it is intended to do by the legislature,  
6 and, in fact, it has done that in the past,  
7 well, it has declined representation of the  
8 public agency in a case in which I was  
9 acting as pro bono counsel for the  
10 petitioners, the case of Castracan v.  
11 Colavita. And I ask that this letter sent  
12 to me by the state agency in that case  
13 which was the State Board of Elections  
14 dated October 31, 1990 setting forth the  
15 fact that the Attorney General would not be  
16 representing that agency and that they  
17 would be representing themselves, I ask  
18 that that be marked as an exhibit so that--

19 THE REFEREE: (Interrupting) We don't  
20 need that as an exhibit. You are referring  
21 to it.

22 MS. SASSOWER: I'm referring to it,  
23 and I have shown your Honor so that you can  
24 understand that there is an option if the  
25 Attorney finds he is too busy to protect

1  
2 the public interest and he is too busy to  
3 defend the agency within the allowable time  
4 that the legislature has set forth as  
5 required in such a serious proceeding as  
6 Article 78 Proceedings, the Commission  
7 itself, which is staffed with lawyers, is  
8 perfectly capable of representing itself  
9 and preparing the necessary response if it  
10 had a legitimate response to make.

11 The fact is, I made an offer to Mr.  
12 Williams, because I don't have the time,  
13 the luxury of that time or staff at all. I  
14 have no staff, in fact, other than my  
15 daughter. And I offered to him, when he  
16 first spoke with me on May 5th, when we  
17 spoke by telephone, I stated to him that,  
18 and subsequently as well the day before  
19 yesterday, and yesterday when we spoke,  
20 that I would withdraw this Petition if he  
21 would give me a legitimate basis for the  
22 dismissal motion he intends to make. He  
23 would not discuss it with me. He does not  
24 have any--

25 THE REFEREE: (Interrupting) I don't

1  
2 understand.

3 MS. SASSOWER: I'm not looking for  
4 needless litigation. I don't have the time  
5 or resources to do it. I do it only as a  
6 public service to attempt to get the agency  
7 that is designed to protect the public to  
8 do its job or to account for its  
9 dereliction. And that's the purpose of  
10 this proceeding.

11 Now I sent a letter yesterday on May 9  
12 to the Administrative Judge, Judge Ostrau  
13 of this Court, because of Mr. Williams'  
14 absolute disrespect to the rules of this  
15 Court which I quoted and the procedures set  
16 forth in the Article 78 Statute, and my  
17 offer to withdraw if he had the Petition,  
18 if he had-- if he gave me evidence of any  
19 legitimate defense. All he wants to do is  
20 make a motion to dismiss for failure to  
21 show cause. It is dilatory and needlessly  
22 going to increase, escalate this litigation  
23 and oppress me maliciously in the process.

24 I would like this letter to be part of  
25 my application.

1  
2 THE REFEREE: You sent that to Justice  
3 Ostrau.

4 MS. SASSOWER: I'd like to give you  
5 this copy, this is May 9. And I pointed  
6 out that the refused to discuss with me the  
7 basis for the application, and I told him  
8 that last Friday when we spoke on the 5th,  
9 that he had best have his papers here on or  
10 before the 11th, or I would ask for a  
11 default.

12 I further told him yesterday that if  
13 he wanted a week so that he could put in  
14 papers, I was willing to do that so that I  
15 would not have to come to Court today,  
16 because I had other litigation deadlines.  
17 I did not wish the Court to be burdened. I  
18 see no reason why the Referee has to be  
19 burdened.

20 Mr. Williams adamantly refused and  
21 hung up on me, again told me he'd see me in  
22 Court, and he is paid for his time. I, as  
23 a taxpayer of this state, contribute to  
24 that compensation he receives. I receive  
25 no pay. Neither does my daughter for my

1  
2 appearance here today or for any of the  
3 work that I do to improve the quality of  
4 the judiciary.

5 Now I am-- it is my request,  
6 therefore, that no adjournment be granted,  
7 and indeed that no adjournment can be  
8 granted, no adjournment could have been  
9 granted when Mr. Williams appeared, because  
10 at that time, as now, he was already in  
11 default. This Court could not treat it as  
12 just a motion default. It was a pleading  
13 default. He had to be excused for that  
14 default with good cause shown, with an  
15 Affidavit of Merit, so that this Court does  
16 not go on wasting taxpayers' money on an  
17 ongoing basis while this courthouse is in  
18 such a state of disrepair that people who  
19 come here are so shocked and look with  
20 disrespect on the Empire State, which has a  
21 courthouse that is broken and disruptible  
22 to look at.

23 Under Article 78--

24 THE REFEREE: (Interrupting) You've  
25 made your statement.

1  
2 MS. SASSOWER: I'm entitled to a  
3 default. And the Court must rule on that,  
4 not-- your Honor, with all due respect, as  
5 I understand it, from CPLR 7804(e), where  
6 the papers have not been filed by either  
7 Answer or Motion in response to the  
8 Petition--

9 THE REFEREE: (Interrupting) That  
10 would be up to Justice Cahn, not for me.

11 MS. SASSOWER: That's right. So  
12 therefore, I have served, my daughter has  
13 served Mr. Williams with a copy of my  
14 Affidavit in Support of Default Judgment.  
15 I have handed this for the Court.

16 THE REFEREE: Do you want to put this  
17 into the folder?

18 MS. SASSOWER: It should be referred  
19 to Judge Cahn, yes, so that he can rule on  
20 it. And I would like to be heard.

21 I called to ask if we could, following  
22 your ruling on his application for an  
23 adjournment, we could proceed to a  
24 conference before the Court so that my  
25 application for default judgment could be

1  
2 heard. I was told that we could call up.

3 In addition, I have an Order to Show  
4 Cause for a stay with a TRO which I would  
5 like to have immediately while his Honor is  
6 cogitating--

7 THE REFEREE: Who is this for?

8 MS. SASSOWER: This is to go before  
9 Judge Cahn. I just show it to your Honor  
10 so you can be aware that I am trying to  
11 protect the public interest in a proper way  
12 and do the job that the Commission on  
13 Judicial Conduct and the Attorney General  
14 of this state and the Ethics Commission are  
15 simply not doing.

16 THE REFEREE: Okay. I believe that you  
17 are sincere.

18 MS. SASSOWER: Thank you, your Honor.

19 THE REFEREE: And I believe that Mr.  
20 Williams is sincere. I will take his  
21 application for an adjournment under  
22 advisement, and you will be notified by  
23 mail of the application the same way as  
24 this matter was transmitted.

25 If you want, it can be faxed instead of



1  
2 mailed. It's up to you. Do you have a fax  
3 number?

4 MS. SASSOWER: Yes, I do, your Honor.

5 THE REFEREE: What's your fax number?

6 MS. SASSOWER: (914) 684-6554.

7 THE REFEREE: And what's the Attorney  
8 General's fax number?

9 MR. WILLIAMS: (212) 416-6009.

10 Your Honor, may we request an  
11 expedited ruling on our application for an  
12 adjournment considering the fact that--

13 THE REFEREE: You will have an  
14 expedited. You will get my ruling this  
15 afternoon. You will get my ruling by fax  
16 this afternoon. I'll consider it. I've  
17 taken the matter under advisement, and,  
18 therefore, my ruling will be faxed to each  
19 of you this afternoon.

20 MS. SASSOWER: If your Honor please, I  
21 wish to remain because the Administrative  
22 Judge's law secretary advised me that I  
23 could, following our proceedings before  
24 you, that I could call him and make  
25 arrangements, which I wish to do, because--

1  
2 THE REFEREE: (Interrupting) You can  
3 go see Judge Ostrau's law secretary.

4 MS. SASSOWER: I refer your Honor to  
5 7804(e) relating to default. "A person in  
6 default has no right to make an  
7 adjournment. He has no standing." It's a  
8 very clear-cut situation.

9 THE REFEREE: So, therefore, let's see  
10 what happens. And we are adjourned at this  
11 time. You will have my decision by fax  
12 this afternoon.

13 MS. SASSOWER: Under 7804 subdivision  
14 f, the respondent can no longer make a  
15 motion.

16 THE REFEREE: He's already made an  
17 application. It's not a motion.

18 MS. SASSOWER: He is making an  
19 application so that he can make a motion.  
20 But the law is black and white. He cannot  
21 make a motion any longer. At best, the  
22 Court could allow him to put in an Answer  
23 if he shows good cause, which he hasn't,  
24 because he has already admitted--

25 THE REFEREE: (Interrupting) You've

1  
2 made that statement on the record already.  
3 Again, we are concluded at this time, and  
4 each of you will get my decision on the  
5 application by fax this afternoon.

6 MS. SASSOWER: I wish to proceed with  
7 Mr. Williams to Judge Cahn's Chambers as  
8 there is a default.

9 THE REFEREE: I cannot direct Mr.  
10 Williams to go to Judge Cahn's Chambers.

11 MS. SASSOWER: I'm giving him notice.  
12 If he chooses not to appear, I have to stay  
13 here, because I am up in White Plains. I  
14 can't come again to present my Order to  
15 Show Cause if your Honor is going to  
16 entertain an application for adjournment.

17 THE REFEREE: I've entertained it.  
18 What are you talking about?

19 MS. SASSOWER: You should read my  
20 papers in support of a default judgment so  
21 you would know that he has no standing.

22 THE REFEREE: I will read your papers  
23 during lunch.

24 MS. SASSOWER: May we return at 2  
25 o'clock, because I won't be home to receive

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

the fax?

THE REFEREE: All right, 2 o'clock.  
2 o'clock instead of faxing my  
decision.

MR. WILLIAMS: Can you fax it anyway?

THE REFEREE: If you want to appear  
here, I'll have my Reporter here at 2  
o'clock inasmuch as I have a continued  
hearing on a legal fee issue, and I'll put  
it on the record, and if you want it faxed  
to you, fine.

MR. WILLIAMS: I'll be back at 2  
o'clock.

THE REFEREE: Fine, I'll see you then.  
(Whereupon, the matter was adjourned  
until 2 p.m.)

## A F T E R N O O N   S E S S I O N

1  
2  
3           THE REFEREE: Mr. Williams, inasmuch  
4 as I didn't provide you with any  
5 opportunity to make a reply to the  
6 petitioner's lengthy statement, is it your  
7 desire to make any reply at this time?

8           MR. WILLIAMS: Yes, I do have a desire  
9 to respond. Simply this: That first of  
10 all, at all times notice was given prior to  
11 each of the adjournments that I attempted  
12 to obtain. As I previously said, for the  
13 purpose of the record, Miss Sassower's  
14 paralegal, who is her daughter,  
15 unequivocally said and stated to me in our  
16 first conversation I had with her that she  
17 had authority to speak on her mother's  
18 behalf. I thought that pursuant to that  
19 authority, she would notify her mom that  
20 there would be an application for an  
21 adjournment.

22           Secondly, prior to the second  
23 adjournment, I did talk to Miss Sassower  
24 herself about the adjournment, and at that  
25 time I told her daughter, who had answered

1  
2 the telephone, that, "I need to talk to  
3 your mom and not to you." And I gave her  
4 the message, and she was aware of the  
5 second adjournment, because I spoke to her  
6 personally.

7 We did, and indeed did discuss the  
8 merits of my defense.

9 She would hear none of it. And I told  
10 her insofar as she would not listen, I  
11 cannot get a word in, I'm terminating the  
12 conversation and hung up the telephone. It  
13 was not the malicious and vicious  
14 disrespect that she would like the Court to  
15 believe.

16 Based upon my prior statements in  
17 regard to my application for an  
18 adjournment, I have nothing further to say,  
19 and I rest upon the merits of my request.

20 THE REFEREE: Okay. At this time--

21 MS. SASSOWER: (Interrupting) Excuse  
22 me, your Honor. May I just say briefly--

23 THE REFEREE: No, you can't say  
24 anything further. I permitted you to go on  
25 for over twenty minutes, and Mr. Williams

1  
2 has only made a two-minute reply.

3 I'm not going to have this going on and  
4 on and on. I mean, taking everything into  
5 consideration, it's my decision on the  
6 Attorney General's application to grant the  
7 application and direct the Attorney General  
8 to serve its papers by June 1, 1995, which  
9 is, I moved the matter up four days from  
10 previously June 5th. So now it's June 1st,  
11 1995.

12 Those papers from the Attorney General  
13 must be served personally at the home  
14 address of the petitioner.

15 As I understand, you don't have any  
16 office address and you are pro se.

17 So it would be served on or before June  
18 1, 1995 by 5 p.m. on that day. And that  
19 the new return date is June 12, 1995 in  
20 Room 130.

21 This will be the only application  
22 permitted and granted to the Attorney  
23 General. And this is my ruling, based upon  
24 all of the-- based upon everything that was  
25 made of argument on the record this

1  
2 morning.

3 And I will return the file to the  
4 Clerk's Office this afternoon with the  
5 notation, as I stated before, "June 1,  
6 1995, final for respondent's papers, and  
7 June 12, 1995 for the return date to permit  
8 the petitioner to reply."

9 MS. SASSOWER: What papers are you  
10 referring to, your Honor? Is it an Answer  
11 or is it a motion you are giving an  
12 extension for?

13 THE REFEREE: All opposing papers in  
14 hand on June 1.

15 MS. SASSOWER: The statute explicitly  
16 states that he can only-- on a default  
17 which is the case here, since no motion and  
18 no Answer was timely filed on the May 3rd  
19 return date, he was in default at that  
20 time.

21 THE REFEREE: I know, you said that.

22 MS. SASSOWER: It specifically states,  
23 "The Court and not the Referee may either  
24 issue a judgment in favor of the petitioner  
25 or order that an Answer be submitted."



1  
2 Those are the only two options.

3 THE REFEREE: I made my ruling on the  
4 application. You may now go and see  
5 Justice Cahn or the Administrative Judge if  
6 you wish, but that is your option to do,  
7 and we are concluded at this time.

8 MS. SASSOWER: I gave Mr. Williams  
9 notice before lunch that I would apply for  
10 an Order to Show Cause with a TRO seeking a  
11 default judgment, and that would be  
12 immediately now before Judge Cahn, or  
13 alternatively, the Administrative Judge,  
14 and I'm asking him if he wishes to  
15 accompany me so we can do this with him  
16 having the right to oppose it.

17 THE REFEREE: All you have to do is  
18 give the Attorney General notice.

19 MS. SASSOWER: I gave him notice.

20 THE REFEREE: He is not required to go.  
21 He makes up his own mind.

22 MS. SASSOWER: I just wanted it on the  
23 record.

24 THE REFEREE: If he wishes to go, he  
25 will go. Otherwise, not.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

And we are concluded at this time.

MS. SASSOWER: He does not wish to state whether or not he's going to be there.

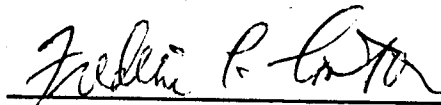
THE REFEREE: Right.

MS. SASSOWER: Then we will not detain you or him any further, and I thank you, your Honor.

THE REFEREE: Thank you very much.

\* \* \*

Certified to be a true and accurate transcript of the proceedings.



---

Frederic C. Cantor,  
Official Court Reporter