UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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DORIS L. SASSOWER,

Plaintiff-Appellant,

Docket #96-7805

Affidavit in Support of Motion for Recusal of the Circuit, Transfer to Another Circuit, Vacatur of Judgment, Vacatur of State and Federal Suspension Orders, and other Relief, including Disciplinary and Criminal Referral and Monetary Sanctions

-against-

Hon. GUY MANGANO, Presiding Justice of the Appellate Division, Second Department, et al.

Defendants-Appellees.

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STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

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

1. I am the Appellant pro se and fully familiar with all the facts, papers, and proceedings heretofore had herein.

2. This Affidavit is in support of a motion for an Order: (a) recusing this Circuit for bias, pursuant to the Fifth Amendment of the U.S. Constitution and 28 U.S.C. §455(a), and, in particular, recusing the three-judge panel [the "panel"] that adjudicated the appeal and rendered the no-publication, no-citation Summary Order, filed September 10, 1997; (b) transferring the appeal to another Circuit; (c) vacating the District Court's Judgment and the panel's Summary Order "affirmance" for

fraud, misrepresentation and other misconduct of an adverse party, pursuant to Fed.R.Civ.P. Rule 60(b)(3), as well as for fraud, misrepresentation, and other misconduct of the District Judge and of the panel, pursuant to Fed.R.Civ.P. 60(b)(6) and the Court's inherent power; (d) immediately vacating Defendant Second Department's June 14, 1991 finding-less "interim" Order suspending Appellant's state law license, pursuant to controlling state law, Matter of Nuey, 61 N.Y.2d 513 (1984) [R-528]; Matter of Russakoff, 79 N.Y.2d 520 (1992) [R-529], requiring immediate vacatur of interim suspension orders, without findings; (e) vacating the Southern District's February 27, 1992 suspension Order as violative of constitutional due process and the Southern District's own Rule 4 [R-906]; and (e) for such other and further relief as may be just and proper, including disciplinary and criminal referral of the District Judge and panel, as well as of Defendants and their co-Defendant counsel, the New York State Attorney General, together with maximum monetary sanctions.

3. To avoid needless duplication, I incorporate herein by reference my separately-filed Petition for Rehearing In Banc, additionally explicating the grounds for recusal, transfer, and vacatur. Likewise, incorporated herein by reference are my separately-filed judicial misconduct complaints under 28 U.S.C. §372(c) against the members of the panel, Judges Dennis Jacobs, Thomas Meskill, and Edward Korman, for their official misconduct, as well as against District Judge John Sprizzo, whose pervasive bias and fraudulent conduct particularized

in my uncontroverted Appellant's Brief[1], the panel's Summary Order (Exhibit "N-2") deliberately covers up and protects[2].

4. For the Court's convenience, a Table of Contents for this Affidavit is herein set forth:

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[1] My Appellant's Brief is uncontroverted inasmuch as Defendants' Appellees' Brief did not deny any of the factual showing or respond to any of the legal argument presented therein. Indeed, it did not even refer to my Appellant's Brief. This was highlighted by my Reply Brief (at 2), which sought sanctions against Defendants for their bad-faith and frivolous opposition to my appeal.

[2] An Appendix demonstrating the Summary Order's deliberate falsification, misrepresentation, and suppression of the material allegations of my Verified Complaint, as well as the facts in the record is annexed hereto as Exhibit "N-1".

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THIS CIRCUIT IS DISQUALIFIED FOR BIAS, ACTUAL AND APPARENT

5. In the interest of avoiding needless duplication and in further support of my instant application, I incorporate by reference my April 1, 1997 motion, wherein I requested the Circuit recuse itself, sua sponte, so as to permit adjudication by a judge outside this Circuit of my entitlement to sanctions and other relief against Defendants' counsel, the New York's Attorney General, himself a co-Defendant, for his fraudulent and otherwise wrongful conduct in subverting the case management phase of this appeal.

6. Prefacing my particularized 17-page recitation of the Attorney General's litigation misconduct, seriously prejudicing my appellate rights, my April 1, 1997 motion devoted five pages to particularizing this Circuit's disqualifying bias. As to the "appearance of impropriety", my Supporting Affidavit pointed out that this "politically-sensitive case, involv[es] state public officials, including high-ranking state court judges with whom judges of this Circuit have personal and professional relationships" (¶6). It additionally stated that an appearance of bias further results from the fact that I am the ex-wife of George Sassower[3], a litigant with whom this Circuit has a long-standing, contentious, and publicly adversarial relationship, stemming from his lawsuits and judicial misconduct complaints against this

[3] My familial relationship to George Sassower (from whom I am divorced since 1984) is one of the allegations of my Verified Complaint [R-25: ¶5].

Circuit's judges (¶6).

7. My April 1, 1997 motion described this Circuit's actualized bias against me, borne of its hostile relationship to Mr. Sassower (¶8). Among the featured examples was its knowingly fraudulent and retaliatory 1992 decision on my appeal in an unrelated civil rights action, Sassower v. Field, et al, #91-7891. In that appeal, Judge Jon Newman authored an unprecedented appellate decision, 973 F.2d 75 (1992), in which he sustained under "inherent power" a $100,000 due process-less sanctions award against myself and my daughter, Elena Ruth Sassower, for our supposed "extraordinary" litigation misconduct, as to which the record showed not the slightest factual basis, and affirmed the district judge's denial of our fully-documented and uncontroverted Rule 60(b)(3) motion against the defendants therein and their counsel.

Notwithstanding Judge Newman's decision, on its face, is aberrant and flouts bedrock decisional law of this Circuit and the U.S. Supreme Court, this Circuit denied my "Petition for Rehearing and Suggestion of Rehearing En Banc", thereby becoming complicitous in Judge Newman's official misconduct. By reason thereof, when I thereafter filed a §372(c) complaint against Judge Newman, by then Chief Judge of this Circuit, I requested the Circuit recuse itself and transfer the complaint to another Circuit[4]. This was denied by Acting Chief Judge Kearse in a

[4] Cf. Stern v. Nix, 840 F.2d 208 (3rd Cir. 1988), in which the entire Third Circuit recused itself from hearing an appeal, where one of its judges was a defendant therein. The Circuit's recusal was sua sponte. In that case, a panel of the Second Circuit (Judges Timbers,

decision which "dumped" the §372(c) complaint, inter alia, by falsely stating that my fully-documented complaint was "unsupported", by falsely stating that it was "merits-related", and, additionally, that the §372(c) statute **requires** dismissal of such complaints -- which is also false. The Circuit Council then covered up for Acting Chief Judge Kearse, and thereby for Judge Newman, by its denial of my petition for rehearing on my §372(c) complaint against then Chief Judge Newman -- my entitlement to which I had fully documented, both factually and legally[5].

8. My April 1, 1997 motion (at ¶12) also set forth my belief that Judge Newman was involved in the Southern District's February 27, 1992 suspension of my federal license to practice law [R-558], as also particularized in the §372(c) complaint that Judge Kearse had dismissed. That federal suspension, which occurred the day before my scheduled oral argument of the appeal in Sassower v. Field, was not preceded by any hearing, although I had specifically requested one by invoking Rule 4 of

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Winter, and Altimari) was designated as a panel of the Third Circuit, pursuant to designation and assignment by the Chief Justice of the U.S. Supreme Court (at 209).

[5] The background to my filing of that §372(c) misconduct complaint -- and its significance in establishing that the judicial branch has subverted the §372(c) mechanism -- is discussed in "Without Merit: The Empty Promise of Judicial Discipline", an article by my daughter, Elena Ruth Sassower, appearing in the current issue of the Massachusetts School of Law's journal The Long Term View (Vol 4, No. 1, pp. 90-97), which issue is devoted exclusively to the subject of "Judicial Misconduct". A copy of the article is annexed hereto as Exhibit "A".

the Southern District's rules [R-562, R-568, R-571, R-906-907][6] because of the complete deprivation of due process on the state level: Defendant Second Department had suspended my state court law license under an immediate, unconditional, and indefinite June 14, 1991 "interim" order", issued without written charges, without a hearing before or after the suspension, without findings, without reasons, and without any right of appeal. The record showed that the New York Court of Appeals had denied my leave application after Defendant Second Department had denied me leave to appeal.

9. Additionally, my motion described my own vigorous public advocacy, resulting from my direct, first-hand experience with the Second Circuit's retaliatory conduct -- as to which I had given testimony to the National Commission on Judicial Discipline and Removal (7/14/93), to the Long-Range Planning Committee of the Judicial Conference (12/9/94), and to the Second Circuit Task Force on Gender, Racial, and Ethnic Bias in the Courts (11/28/95) [R-890-900].

10. My April 1, 1997 motion was referred for disposition to a three-judge panel comprised of Judge Guido Calabresi, Judge Louis

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[6] My exchange of correspondence with the Southern District Grievance Committee is contained in the record herein [R-562-572] inasmuch as the Order to Show Cause for a Preliminary Injunction, with TRO that I brought before the District Judge, for vacatur of Defendant Second Department's June 14, 1991 "interim" suspension Order pursuant to Nuey [R-528] and Russakoff, [529], included as a branch of relief "such steps as may be required to vacate the February 27, 1992 order of this court (per Thomas Griesa, J.) suspending Plaintiff's license to practice law in this District" [R-489]. See my Appellant's Brief, pp. 20-21, Point III: pp. 50-56.

Oberdorfer, and, its Presiding Judge, Amalya Kearse.

11. Consistent with 28 U.S.C. §455(a) and Canon 3E of the ABA Code of Judicial Conduct, requiring a judge to disqualify him or herself in any proceeding in which his or her "impartiality might reasonably be questioned", Judge Kearse was legally and ethically bound to avoid "the appearance of impropriety" which would arise from her deciding my recusal/transfer motion, where her own misconduct was at issue and alleged to demonstrate the actual bias of the Circuit. On April 28, 1997, I filed a Supplemental Affidavit, bringing Judge Kearse's specific disqualification to her attention and that of her co-panelists.

12. Nonetheless, Judge Kearse did not disqualify herself from the panel. Nor did she make any disclosure or response to my serious allegations. Instead, without reasons, the panel not only denied my request for sua sponte recusal of the Circuit, but the entirety of my motion in a one-word order "DENIED".

13. The panel's summary denial of my April 1, 1997 motion is prima facie proof of the panel's disqualifying actual bias. No fair and impartial tribunal, with the most passing respect for the integrity of the appellate process, could summarily deny the relief requested by that motion which chronicled (at pp. 9-26) a pattern of on-going litigation misconduct, including fraud, by Assistant Attorney General Weinstein throughout the appellate phase of this case, beginning with his non-appearance at the November 8, 1996 Pre-Argument Conference, carrying through to his bad-faith refusal to discuss any of the stipulations

proposed therein, and continuing with his procurement of ex parte orders, based on legally insufficient and perjurious motion papers, not served upon me, granting him a post-default extension to file his Appellees' Brief and pro hac vice status to argue an appeal from which he should properly have been barred by reason of his fully-documented litigation misconduct. Such particularized 11-page factual showing, as set forth in my April 1, 1997 Affidavit was completely undenied, undisputed, and uncontroverted by Defendants -- as highlighted by me in both my April 23, 1997 Reply Affidavit and April 28, 1997 Supplemental Affidavit, each of which established my entitlement to further sanctions against Assistant Attorney General Weinstein. Indeed, the record before the panel established my entitlement to sanctions against Mr. Weinstein's superiors, including Attorney General Vacco personally. They had been informed of Mr. Weinstein's misconduct, but took no action to restrain him or other corrective steps[7].

14. In my April 1, 1997 motion and April 28, 1997 Supplemental Affidavit, I stated that in the event the Circuit did not recuse itself, sua sponte, I would make a formal recusal/transfer

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[7] The panel's indefensible denial of that motion was featured in a $3,000 paid advertisement by the Center for Judicial Accountability, Inc. in the August 27, 1997 New York Law Journal, entitled "Restraining 'Liars in the Courtroom' and on the Public Payroll" -- a copy of which is annexed hereto as Exhibit "B". The 1994 ad "Where Do You Go When Judges Break the Law?", referred to therein, is part of the Record [R-606], was included as part of Exhibit "D" to my April 1, 1997 recusal/sanctions motion, and is annexed hereto as the last page of Exhibit "M".

application, annexing some of the referred-to documents. Such are herewith annexed and incorporated by reference. In substantiation of this Circuit's actual bias toward me, as evidenced by its dishonest and fraudulent decision in Sassower v. Field, affirming under "inherent power" a $100,000 "sanctions" award against me and my daughter, I annex copies of: (1) my March 4, 1996 §372(c) judicial misconduct complaint against then Chief Judge Jon Newman (Exhibit "C")[8]; (2) Acting Chief Judge Kearse's April 11, 1996 decision dismissing said complaint (Exhibit "D"); (3) my May 30, 1996 petition for review thereof (Exhibit "E"); and (4) the Judicial Council for the Second Circuit's June 26, 1996 dismissal order (Exhibit "F"). Encompassed in the above misconduct complaint, although not its named subject, is this Circuit's current Chief Judge, Ralph Winter, who, together with Judge Edward Lumbard, sat on my appeal in Sassower v. Field, joining in Judge Newman's knowingly false, fraudulent, and retaliatory decision, without dissent. Likewise implicated are the judges of this Circuit, who denied my "Petition for Rehearing En Banc" of Judge Newman's factually unsupported and legally insupportable decision (Exhibit "C", p. 1).

15. Additionally, since receipt of the subject affirmance decision, I have obtained a number of §372(c) judicial misconduct complaints filed by Mr. Sassower against various judges of this Circuit,

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[8] The four court submissions that supported my March 4, 1996 judicial misconduct complaint, as itemized in the second paragraph therein, may be accessed, inter alia, from the Second Circuit Task Force on Gender, Racial, and Ethnic Fairness in the Courts [R-900].

demonstrative of the contentious relationship that exists. As illustrative, I annex hereto: (1) Mr. Sassower's first §372(c) judicial misconduct complaint, #87-8503, filed in March 1987 against then Chief Judge Feinberg and Circuit Judges Kaufman and Meskill, as well as District Judge Nickerson, together with the dismissal decision of Acting Chief Judge Oakes (Exhibit "G"); and (2) Mr. Sassower's misconduct complaint, #90-8560, filed in October 1990 against Judge Pratt, together with the dismissal decision of Acting Chief Judge Meskill, including Mr. Sassower's petition for rehearing based thereon (Exhibit "H").

16. As reflected therein, Mr. Sassower's complaints against this Circuit's judges centered on his allegations that they were covering up state court corruption, in which New York's Attorney General is an active participant[9]. Mr. Sassower contended -- and reiterated in his other judicial misconduct complaints -- that this Circuit's judges were

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[9] Cf. ¶21 of my April 23, 1997 Affidavit in Reply and in Further Support of my April 1, 1997 motion:

> "...the brazenness of the Attorney General's misconduct in this litigation is a direct result of the great success he has enjoyed in this Circuit in using litigation misconduct as a modus operandi to defeat Mr. Sassower's legitimate rights...it is this Circuit's cover-up of that Attorney General misconduct, in turn covering up the misconduct of state court judes, that has led Mr. Sassower to sue federal judges of this Cicuit and to file against them §372(c) judicial misconduct complaints. Upon information and belief, the files of his litigation reflect the same kind of dishonest decisions as were authored by the District Judge and this Circuit in Sassower v. Field and by the District Judge in my instant 1983 federal action."

authoring decisions that deliberately contrived and fabricated non-existent facts and knowingly disregarded controlling law and that they were covering up the misconduct not only of state judges and public officials, but of each other. In both the §372(c) complaint Mr. Sassower filed against, inter alia, Judge Meskill and the §372(c) complaint Judge Meskill adjudicated, such allegations were dismissed as "merits related".

17. At the time the three-judge panel summarily denied my April 1, 1997 recusal/sanctions motion, the record before in this case echoed Mr. Sassower's complaints: heinous state judicial corruption, in which the State Attorney General was an active participant and an appeal

> "necessitated by the extraordinary misconduct of the federal District Court judge [who] [k]nowingly and deliberately ... used his judicial office to cover up and protect the state Defendants from the civil, criminal, and disciplinary consequences of their malicious, constitutionally-tortious and unlawful acts -- the subject of this civil rights action against them." (Br. 2).

THE PANEL WHICH HEARD AND DECIDED THIS APPEAL FAILED TO MAKE THE REQUIRED ETHICAL DISCLOSURE AND WAS DISQUALIFIED FOR BIAS, ACTUAL AND APPARENT

18. As is this Circuit's practice, I had no knowledge of the identity of the members of the appellate panel assigned to this appeal until the Thursday of the week before oral argument.

19. At the time of the assignment, however, two of the three panel members, Judge Thomas Meskill and Judge Edward Korman, had prior adversarial involvement in matters relating to my ex-husband, George Sassower. Judge Meskill, in particular, had not only sat on a Circuit

appellate panel, which rendered an affirmance decision that then became the basis upon which Mr. Sassower filed a misconduct complaint against him (Exhibit "G"), but had, as Chief Judge and Acting Chief Judge, dismissed a number of Mr. Sassower's judicial misconduct complaints against members of this Circuit and district judges therein -- the above-mentioned complaint against Judge Pratt being but one (Exhibit "H"). In addition, and as particularly reflected by the first complaint (Exhibit "G"), Mr. Sassower widely distributed it among the Second Circuit judges and beyond. As for Judge Korman, he had been a judge before whom Mr. Sassower had lawsuits raising issues of state court corruption, also involving the New York State Attorney General, Sassower v. Littman, #89-7049, and Sassower v. Sanseverie, #89-7051. This Circuit's decisions therein on appeal are annexed as Exhibits "I-1" and "I-2", respectively.

20. Nevertheless, neither judge made the ethically-mandated disclosure of the foregoing facts -- although these were precisely the kind of facts which my April 1, 1997 motion contended bore on the appearance of bias in this Circuit toward me, contributing to its actualization. Nor did they disqualify themselves, as should have been obvious was their legal and ethical duty to do if they could not be fair and impartial. As events showed and their September 10, 1997 Summary Order and Decision prima facie establishes, they were not fair and impartial.

A. The Panel's Restriction of Oral Argument to the Minimum Time of Five Minutes Per Side Evidences its Extrajudicial Actual Bias Since it is Counter-indicated by the Record

21. Any de novo examination of the record -- as the panel was required to do on this appeal from the District Court's sua sponte and without notice granting of summary judgment to Defendants, who had expressly disclaimed any request for such relief and had produced no evidentiary support for it, and his denial of summary judgment to me, where I had not only requested such relief, but evidentiarily documented my legal entitlement thereto -- would have established the transcending importance of this case. The sole overarching issue on appeal was the District Judge's "pervasive bias", as evidenced by a pattern of misconduct by him throughout the course of the proceeding, culminating in his appealed-from decision and Judgment. This should have been of particular interest to Judge Meskill, who participated on two of the cases cited in my uncontroverted Brief (at 33): In Re IBM, 618 F.2d 923 (1980), as well as United States v. Coven, 662 F.2d 59 (1981), which he authored. In both those cases, the Circuit recognized that a judge's conduct in a proceeding can form the basis for a finding of bias.

Indeed, the very outset of my Brief (at 2) expressly stated, "This appeal is not about good-faith error by the District Judge, but about a wilful course of behavior perverting the judicial process". My uncontroverted Brief then chronicled that the District Judge's "pervasive bias" and official misconduct, which rose to a level of fraud, went hand-

in-hand with the misconduct and fraud of Defendants and their co-Defendant counsel, New York State's highest law enforcement officer, the State Attorney General. The record before the panel showed that I had made fully-documented, uncontroverted, and incontrovertible sanctions applications against Defendants and their counsel for misconduct and fraud, but that the District Judge not only failed and refused to perform his duty to adjudicate such threshold issues, but had completely obliterated their very existence in his appealed-from decision!

22. Judge Meskill should also have been especially interested in my unadjudicated sanctions applications, including several against Assistant Attorney General Weinstein for his fraudulent "oral advocacy" -- since he had sat on the Circuit panel in O'Brien v. Alexander, (2d Cir. Docket # 95-7976, 12/12/96), also cited in my Brief (at 39), which involved sanctionable oral advocacy.

23. My Brief (at 38-50) demonstrated that the defense misconduct not only made this a "classic Rule 11 case", but one whose gravely serious nature mandated judicial inquiry, including by order to show cause on the court's own initiative, pursuant to Rule 11(c)(1)(A). My Brief (38-50) and Reply (1-5) showed that Defendants' litigation misconduct was chargeable not only to Assistant Attorney General Weinstein, but extended to the supervising staff of the Attorney General's office and, ultimately, to Attorney General Vacco himself, to whom explicit written notice of Mr. Weinstein's misconduct had been

given, which was part of the record[10]. Yet, even in the face of specific notice, advising Attorney General Vacco of his duty to make a Rule 60(b)(3) vacatur motion or to join in the instant appeal, Attorney General Vacco took no curative steps. Rather, he and his supervisory staff knowingly allowed Mr. Weinstein to engage in a course of defense misconduct and fraud on the appellate level, much as he had previously done before the district judge.

24. This combination of judicial and defense misconduct was all the more serious because its consequence was to protect from liability the Defendants in my §1983 civil rights action -- defendants who, in addition to the State Attorney General, were the judges of New York's Appellate Division, Second Department and their mostly lawyer appointees connected with the disciplinary mechanism in New York's Ninth Judicial District. The profoundly unconstitutional, tortious, and criminal conduct of all these Defendants was documentarily established by the uncontroverted allegations of my Verified Complaint and the basis upon which the record showed my entitlement to summary judgment, as a matter of law.

25. The uncontroverted record showed that the state court had

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[10] My January 14, 1997 letter to Attorney General Vacco (referred to at p. 4 of my Reply Brief) was annexed as part of Exhibit "D" to my April 1, 1997 recusal/sanctions motion. It is also annexed hereto as part of Exhibit "M".

misused the attorney disciplinary law, all aspects of which it controls[11], to retaliate against me for its own ulterior political and personal purposes. This retaliation was so flagrant and unrestrained that, on June 14, 1991, Defendant Second Department, by a so-called "interim" order, suspended my law license, without written charges, without findings, without reasons, without any hearing, and thereafter, denied me a post-suspension hearing and all appellate or independent review. It has perpetuated that illegal suspension in the face of clear and controlling law of the New York Court of Appeals in Matter of Nuey, [R-528], reiterated in Matter of Russakoff, [R-529], that interim suspension orders without findings must be immediately vacated. The New York Court of Appeals declined review of my June 14, 1991 finding-less "interim" suspension, dismissing my appeals of right and denying my requests for leave -- notwithstanding it had granted leave to interimly-suspended attorneys Nuey and Russakoff. My attempt to obtain discretionary U.S. Supreme Court review by a petition for a writ of certiorari was unavailing.

26. The Verified Complaint's substantiated allegations of bias and corruption by the state adjudicators, who were over and again accused of knowingly and deliberately flouting black-letter law, and my futile exhaustive efforts to obtain appellate or independent review,

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[11] See, Point III of my petition for a writ of certiorari, "The Combination of Prosecutorial and Adjudicative Functions in New York's Disciplinary Scheme Is Unconstitutional and Lends Itself to Retaliation Against Judicial Whistle-Blowers" [R-334-338].

including from the U.S. Supreme Court, as well as the New York Court of Appeals, thus opened up to the lower federal courts a perfect vehicle -- at long last -- to address the constitutionality of New York's attorney disciplinary law. This case afforded the Circuit the opportunity of revisiting Mildner v. Gulotta, 405 F.Supp. 182, 191 (E.D.N.Y. 1975), aff'd, 425 U.S. 901 (1976), where, more than twenty years ago, in a case without allegations of bias in the state forum and where the plaintiffs had not first sought review in the U.S. Supreme Court, a specially-convened three-judge federal court panel split as to what constituted "due process" in quasi-criminal disciplinary proceedings, with Judge Jack Weinstein, in dissent, condemning New York's attorney disciplinary law as constitutionally violative. As highlighted by my cert petition [R-303-439], which is part of the record, when the attorney-plaintiffs thereafter sought review of the dismissal of their federal action in the U.S. Supreme Court:

> "Justices Marshall and Powell apparently agreed with the view of concurring Judge Moore of the District Court that 'the constitutional question is of sufficient importance to be resolved by our highest court...' (At 199). [The] Memorandum Decision in Mildner shows that those two justices wished to 'postpone consideration of the question of jurisdiction to a hearing of the case on the merits.' 425 U.S. 901 (1976)." [R-327]

27. This case involving, as it does, the integrity of the federal judicial process, the integrity of the state judicial process, and the constitutionality of New York's attorney disciplinary law, as written and as applied, was clearly of precedential significance and

plainly deserved at least the 20 minutes I had requested for my oral argument (Exhibit "J-1"). Indeed, even Mr. Weinstein had requested 15 minutes (Exhibit "J-2"). Yet, with no explanation, the Circuit panel cut down our requests to the five-minute minimum to each side.

28. As may be seen from the annexed copy of the August 29, 1997 court calendar (Exhibit "J-3"), the day on which my appeal was scheduled for oral argument, all other cases argued were allotted significantly more time by the panel. Of the three other argued cases, one received 12 minutes for each side (140% more time), one received 15 minutes for each side (300% more time), and one received 20 minutes for each side (400% more time).

29. The only basis on which an appellate panel can properly determine the time to be allotted for oral argument of an appeal is by reviewing the appellate submissions. Especially is this so when the time dramatically disregards the assessment of the parties and counsel -- who are most knowledgeable of their appellate brief and the record. Their time requests reflect their assessments of the time necessary for a formal presentation to the panel and for anticipated questioning by the panel as to issues raised therein and by the briefs and record.

30. I am informed that it is the Presiding Judge -- in this case, Judge Jacobs -- who makes the determination of the time to be allotted each case argued. Yet, as the transcript of the oral argument shows (Exhibit "K"), his sole question of me with which he interrupted my scheduled five-minute presentation, evidenced shocking unfamiliarity

with the case -- or disingenuousness. Indeed, my response to his question as to whether I had sought review in the U.S. Supreme Court was as follows:

> "Excuse me your Honor. Is this a hot court? Did you read the Briefs? Because if you did, it's all there." (Exhibit "K", p. 5, ln. 7)

31. Just from reading the District Judge's decision [R-4]--assumedly where an appellate panel begins its review of an appeal -- Judge Jacobs had to have known the answer to his question. Indeed it makes specific record references to my cert petition, both in its "Background" section [R-10-12], and, in the "Discussion" section, where the District Judge cited it as a basis upon which my action is allegedly barred under Rooker-Feldman [R-15, 17], as well as res judicata [R-17] -- notwithstanding the District Judge had to know that denial of a writ is not a judgment on the merits.

32. My appellate Brief had also repeatedly cited and discussed my cert petition, beginning on its opening pages. The second footnote (at p. 5) states:

> "relevant statutory and rule provisions [R-343-361] are reprinted in Plaintiff's petition for a Writ of Certiorari to the United States Supreme Court, which is part of the record [R-303-439]"

The subsequent references to my cert petition appear at pages 12, 18, 21, 40, 63, 68, 70, 72, 73-74 of the Brief. Particularly noteworthy is page 63 of my Brief, which reprinted verbatim the four discrete areas of unconstitutionality of New York's attorney disciplinary law, as presented

in POINTS I-IV of my cert petition [R-331-342]. The footnote on that page specifically stated that the legal arguments in the cert petition were reiterated and incorporated by reference on the appeal.

References to and discussion of my cert petition also appear in my Reply Brief at pages 9, 15, and 31 -- in response to Mr. Weinstein's references to my cert petition in his Appellees' Brief (pp. 7-8, 9, 15, 17, 18-19, 20).

33. Likewise, Judge Meskill's question to me at oral argument reflected, at best, his ignorance of the record, including of the District Judge's decision -- or, at worst, his disingenuousness. Thus, he asked me "Did you challenge the constitutionality in the state court - of the statute?" (Exhibit "K", p. 3, ln. 22), to which I responded, "Yes, Your Honor, I did", followed by "and it's all stated in the Brief" (Exhibit "K", p. 4, ln. 13).

34. Indeed, my Brief (at 72) expressly referred to the District Judge's acknowledgment of such constitutional challenges by me, stating

> "...As recognized by the District Judge [R-15], Plaintiff exhausted <u>every</u> available remedy in the state forum for review of her constitutional challenge to the state attorney disciplinary law, as written and as applied, including a Petition for a Writ of Certiorari to the U.S. Supreme Court."

The District Judge's decision had been very explicit [R-15]:

> "...Sassower pressed both her statutory and constitutional challenges to the June 1991 suspension order and to the New York State bar disciplinary rules upon which they were issued, in the state appellate courts and ultimately in the Supreme Court. Indeed, Sassower raised all the claims asserted herein

> in the state court and in her petition for a writ of certiorari, including claims that N.Y. Comp. Codes R. & Regs. Tit. 22, §691.4 is unconstitutional on its face and as applied, and that New York Judiciary Law §90 is unconstitutional in failing to provide for a post-suspension hearing. See Cert. Pet'n. at 16-25, A-89 n.1"

35. Defendants' Appellees' Brief, in support of dismissal on grounds of Rooker-Feldman, quoted (at 11) the above excerpt from the District Judge's decision and, argued that I had raised my constitutional claims in state court and in my cert petition, quoting verbatim from my cert petition (at 18).

36. Only Judge Korman's questions evinced familiarity with the specific facts in the case, albeit superficially. He inquired as to whether, before my suspension, I hadn't been served with an Order to Show Cause why I shouldn't be suspended, which he seemed to purport was "what due process is" (**Exhibit "K"**, p. 8). Anyone who had read my Verified Complaint [¶¶67-74; ¶¶85-86] -- or the recital of its material allegations, as it appears at the outset of my Brief (at 5-6) -- knew that Defendant Casella's May 8, 1990 Order to Show Cause, allegedly pursuant to 22 NYCRR §691.13(b)(1), for an order for me to be medically examined, and his January 25, 1991 Order to Show Cause for my immediate interim suspension, allegedly pursuant to 22 NYCRR §691.4(l), were jurisdictional nullities, inter alia, because they lacked the essential supporting petition necessary to commence a plenary proceeding, as those very court rules require -- and that they were each challenged by me for lack of jurisdiction, subject matter, as well as personal.

37. This ignorance of the fundamental aspects of the case was also shown by Judge Jacob's superficial questioning of Assistant Attorney General Weinstein as to the District Judge's grounds for dismissal (Exhibit "K", pp. 11-12) -- grounds set forth explicitly in the decision [R-14-20] and reiterated in Appellees' Brief (at 11-12). Here, too, Judge Korman showed more specific familiarity by his question about my claim that Defendant Second Department had improperly reviewed its own conduct in my Article 78 proceeding against itself. However, such question was not one requiring him to do more than read the District Judge's decision [R-11]. Indeed, had he read my Brief, Reply, or my submissions in the lower court in the Record on Appeal, he had to know that the issue was <u>not</u> whether my Article 78 suit against Defendant Second Department could have been had in "another Appellate Division" -- which would have been a court of coordinate jurisdiction -- but, rather the unconstitutionality of New York's Article 78 statute by reason of its failure to provide for the venue of Article 78 proceedings against Appellate Division judges and the fact that the only higher tribunal is the New York Court of Appeals -- which, under the New York State Constitution, has no original jurisdiction. My cert petition [R-331-334] pointed out that New York's statutorily-unauthorized "interim" suspension court rules are unconstitutional because attorneys who are unlawfully suspended under "interim" suspension orders cannot obtain independent Article 78 review by a superior tribunal and have no statutory right of

appeal[12].

38. Such shameful ignorance, be it genuine or feigned[13], of the facts and law in this case establishes that the panel made no "merits-related" determination as to the time it would allot to the oral argument of my appeal. What it did, instead, was to make a bad-faith determination driven by this Circuit's personal, extra-judicial bias -- as well as that of its members -- to afford me the short shrift reflected by its five-minute minimum time allotment.

39. If, the panel was genuinely ignorant of the record of this case, it was because of its a priori, fixed, and unalterable view that, irrespective of the merits, the District Judge's decision was to be affirmed. Why then should it "waste" time on the factual record and my legal arguments when they established my entitlement to reversal, summary judgment in my favor, and sanctions. Indeed, this panel showed them to be irrelevant when it rendered its Summary Order less than two

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[12] The absence of such Article 78 review remedy is also unconstitutional as to attorneys suspended under a final order since under Judiciary Law §90(6), such are only appealable on questions or law, not fact.

[13] Cf. The panel's extraordinary "ignorance" of the fundamentals of the case, revealed in the transcript of the oral argument (Exhibit "K") replicates the District Judge's similar extraordinary "ignorance" at the September 28, 1995 presentment of my Order to Show Cause for Temporary Injunction, with TRO. This is summarized in my Brief (at 21) and graphically particularized in my Affidavit in support of my Order to Show Cause for the District Judge's recusal [R-647-667]. The stenographic transcript of the September 28, 1995 proceeding before the District Judge is at R-668-701].

weeks later (Exhibit "N-2") -- an Order obliterating all the qualifying details to my responses to Judges Meskill and Jacobs, as well as the entirety of my response to Judge Korman, precisely because they precluded the decision which the panel had pre-determined to render (Cf., Exhibit "N-1").

B. The Panel's Conduct at the Oral Argument, Including its Countenancing of Assistant Attorney General Weinstein's Continued Misconduct by His Fraudulent and Dishonest Oral Advocacy, Evidences its Extrajudicial Actual Bias

40. Obviously, where a Circuit panel fails to acquaint itself -- even minimally -- with the Record on Appeal and the Appellant's Brief, and, nonetheless, curtails oral argument to the barest minimum of five minutes, basic rules of fairness require that it not consume that appellant's five minutes by asking elementary, non-dispositive questions, whose answers it would know had it acquainted itself with the Record and Brief.

41. This panel denied me such basic decency. The transcript reflects my reasonable request that the panel's questions to me and my answers not be counted against my allotted five minutes -- and its unapologetic, unexplained refusal to permit me those five minutes for a presentation I had worked long and hard to distill to fit within that arbitrary time limit -- a written presentation whose purpose was to focus the panel on the critical facts and issues of the case (Exhibit "K", pp. 4, 10, 16).

42. The transcript shows that Presiding Judge Jacob's response to my inquiry "Is this a hot court? Did you read the Briefs?..." was to castigate me for not being "grateful for the opportunity to answer our questions", followed up by an unwarranted threat that the argument would be over if I did not want to answer his questions (Exhibit "K", p. 5, ln. 19[14]).

43. Although I had been told that where a panel has questions, it is free to extend time for its inquiries, Judge Jacobs warned me to "just go to the closing" (Exhibit "K", p. 9) as I was in the midst of my response to Judge Korman as to the political context to my retaliatory suspension in support of my First Amendment claims. The significance of what I was saying was, assuredly, obvious to Judge Jacobs, who had participated in Bernheim v. Litt, 79 F.3d 318 (2d Cir. 1996), cited in my Brief (at 67), as demonstrating that "special considerations govern §1983 actions asserting free speech claims".

44. The transcript shows that even as I was mid-sentence in my recusal application addressed to the panel's bias, Judge Jacobs did not see fit to allow me to conclude my plainly threshold statement and cut me off (Exhibit "K", p. 9, ln. 20).

45. Nor would Judge Jacobs permit me to submit the written statement I had been precluded from presenting orally by the panel's

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[14] The stenographer transcribing the oral argument had difficulties with the transcription. However, the continuation of Presiding Judge Jacob's comments, herein quoted, can be heard on the Circuit's audiotape of the argument.

interruptions or the copy of my August 27, 1997 letter challenging Attorney General Vacco to appear personally to defend this appeal andaccount for his office's litigation misconduct. Instead, Judge Jacobs, without cause or provocation, publicly humiliated me before a packed courtroom, threatening to have me removed from the courtroom and unjustly accusing me of "acting in disrespect" (Exhibit "K", pp. 10, ln. 15) -- when all I was doing was trying to protect my legal rights, then being trampled on by the panel.

46. Despite Judge Jacobs' pronouncement that the oral argument was the court's "opportunity to ask...questions", the panel's superficial questions engendered no meaningful follow-up so as to demonstrate the good-faith of such inquiries which had interrupted my prepared statement. Thus, when I responded to Judge Meskill's inquiry as to whether I had raised a constitutional challenge in the state court by stating "I never had a full and fair opportunity to litigate that issue", there was not the slightest inquiry by him or any other panel member to explore that claim -- one which dispositively eroded defenses based on Rooker-Feldman and preclusion, as pointed out, repeatedly, in my Brief (at 52, 62-63, 65-66) and Reply (at 8-9, 11, 13, 22, 26-32). These were the very grounds on which the panel, thereafter, dumped the case -- without denying or disputing my argument that such defenses are wholly inapplicable in the absence of a "full and fair opportunity to litigate" -- an essential component of which is an unbiased and impartial tribunasl. Of course, addressing that argument would have required the

panel to confront the political and personally-motivated bias by the state adjudicators, as alleged in my Verified Complaint, their non-compliance with express requirements of New York's attorney disciplinary law, and the due process requirements and constitutional omissions of New York's attorney disciplinary law, as well as the Article 78 statute -- all of which its Summary Order omits (Exhibit "N-2"). It could not address those arguments and such law and legal principles and uphold the District Judge's decision and Judgment, as it was predetermined to do.

47. Nor was there any follow-up to my response to Judge Jacobs' question as to whether I sought review by the U.S. Supreme Court -- a question which, had I answered in the negative, would have been the pretext for invoking Rooker-Feldman on the simplistic assertion that my remedy lay with filing a cert petition to that Court. As pointed out in my response, Supreme Court review is discretionary and my cert petition was denied, along with thousands of other meritorious petitions. The significance of these two facts was highlighted in my Brief (73-74) -- which the panel's Summary Order also fails to address -- much as it fails to address the fact that the Supreme Court's denial of a writ is not an adjudication on the merits -- which it ignores when it holds that unspecified "contemporary preclusion principles" (Exhibit "N-2", p. 5) bar my general challenge to New York's attorney discipinary law, as written.

48. None of the panel's reactions at oral argument were remotely consistent with what the uncontroverted record in this case

called for. Thus, there was not the slightest reaction of revulsion -- as there should have been from a fair and impartial panel having respect for rudimentary constitutional values and due process standards -- to my response to Judge Jacobs as to the basis for my constitutional claims, as written and as applied, that

> "...the Attorney Disciplinary Law of the State of New York, is blatantly unconstitutional, because it denies any right of appeal to an attorney whose law license has been suspended without any written charges, without any hearing, findings, reasons, without any post-suspension hearing, where the facial order itself does not make any findings." [Exhibit "K", p. 6, ln. 17]

49. Instead, the panel's only reaction was Judge Korman's extraordinary pretense that, if I was served with an order to show cause "isn't that what due process is?" (Exhibit "K", p. 7]. Such a preposterous assertion of what due process is -- as if an order to show cause could, without more, satisfy constitutional requirements for suspending an attorney without findings, without reasons, and without a hearing -- in addition to without written charges -- is the kind of frivolous, legally unsupported argument worthy of Defendants, indeed, made by them in Mr. Weinstein Appellees' Brief -- and exposed as frivolous and legally unsupported by my Reply (at 9, 16-17, 18-19, 30-31), with citation to legal authority.

50. In view of what the fully-documented and uncontroverted record showed as to Mr. Weinstein's fraudulent conduct before the district judge, as well as in the case management phase of the appeal and in the appeal itself, no fair and impartial tribunal with respect for the

integrity of the judicial process would have allowed Mr. Weinstein to open his mouth to argue the appeal, and surely not without first accounting for his extraordinary misconduct in his representation of Defendants and his office. Nor could it allow his insipid, superficial, and fraudulent presentation at the oral argument to pass without challenge, as it did with the exception of some potentially incisive questioning by Judge Korman, who then leniently allowed Mr. Weinstein to get away with responses which were either inapplicable boiler-plate or outright gibberish (Exhibit "K", pp. 12-16).

51. Before leaving the lectern, my paralegal assistant handed up to the Clerk the copy of my prepared five-minute written statement I had proffered (Exhibit "L"), as well as three copies of my August 27, 1997 letter to Attorney General Dennis Vacco, one for each of the panel members (Exhibit "M"). Such letter had previously been served on Mr. Weinstein, as reflected by annexed fax confirmation slips[15]. The letter brought to Attorney General Vacco's attention the advertisement published in the August 27, 1997 New York Law Journal, entitled "Restraining 'Liars in the Courtroom' and on the Public Payroll" -- a copy of which it

[15] On September 2, 1997, the letter was also hand-delivered to the Attorney General's office in Albany -- as reflected by the signed acknowledgment (Exhibit "M"). At the same time, three copies of the August 27, 1997 Law Journal ad "Restraining 'Liars in the Courtroom' and on the Public Payroll" were also hand-delivered for First Deputy Atorney General William Flynn, Deputy Attorney General Donald P. Berens, Jr., and for Barbara A. Billet, the Solicitor General (Exhibit "B").

annexed[16]. Both the letter and ad were part of my aborted presentation (Exhibit "L", p. 3).

52. Preparation for this recusal motion was begun immediately upon conclusion of the August 29, 1997 oral argument. While still at the Circuit Court of Appeals, I ordered a copy of the audiotape of the argument from the Clerk's office (Exhibit "J-5"). I also instructed the court stenographer, who I had arranged, in advance, to stenographically record the argument, to transcribe it[17]. The following week, I received a phone call from the Circuit Court Clerk that my written statement (Exhibit "L"), together with the copies of my letter to Attorney General Vacco (Exhibit "M") were being returned -- and, thereafter, I received them in the mail. The audiotape arrived by mail on Saturday, September 6, 1997. The transcription had not yet even been completed when, on Wednesday, September 10, 1997, I received a telephone call from the Clerk's office, notifying me of the Circuit panel's "affirmance" (Exhibit "N-2"). As for the transcription of the August 29, 1997 oral argument, I did not receive a usable transcript until 4:31 p.m. on September 23, 1997 -- when a faxed copy was received (Exhibit "K").

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[16] In view of the ad's size and prominent placement on pages 3 and 4 of the Law Journal (Exhibit "B"), it can reasonably be inferred that the panel was aware of it.

[17] I had hoped to videotape the oral argument, but the panel summarily denied the request (Exhibit "J-4"). It would have truly showcased Judge Jacob's intemperate, injudicious, and brutish behavior.

C. The Panel's No-Publication, No-Citation Summary Order is Prima Facie Proof of its Extrajudicial Actual Bias

53. The panel's Order (Exhibit "N-2") does not adjudicate the threshold issue of its own disqualifying bias, which I raised at the August 29, 1997 oral argument (Exhibit "K", p. 9). Aborted as they were by the panel's restrictive actions, my presentation conveyed my position as to the Circuit's bias and alerted the panel to the significance of my April 1, 1997 motion, which motion was also referred to in my Reply Brief (at 1). Surely, however, the panel did not require me to tell it -- as I was in the midst of doing before I was cut off,

> "I respectfully submit that the panel hearing this appeal should independently adjudicate the basis for recusal and transfer, as well as the motion's other branches of relief. These include disciplinary and criminal referral of the Attorney General and his co-defendants for their fraud and other misconduct in the appellate case-management phase of this litigation. The panel's one-word general denial of that good and meritorious, fact-specific motion only further supports my allegations and the public perception of bias by this Circuit." (Exhibit "L", p. 2).

Nonetheless, the panel's Order makes no adjudication of either the Circuit's bias, the bias of the three-judge panel denying my April 1, 1997 motion, or its own bias -- which its abusive conduct at the August 29, 1997 argument tellingly demonstrated.

54. Judge Meskill, in particular, should have been well able to evaluate the evidence, particularized by my April 1, 1997 motion, of this Circuit's actual bias against me, as reflected by the Southern District's suspension of my federal law license [R-558] despite my

invocation of Rule 4 [R-562, R-568, R-570]. He participated on this Circuit's appellate panel in Matter of Jacobs, 44 F.3d 84 (1994), which discussed the governing standards, procedures, and considerations for federal court suspension and invocation of Rule 4. The record shows that the Southern District utterly violated such standards, procedures, and considerations by its suspension of my federal law license, without a hearing -- thereby amplifying the "appearance of impropriety" created by Judge Newman's questioning of me on the dehors-the-record subject of my federal law license at the oral argument of Sassower v. Field, as recited in my §372(c) complaint (Exhibit "C", pp. 4-5).

55. Nor does the Circuit panel adjudicate the sole issue of the District Judge's pervasive bias that I had raised on the appeal. The importance of this issue was highlighted in my aborted oral argument statement which described the District Judge's bias as "the overarching issue presented by my Brief, with five specific subsections relating to the lower court's aberrant and abusive conduct and its factually and legally dishonest decision." (Exhibit "K", p. 2). These five subsections, reflected in the "Issues Presented for Review" page of my uncontroverted Brief and developed in the legal points of my argument therein (at pp. 31-75), relate to the District Judge's adjudications -- or lack thereof -- of five motion-submissions before him, each misrepresented by his decision and reflecting his jettisoning of fundamental adjudicatory standards -- beginning with honesty.

56. The dishonesty of the District Judge's decision was the

reason my Appellant's Brief had to be expanded to 76 pages, with a seven-page Appendix annexed thereto, further detailing his multitudinous falsifications, distortions, and omissions of material fact -- without which he could not have granted summmary judgment to Defendants. The Appendix demonstrated, line-by-line, how the District Judge's recitation of my Verified Complaint, appearing in his decision [R-5-13], had deliberately sheared off virtually EVERY allegation of Defendants' jurisdiction-less, due-process-less, fraudulent and malicious conduct. My Brief argued that the District Judge had done this so as to make the Complaint susceptible to otherwise inapplicable defenses of Rooker-Feldman, res judicata, immunity. This, in addition to excising all allegations relating to First Amendment rights and the political genesis and context of Defendants' retaliatory conduct for their exercise -- forming almost a quarter of my Verified Complaint (See, Br. at 6, fn. 3).

57. Notwithstanding the de novo standard for appellate review, the panel does not even once cite the record before the District Judge, but instead relies exclusively on his decision, which it compliments as "cogent". Nor does it address any of the District Judge's adjudications on the motion-submissions before him, including the District Judge's sua sponte and without notice conversion of Defendants' dismissal motion to one for summary judgment in their favor, based on non-existent "voluminous" affidavits of Defendants. Instead, the panel sua sponte and without notice dismisses the Complaint -- purportedly on the pleading -- for lack of subject matter jurisdiction under Rooker-

Feldman. In so doing, it even more dramatically than the District Judge shears off ALL allegations of Defendants' jurisdiction-less, due-process-less, fraudulent, and malicious conduct and all allegations relating to exercise of First Amendment rights and the political context of Defendants' retaliatory conduct. Nor does the panel make any statement that Defendant Second Department's suspension of my law license satisfied due process minimums -- let alone articulate what those minimums are in relation to quasi-criminal attorney disciplinary proceedings, In re Ruffalo, 390 U.S. 544, 551 (1968) (Reply Br. 7, 16-17). This replicates the similar "omission" in the District Judge's decision (Reply 8-9).

58. As an aid to establishing that the panel's Order (Exhibit "N-2") is knowingly false and fraudulent, a 13-page Appendix is annexed hereto (Exhibit "N-1") identifying -- line by line -- the myriad respects in which it knowingly falsifies, misrepresents, and suppresses my Verified Complaint's material allegations and the proceedings herein, as established by the record before the panel.

59. The false and fraudulent nature of the panel's Order is also detailed by my incorporated-by-reference Petition for Rehearing with Suggestion for Rehearing In Banc. In the interest of judicial economy, it should be read in conjunction herewith.

60. The record herein established no basis upon which to found a claim that the panel's Order represents "good faith" decision-making. Indeed, the record documents far more than "egregious" error, but official misconduct which is unquestionably knowing and deliberate.

61. The fact that the panel's Order is not for publication or citation -- although my appeal was in every sense "precedent-worthy" -- reflects the panel's conscious attempt to conceal it from public scrutiny and supports a further inference of its scienter.

CONTROLLING NEW YORK LAW, AS EXPRESSED IN MATTER OF NUEY AND MATTER OF RUSSAKOFF, REQUIRE IMMEDIATE VACATUR OF DEFENDANT SECOND DEPARTMENT'S FINDING-LESS JUNE 14, 1991 "INTERIM" SUSPENSION ORDER

62. There is no legal authority anywhere in America to permit suspension of an attorney's law license, as here at issue, without written charges, without a hearing, without findings, without reasons, without a post-suspension hearing, without any appellate or independent review. It is an abomination to the Constitution of the United States, as well as to the State of New York, and the basis upon which I have a §1983 civil rights action invulnerable to Rooker-Feldman and preclusion defenses.

63. As particularized in the record before the District Judge and in my Brief (at 8-9, 28, 54-56, 68, 70-71) and Reply Brief (at 28) to this Circuit, Nuey [R-528] and Russakoff [R-529]-- whose significance is recited among the allegations of my Verified Complaint -- are dispositive of my entitlement to immediate vacatur, for lack of findings, of Defendant Second Department's June 14, 1991 "interim" suspension Order [R-96], which -- on its face -- makes no findings. On appeal, Defendants have not argued the contrary, but have ignored those two cases entirely

(Reply Br. 15-16, 18-19). This replicates their conduct before the district court (Br. 14, 15, 18), where they never once confronted these extremely short, straight-forward cases of New York's highest court, making plain that §691.4(l) [R-349] is not only statutorily unauthorized, but, on its face, unconstitutional for failure to provide for a prompt post-suspension hearing. Defendants' Answer to my Verified Complaint deferred to the federal court for its interpretation -- which both the District Judge and panel failed and refused to provide (See Br. 68, 70-71; Reply Br. 16)

64. The panel, like the District Judge, has knowingly and deliberately failed and refused to perform its duty to interpret and apply Nuey and Russakoff, because doing so would require it to summarily declare §691.4(l) unconstitutional -- both as written and as applied to me. This wilful refusal to adjudicate the controlling effect of these cases is part and parcel of the systemic fraud and official misconduct herein, no less serious than their stripping my Verified Complaint of the very allegations which preclude Rooker-Feldman and preclusion defenses -- allegations which are evidentiarily uncontroverted and as to which I am entitled to summary judgment as a matter of law (Br. 61-64).

65. My right to immediate vacatur under Nuey and Russakoff was the subject of an Order to Show Cause for a Preliminary Injunction, with TRO [R-488-623], which I brought before the District Judge more than two years ago. His refusal to sign that Order to Show Cause, and his denial of the relief to which I was then -- and now -- absolutely

entitled, is encompassed by the instant appeal. Indeed, it is among the five subsections of my Brief establishing, prima facie, the District Judge's aberrant conduct and disqualifying bias -- as to which the panel's Order makes no adjudication (Exhibit "N-2", p. 3) (See Br. 50-56: Point III: "THE DISTRICT JUDGE WRONGFULLY REFUSED TO SIGN PLAINTIFF'S ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION, WITH TRO, AND WRONGFULLY DENIED IT", See, also, recitation at 20-22).

66. As reflected by my April 1, 1997 motion, immediate vacatur of my suspension based upon Nuey and Russakoff was encompassed in the relief sought therein, requesting:

> "(d)... a Show Cause Order against the Attorney General, pursuant to the Court's own initiative under Rule 11(c)(1)(B), or on this motion, requiring the Attorney General to show cause as to why he and Appellees should not be held in contempt for wilful disobedience of the October 23, 1996 Pre-Argument Conference Notice and Order, [and] sanctioned for fraudulent and frivolous conduct in defeating the purposes of the November 8, 1996 Pre-Argument Conference, including their bad-faith failure to respond, with reasons, to any of the stipulations proposed therein and reiterated in my January 14, 1997 letter to Attorney General Vacco...among them, immediate vacatur of the Second Department's June 14, 1991 Order suspending my license, as required by the controlling cases of Matter of Nuey, 61 N.Y.2d 513 (1984) [R-528] and Matter of Russakoff, 72 N.Y.2d 520 (1992) [R-529-531]". (at pp. 2-3; and WHEREFORE CLAUSE, pp. 27-28)

67. My aborted statement at the August 29, 1997 oral argument (Exhibit "L", p. 3) emphasized the Attorney General's ethical duty to stipulate to vacatur of my suspension and quoted from my August 27, 1997 letter to him (Exhibit "M"). Highlighting the significance of Nuey and Russakoff in establishing my immediate entitlement to vacatur, my

statement closed by requesting that the panel:

> "demand the Attorney General address those issues here today -- so that when I leave this courtroom, it is with my law license restored to me, in accordance with my most fundamental due process and equal protection rights." (Exhibit "L", at p. 5).

68. Even without the benefit of my oral presentation on the subject of Nuey and Russakoff, any fair and impartial tribunal, which knew the first thing about the record, would have demanded that Mr. Weinstein address those cases and justify the Attorney General's refusal to stipulate to immediate vacatur of the facially unconstitutional June 14, 1991 "interim" suspension Order [R-96], issued pursuant to a facially unconstitutional and statutorily-unauthorized court rule [R-349]. The panel's failure to direct such question to Mr. Weinstein -- like its failure to direct him to respond to the documentary record of his defense misconduct -- is prima facie evidence of its disqualifing bias.

LEGAL AND ETHICAL MANDATES REQUIRE DISCIPLINARY AND CRIMINAL REFERRAL OF THE INVOLVED FEDERAL JUDGES, AS WELL AS OF DEFENDANTS AND THE STATE ATTORNEY GENERAL AND IMPOSITION OF THEM MONETARY SANCTIONS

69. Wilful misconduct by federal judges of the nature and extent demonstrated by the easily-verifiable record herein requires disciplinary and criminal referrals:

> "A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has commited a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate

authority." Canon 3D(1) of the ABA Code of Judicial Conduct. Based on this record, appropriate action would include a sua sponte judicial misconduct complaint by the Circuit's Chief Judge, pursuant to §372(c)(1), against District Judge John Sprizzo and against the two three-judge appellate panels involved herein: the first, presided over by Judge Kearse, with Judges Calabresi and Oberdorfer. The second, presided over by Judge Jacobs, with Judges Meskill and Korman. It would also include their referral to the U.S. Justice Department's Public Integrity Section of its Criminal Division.

70. Likewise, the record herein establishes the appropriateness of disciplinary and criminal referral of the Defendants, most of whom are lawyers, and their co-Defendant counsel, the State Attorney General, as well as his staff, for their defense misconduct at every stage of this litigation: before the District Judge, in the pre-appellate case management phase, and on appeal before this Circuit:

> "A judge who receives information indicating a sbustantial likelihood that a lawyer has commited a violation of the rules of professional conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the rules of professional conduct that raises a substantial question as to a lawyer's honesty, trustworthiness, and fitness as a lawyer in other respects shall inform the appropriate authority." Canon 3D(2) of the ABA Code of Judicial Conduct[18].

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[18] See, also, F.R.A.P. Rule 46(c):

> "A court of appeals may, after reasonable notice and opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who

71. Additionally, maximum monetary sanctions for Defendants' documentably fraudulent conduct are also warranted, pursuant to 28 U.S.C. 1927, Fed.R.Civ.P. Rule 11, F.R.A.P. 31 and 38, as well as the court's inherent power.

WHEREFORE, it is respectfully prayed that this Court grant an Order: (a) recusing this Circuit for bias, pursuant to the Fifth Amendment of the U.S. Constitution and 28 U.S.C. §455(a), and, in particular, recusing the three-judge panel that adjudicated the appeal and rendered the no-publication, no-citation Summary Order and Decision, filed September 10, 1997; (b) transferring the appeal to another Circuit; (c) vacating the District Court's Judgment and the panel's Summary Order affirming it for fraud, misrepresentation, and other misconduct of an adverse party, pursuant to Fed.R.Civ.P. Rule 60(b)(3), as well as fraud, misrepresentation, and other misconduct of the District Judge and of the panel, pursuant to Fed.R.Civ.P. 60(b)(6) and the Court's inherent power; (d) immediately vacating Defendant Second Department's June 14, 1991 finding-less "interim" Order suspending Appellant's state law license, pursuant to controlling state law, Matter of Nuey, 61 N.Y.2d 513 (1984) [R-528]; Matter of Russakoff, 79 N.Y.2d 520 (1992) [R-529], requiring that interim suspension orders, without findings, be immediately vacated; (e) vacating the Southern District's February 27, 1992 suspension Order

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practices before it for conduct unbecoming to a member of the bar and for failure to comply with these rules or any rule of the court."

as violating constitutional due process requirements and the Southern District's own Rule 4 [R-906]; and (f) for such other and further relief as may be just and proper, including disciplinary and criminal referral of the District Judge and Circuit panels, as well as of Defendants and their co-Defendant counsel, the New York State Attorney General, together with maximum monetary sanctions.

Doris L. Sassower

DORIS L. SASSOWER
Appellant Pro Se

Sworn to before me on this
10th day of October 1997

Notary Public

ANTHONY DELLA VECCHIA
Notary Public, State of New York
No. 01DE5035676
Certificate Filed in Westchester County
Commission Expires 11-6-98

TABLE OF EXHIBITS

Exhibit "I-1":	Second Circuit's not-for-publication, no citation decision in Cohen v. Littman, #89-7049 (District Judge Korman)
Exhibit "I-2":	Second Circuit's decision in Sassower v. Sansverie, #89-7051 (District Judge Korman)
Exhibit "J-1":	Doris L. Sassower's notification, dated May 15, 1997, requesting 20 minutes to orally argue appeal
Exhibit "J-2":	Assistant Attorney General Jay Weinstein's notification, dated March 11, 1997, requesting 15 minutes to orally argue appeal
Exhibit "J-3":	Second Circuit's Day Calendar for August 29, 1997: Room #506
Exhibit "J-4":	Order of Court, dated August 28, 1997, denying written requests to videotape and audiotape oral argument
Exhibit "J-5":	Written request, dated August 29, 1997, for copy of audiotape of the August 29, 1997 oral argument and Second Circuit receipt of payment
Exhibit "K"	Stenographic transcript of August 29, 1997 oral argument
Exhibit "L":	Aborted statement of Doris L. Sassower, intended for presentment at August 29, 1997 oral argument. Copy proffered and thereafter returned by the Second Circuit
Exhibit "M":	August 27, 1997 letter to Attorney General Dennis Vacco, proffered at the August 29, 1997 oral argument and thereafter returned by the Second Circuit. Receipted copy reflecting hand-delivery on September 2, 1997 for Attorney General Dennis Vacco
Exhibit "N-1":	Appendix to panel's Summary Order establishing its deliberate falsification, misrepresentation, and suppression of the material allegations of Appellant's Verified Complaint and the facts in the record
Exhibit "N-2":	Panel's Summary Order, filed September 10, 1997