

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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DORIS L. SASSOWER,

Plaintiff - Appellant,

-against-

GUY MANGANO HON, Presiding Justice of the Appellate Division, Second Dept. of the Supreme Court of the State of New York, THE ASSOCIATED JUSTICES THEREOF, GARY CASELLA and EDWARD SUMBER Chief Counsel and Chairman, respectively, of the Grievance Committee for the Ninth Judicial Circuit, DOES 1-20, being present members thereof, MAX GALFUNCT, being a Special Referee and G. OLIVER KOPPELL, Attorney General of the State of New York, all in their official and personal capacities,

Defendants - Appellees,  
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Federal Court Building  
40 Centre Street  
Room 506  
New York, New York

August 29, 1997  
10:30 A.M.

ORAL ARGUMENT taken in the above-mentioned caption, held before Joy-Angela Williams, a Notary Public of the State of New York.

PROCEDURAL PROCESS, INC.,  
928 Broadway  
New York, New York 10010  
(212) 674-1015

EX 9K

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

DORIS L. SASSOWER, Pro Se

JAY T. WEINSTEIN, ESQ.,  
Attorney for all Defendants  
(212) 416-8573

T H E P A N E L

HON. THOMAS J. MESKILL, C. J.,  
HON. DENNIS JACOBS, C. J.,  
HON. EDWARD R. KORMAN, D. J. EDNY

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2 MRS. SASSOWER: Your Honor, since I am  
3 pro se, may I ask permission to have my  
4 assistant stand alongside me?

5 HON. JACOBS: You can pull up a chair.

6 MRS. SASSOWER: Thank you, Your Honor.  
7 If the Court pleases, I am Doris Sassower,  
8 the Plaintiff-Appellant, pro se, in this 1983  
9 civil rights action challenging the  
10 constitutionality of New York's Attorney  
11 Disciplinary Law as written and as applied to  
12 me. This is the case in which not only every  
13 New York attorney has an interest but the  
14 public as well. The public is directly  
15 affected when the State Judiciary, which has  
16 exclusive control over all aspects of  
17 attorney discipline, uses its disciplinary  
18 power for political and ulterior purposes to  
19 retaliate against an attorney who has been  
20 challenging the politicalization of appointed  
21 and elected state court judgeships.

22 HON. MESKILL: Did you challenge the  
23 constitutionality in the state court of these  
24 statutes?

25 MRS. SASSOWER: Yes, I did, Your

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Honor, and since I am limited to five minutes, Your Honor, although I asked for twenty, I would be grateful if I could complete my prepared statement.

HON. MESKILL: I would be grateful if you answer my question.

MRS. SASSOWER: Will it be counted on my time?

HON. MESKILL: Yes. You did challenge the constitutionality in the state court?

MRS. SASSOWER: Yes, Your Honor, I did, and it is stated in the brief, however, I never had a full and fair opportunity to litigate that issue, nor was there any right of appeal afforded to me under the law of the State of New York.

HON. MESKILL: Go ahead. You have answered my question.

MRS. SASSOWER: Yes. That alone is an abomination which should not be tolerated be federal court in a democratic society.

HON. JACOBS: Did you appeal the adverse determination in the state court?

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You have an adverse determination on this Federal Constitutional article. Did you appeal that up to the Supreme Court of the United States?

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MRS. SASSOWER: Excuse me, Your Honor. Is this a hot court? Did you read the briefs? Because if you did, it's all there.

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HON. JACOBS: Mrs. Sassower, this oral argument is our opportunity to ask you questions.

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MRS. SASSOWER: Certainly.

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HON. JACOBS: And you should be grateful for the opportunity to answer our questions.

MRS. SASSOWER: Certainly I am.

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HON. JACOBS: If you don't want to answer my question --

MRS. SASSOWER: No, no. On the contrary, Your Honor, I welcome the opportunity to answer as many questions as Your Honors have.

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HON. JACOBS: Could you answer mine?

MRS. SASSOWER: Yes, indeed. I

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2 exhausted every avenue of appeal known to the  
3 law of the State of New York, including not  
4 only direct appeal, but an Article 78  
5 Proceeding in order to obtain appellate  
6 review of the jurisdiction-less, due  
7 process-less, suspension order.

8 HON. JACOBS: Did you go to the  
9 supreme court?

10 MRS. SASSOWER: I applied for a Writ  
11 of Cert to the Supreme Court of the United  
12 States, and, as Your Honor knows, that it is  
13 a discretionary remedy. It is not a matter  
14 of right, and, as one of about seven thousand  
15 applicants for a Writ of Cert, I was not  
16 fortunate enough to be within the 75 or so  
17 that were chosen. That's precisely why the  
18 state law, the Attorney Disciplinary Law of  
19 the State of New York, is blatantly  
20 unconstitutional, because it denies any right  
21 of appeal to an attorney whose law license  
22 has been suspended without any written  
23 charges, without any hearing, findings,  
24 reasons, without any post-suspension hearing.  
25 Where the facial order itself does not make

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any findings.

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HON. KORMAN: You did have with respect to presenting for your suspension case that was served you an order to show cause why you should not be suspended; did you? You have had an opportunity to tell the Court why they should not suspend you; isn't that what due process is?

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MRS. SASSOWER: Yes. Unfortunately --

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HON. KORMAN: You were served with an order to show cause why you should not be suspended or not?

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MRS. SASSOWER: The order to show cause, the suspension, under an unconstitutional court rule, would make no difference. However, the order to show cause did not initiate the proceeding under New York law. An order to show cause is a motion in an action or proceeding. There was no action and there was no proceeding. There was a motion without support of the required petition that started a disability proceeding in May 1990, which was not even served on me, as Section 90 of the Judiciary Law requires,

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explicitly. Whenever an attorney at law is the subject of disciplinary jurisdiction, there must be a copy of charges personally delivered to the attorney to commence the proceedings. That's Judiciary Law 90, Subdivision 6, that's very clear. Now that didn't happen in my case at all. What happened was that a fraud, an outright fraud was perpetrated by the Court, the Court, the State Court involved and its Grievance Committee Defendants in this action, who are appointed by and serve at the pleasure of the Appellate Division Second Department, whose Judges I was challenging and exposing as engaging in outright corruption of the judicial nominating process.

I had brought a case called Castracan against Colavita and others in 1990 under the State Election Law, as pro bono counsel, challenging what was the corrupt, written deal between the two major parties, Republican and Democratic parties, in the Ninth Judicial District that got together and nailed down every judgeship for the next



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2 three years starting in 1989 Fall  
3 elections. And it wasn't enough that they  
4 nailed down every vacancy that was upcoming,  
5 they decided to create a few by having an  
6 agreement that certain Judges should  
7 resign in advance --

8 HON. JACOBS: Just go to the closing.

9 MRS. SASSOWER: I haven't even got  
10 started. With all due respect to the Panel,  
11 I believe this case is too important to fail  
12 to ensure the fairness and integrity of the  
13 federal appellate process. This  
14 oral argument is without prejudice to my  
15 objection that this Circuit is disqualified  
16 for bias, as particularized by my voluminous  
17 April 1, 1997 motion. A Circuit Panel  
18 disposed of that motion in a one word  
19 decision, "Denied." I respectfully submit  
20 that the Panel hearing this --

21 HON. JACOBS: Your time is over.

22 MRS. SASSOWER: I am sorry, Your  
23 Honors. I have some very important --

24 HON. JACOBS: Your time is over.

25 MRS. SASSOWER: But I was --

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HON. JACOBS: Take a seat.

MRS. SASSOWER: Let me just -- Every other party on the calendar got more than that, and I ask that in that case my written statement be submitted.

HON. JACOBS: Mrs. Sassower, you will take a seat or you will be removed from the courtroom.

MRS. SASSOWER: Pardon me, Your Honor, may I at least offer --

HON. JACOBS: The answer is no.

MRS. SASSOWER: My written statement that I prepared.

HON. JACOBS: Sit down. You are acting in disrespect. Sit down now.

MRS. SASSOWER: May I submit a copy of a letter that I sent to Mr. Weinstein and the Attorney General, Vacco?

HON. JACOBS: We will look at the record and nothing else. Do take a seat.

MRS. SASSOWER: I do object, Your Honor.

HON. JACOBS: Please have a seat. Mr. Weinstein.

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MR. WEINSTEIN: Good morning.

THE PANEL: Good morning.

MR. WEINSTEIN: May it please the Court, my name is Jay Weinstein. I am an Assistant Attorney General in the office of Dennis C. Vacco, Attorney General for the State of New York, attorney for appellees herein. District Court properly granted summary judgement on behalf of Appellees on four grounds, namely on the Rooker-Feldman Doctrine, on the ground --

HON. JACOBS: Namely what?

MR. WEINSTEIN: The Rooker-Feldman Doctrine, on the grounds of a preclusion both claim and issue preclusion, the 11th Amendment and various periods of absolute immunity. In addition, the Appellant argued that the District Court --

HON. JACOBS: Are there any members among the Defendants who are not -- there are members of the Defendant who are not granted immunity. There are immunity for some people and --

MR. WEINSTEIN: Quasi judicial

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2 immunity with respect to the hearing officer,  
3 who was the hearing officer at her --

4 HON. JACOBS: Also Oliver Koppell as  
5 Attorney General --

6 MR. WEINSTEIN: Yes, prosecutorial  
7 immunity with respect to him.

8 HON. JACOBS: Special Referee?

9 MR. WEINSTEIN: And the Special  
10 Referee was Max Galfunt, and he heard the  
11 disciplinary petitions and he enjoys quasi  
12 judicial immunity. In addition, with respect  
13 to Appellant's allegation that the district  
14 court should recuse itself for bias during  
15 these proceedings, it is simply, factually  
16 unsupported in the report. Federal District  
17 Courts are courts of original jurisdiction  
18 not appellate review, and, as such, they have  
19 no power to review state courts'  
20 pronouncements. Moreover, to the extent that  
21 any --

22 HON. KORMAN: The state court, in this  
23 situation, functions as the court or simply  
24 as administrator in the judicial process?

25 MR. WEINSTEIN: The courts, the

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2 judicial courts, they rule. It is a judicial  
3 proceeding as opposed to a general rule  
4 making proceeding.

5 HON. KORMAN: This is something that  
6 have to be -- invested in the group that  
7 the Legislature has created. I am just  
8 curious as to what was the court essentially  
9 performing, kind of delegating supervisory  
10 function over the bar as opposed to  
11 necessarily performing a judicial function in  
12 resolving cases.

13 MR. WEINSTEIN: I think it has been  
14 established that disciplinary committees,  
15 when they hear disciplinary petitions, are  
16 performing their judicial function and not,  
17 say, an interpretive function or rule making  
18 function.

19 HON. KORMAN: It is a function that  
20 the judiciary initiates, prosecutes and  
21 resolves.

22 MR. WEINSTEIN: It is certainly  
23 adverse and it certainly has precedence  
24 in the state courts for which the Defendants  
25 have appellate review.

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HON. KORMAN: With who? There is no appellate review from the decision of the Appellate Division, is there?

MR. WEINSTEIN: There is discretionary review to the Court of Appeals. In this particular instance, the Petitioner or the Appellant brought an Article 78 Proceeding, so she collaterally attacked her suspension as well, but directly with respect to her suspension, that emanated from the disciplinary petition, the review was discretionary in the Court of Appeals.

HON. KORMAN: However she was forced to bring an Article 78 Petition before the same court.

MR. WEINSTEIN: Her denial --

HON. KORMAN: Could she not be afforded -- I am asking, could she not be afforded another Appellate Division or suggested that she could?

MR. WEINSTEIN: That she should be transferred to a different Appellate Division?

HON. KORMAN: Yes.

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2 MR. WEINSTEIN: Well, this particular  
3 Appellate Division had jurisdiction over  
4 Mrs. Sassower. She was an attorney who was  
5 admitted in the Second Department. Under  
6 state law the Appellate Division has  
7 jurisdiction over disciplinary proceedings  
8 for those attorneys who are admitted in their  
9 jurisdiction. Her cause for review would be  
10 up to the state highest court and then  
11 ultimately to the U. S. Supreme Court, which  
12 she did, and she raised the same claim, the  
13 same issues in her petition to the U.S.  
14 Supreme Court that she raises now; not only  
15 that, the same transactional event occurred  
16 that caused her suspension from the practice  
17 of law that she challenges now in Federal  
18 District Court and that is where res judicata  
19 applies, in addition to --

20 Moreover, any challenge that would cast  
21 doubt on a state court adjudication that  
22 suspended her license to practice law would  
23 be inextricably intertwined with the state  
24 court adjudication and therefore the Federal  
25 District Court would lack jurisdiction to make

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that adjudication.

HON. JACOBS: Your time is up. Thank you. We will reserve decision.

MRS. SASSOWER: May I have a moment for rebuttal?

HON. JACOBS: Mrs. Sassower, you know there is no rebuttal.

MRS. SASSOWER: I was interrupted and precluded from giving my five minute prepared statement that focused on the key issues here to a report.

HON. JACOBS: Have a seat in the audience or you may leave.

MRS. SASSOWER: I do protest this shocking curtailment of my right of oral argument. Your Honors asked for questions and answers and I welcomed questions and I am willing to give answers if there is any real interest.

MRS. SASSOWER'S ASSISTANT: This court evidences a complete ignorance of the records and the briefs, pretended or otherwise.

MRS. SASSOWER: It has been conceded by Mr. Weinstein that the very court that



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was the subject --

HON. JACOBS: You are coming close to  
contempt of court. Take a seat or you will  
be escorted out.

We will hear the other case.

VOICE VOICE: May it please the  
Court --

HON. JACOBS: This is not a townhall.  
Sit down and behave yourself.

(Time noted: 10:40 A.M.)

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STATE OF NEW YORK )  
  ; ss  
COUNTY OF BRONX )

I, JOY-ANGELA WILLIAMS, a  
Shorthand (Stenotype) Reporter and  
Notary Public of the State of New York,  
do hereby certify that the foregoing  
oral argument, taken at the time and place  
aforesaid, is a true and correct  
transcription of my shorthand notes.

I further certify that I am  
neither Counsel for nor related to  
any party to said action, nor in any  
way interested in the result or outcome  
thereof.

IN WITNESS WHEREOF, I have hereunto  
set my name this 22<sup>nd</sup> day of September, 1997.

*Joy-Angela Williams*  
JOY-ANGELA WILLIAMS