UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DORIS L. SASSOWER,

Plaintiff-Appellant,

-against-

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

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLEES' MEMORANDUM OF LAW IN OPPOSITION

Preliminary Statement

Appellees file this memorandum of law in opposition to appellant's motion under Fed. R. App. P. 27(b) and (c).

ARGUMENT

POINT I

APPELLANT'S MOTION FOR CONSIDERATION BY A JUDGE OUTSIDE THE CIRCUIT AND SUA SPONTE RECUSAL OF THE CIRCUIT SHOULD BE DENIED

Appellant Doris Sassower argues that a single judge from another circuit should hear her motion and that the United States Court of Appeals for the Second Circuit should recuse itself from hearing this appeal because of the alleged animus this Court harbors for George Sassower, her former husband who unsuccessfully litigated numerous appeals before this Circuit, the politically sensitive nature of this case, and the alleged relationship between appellee justices and the judges of this Court. See Affidavit of Doris L. Sassower, sworn to April 1, 1997, at ¶¶ 1-16. All of appellant's arguments lack merit.

Pursuant to 28 U.S.C. § 455(a) a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." "[T]he test is an objective one which assumes that a reasonable person knows and understands all the relevant facts," In re Drexel Burnam Lambert Inc., 861 F.2d 1307, 1313 (2d Cir. 1988)(emphasis in original), cert. denied sub nom. Milken v. SEC, 490 U.S. 1102 (1989); United States v. Lovaglia, 954 F.2d 811, 815 (2d Cir.1992). There is a strong presumption of impartiality which may be overcome by adequate proof to the contrary. Wolfman v. Palmieri, 396 F.2d 121, 126 (2d Cir.1968); United States v. Occhipinti, 851 F.Supp. 523, 525 (S.D.N.Y.1993). This Circuit has emphasized that a judge has a duty not to recuse

unless the facts warrant it, and this duty is as strong as the duty to do so when warranted. United States v. Lovaglia, 954 F.2d at 814-15 (2d Cir.1992).

Here, appellant's alleged basis for her recusal application is her unsubstantiated belief that the judges of this Court have an animus against her former husband George Sassower and anyone connected with him, including herself. In support of this theory, appellant points to the alleged "fraudulent" decision by Chief Judge Newman in Sassower v. Field, and various unsubstantiated acts of purported misconduct by judges and staff-members of the federal judiciary. However, adverse "judicial rulings alone almost never constitute a valid basis" for recusal based on bias or partiality." See Liteky v. United States, 510 U.S. 540, 555 (1994). There must be a "display [of] a deep-seated favoritism or antagonism that would make fair judgment impossible." Id. Moreover, appellant's recusal application fails to supply any proof or legal authorities. Rule 11 sanctions may be imposed for a frivolous recusal application because no statutes or cases are cited in support of the application, and the supporting affidavit is immaterial and speculative. Greater Buffalo Press v. Federal Reserve Bank of New York, 129 F.R.D. 462 (W.D.N.Y. 1990), aff'd 923 F.2d 843, cert. denied 111 S.Ct. 2238, 500 U.S. 942. And, a pro se attorney is not entitled to special treatment. See Lockhart v. Sullivan, 925 F.2d 214, 216 n.1 (7th Cir.1991).

Plaintiff also argues that recusal is appropriate here

because of personal and professional relationships formed between judges of this Circuit and the appellee State appellate justices. However, friendships among judges, parties, and witnesses are insufficient grounds, in and of itself, for recusal. See, e.g., United States v. Occhipinti, 851 F.Supp. at 527; United States v. Kehlbeck, 766 F.Supp. 707, 712 (S.D. Ind. 1990). Plaintiff's further argument that this Court should recuse itself because of the "politically sensitive nature of the case" is absurd and would require the judiciary to abdicate a large part of its Constitutionally mandated role.

POINT II

THIS COURT SHOULD DENY APPELLANT'S REQUEST TO VACATE THE MARCH 10, 1997 ORDER

Requests for enlargement of time are governed by Fed. R. App. P. 26(b), which states that such requests may be granted "for good cause shown." "[G]ood cause shall not be deemed to exist unless the movant avers something more than the normal (or even the reasonably anticipated but abnormal) vicissitudes inherent in the practice of law." United States v. Raimondi, 760 F.2d 460, 462 (2d Cir. 1985).

On February 13, 1996 I served and filed Appellees' motion for a three-week extension to file their brief, from February 18, 1997 to March 11, 1997. By order dated February 25, 1996, one week after the deadline for filing Appellants' brief, Appellants' application was denied, "without prejudice to a renewed

application setting forth particularized reasons for the requested extension of time." On March 4, 1997, I served and filed Appellees' motion for an extension of time and my admission pro hac vice, along with Appellees' brief. Explaining the necessity of Appellees' motion for more time to file their brief, I stated,

> (1) Appellant's brief is seventy-six pages long, with numerous references to a nine-hundred page record, and I required additional time to review plaintiff's brief, the authorities she cites, and the pages of the record she cites to; (2) The amount of time necessary to devote to the task of drafting a brief of this size and complexity exceeded the thirty days I was given to write it, considering the time I required to devote to other cases during the same period; (3) Additional time was also required because of this office's internal review process. This office has a review process that is time-consuming. It involves a review by my supervisor and by two other attorneys from the Solicitor General's office.

By order dated March 10, 1996, Staff Counsel Bass correctly granted Appellees' March 4, 1997 motion for an extension of time "for good cause shown." The task of responding to a seventy-six page brief, such as the one filed by Appellant, which included numerous citations to a nine-hundred page appendix, within the period of time allotted by the rules cannot be considered "normal."

POINT III

APPELLANT'S REMAINING REQUESTS FOR RELIEF SHOULD BE DENIED

Appellant's remaining requests for relief should be denied because they are frivolous and unsubstantiated and because the New York State Attorney General and Assistant Attorney General

Jay T. Weinstein acted at all times reasonably and in compliance with the law.

CONCLUSION

FOR THE FOREGOING REASONS, APPELLANT'S VARIOUS REQUESTS FOR RELIEF SHOULD BE DENIED

Dated: New York, New York
April 16, 1997

Respectfully submitted,

DENNIS C. VACCO
Attorney General of the
State of New York
Attorney for Appellees
By:

Jay T. Weinstein

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