

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

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DORIS L. SASSOWER,

Plaintiff-Appellant,

Docket #96-7805

4/29/97 Motion Calendar

-against-

SUPPLEMENTAL AFFIDAVIT

Hon. GUY MANGANO, 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. This Supplemental Affidavit is submitted as an aid to the Court to make known facts of which I only became aware subsequent to submission of my April 23, 1997 Reply Affidavit. These facts relate to: (a) the disqualification of the presiding judge of the panel hearing this motion; (b) recent decisions of district courts of this Circuit strongly critical of the Attorney General's office for far lesser misconduct than is documented by my April 1, 1997 motion; and (c) the continuing burden upon me and this Court by reason of the misconduct of Assistant Attorney General Weinstein and the Attorney General's office -- by their bad-faith and oppressive refusal to entertain reasonable and legally mandated stipulations proposed at the November 8, 1996 Pre-Argument Conference.

A. THE DISQUALIFICATION OF PRESIDING JUDGE AMALYA KEARSE

2. This Circuit does not disclose the identity of its motion panels until the noon hours of the Thursday prior to the motion date -- or so I have been told by the Clerk's office. On Friday morning, April 25, 1997, my daughter telephoned the Clerk's office and learned from Richard

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Alcantara that the panel hearing my April 1, 1997 motion would consist of Judge Amalya Kearse, as Presiding Judge, Judge Guido Calabresi, and a District Court Judge from the District of Columbia, Louis Oberdorfer.

3. My daughter's immediate response to Mr. Alcantara was to tell him that Presiding Judge Kearse was disqualified from hearing this motion. Her official misconduct in wilfully covering up the retaliatory decision in Sassower v. Field, 973 F.2d 75 (1992), authored by now Chief Judge Jon Newman, is presented therein as partial basis for my seeking this Circuit's sua sponte disqualification from adjudicating this case. Judge Kearse not only participated in this Circuit's denial of my Petition for Rehearing En Banc of Judge Newman's factually-fabricated, legally insupportable and facially-aberrant decision in Sassower v. Field, but she herself authored the factually-fabricated and legally insupportable decision dismissing my §372(c) misconduct complaint against Judge Newman based thereon, #96-8511. The facts relating to Judge Kearse's misconduct are summarized at ¶8 of my motion (p. 4), as well as footnote 6 of my Reply Affidavit (p. 6).

4. As set forth in my daughter's November 28, 1995 testimony before the Second Circuit's Task Force on Gender, Racial, and Ethnic Fairness in the Courts (Exhibit "A", pp. 8-9) -- which accompanied my own testimony on that date [R-890-900] -- 28 U.S.C. §372(c) does not mandate the confidentiality of judicial misconduct complaints. The Court is, therefore, respectfully referred to my extensive Petition for Review of Judge Kearse's dismissal of my §372(c) complaint, particularizing Judge Kearse's deliberate disregard for fact and law in her fraudulent decision. In addition to the Court's file of my §372(c) complaint -- presumably accessible to Judge Kearse and who, by the §372(c) statute, is not barred

from disclosing it -- a duplicate of the file was provided to the Second Circuit's Task Force on Gender, Racial, and Ethnic Fairness. A copy of the letter transmitting the file to the Task Force is annexed hereto (Exhibit "B"). For the convenience of this panel, I will request the Task Force to make such file of my §372(c) complaint available to this Court -- and the Attorney General's office -- upon request. This includes my cert papers to the U.S. Supreme Court for review under its "power of supervision" of Judge Newman's decision in Sassower v. Field.

5. As expressly stated at ¶7 of my motion (p. 4), should this Court not recuse itself sua sponte based on the facts therein set forth and those pertaining to George Sassower, of which it has superior knowledge<sup>1</sup>, I will make a formal motion, annexing the pertinent documentation.

B. RECENT COURT DECISIONS FURTHER SUPPORT MY ENTITLEMENT TO A SHOW CAUSE ORDER AGAINST THE ATTORNEY GENERAL'S OFFICE FOR CONTEMPT AND SANCTIONS

6. On April 24, 1997, a front-page article in the New York Law Journal (Exhibit "C") described the recent report of Southern District Magistrate Judge Theodore H. Katz in McClain v. Lord, 95 Civ. 4918, who found an Assistant Attorney General's conduct in repeatedly missing filing deadlines and violating court orders so professionally unacceptable that he recommended that a \$150,000 default judgment be entered against the state -- which was accepted by Judge Leisure. The Law Journal also noted that Judge Katz' report had cited decisions by other judges criticizing the

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<sup>1</sup> As set forth in my Petition for Review of Judge Kearse's dismissal of my §372(c) complaint against Judge Newman, Judge Kearse participated in In re Sassower, 20 F.3d 42 (2d Cir. 1994).

Attorney' office for failing to comply with deadlines and court orders<sup>2</sup>.

7. According to the Law Journal, a spokesman for Attorney General Vacco characterized the conduct of the Assistant Attorney General in that case as "disturbing and absolutely unacceptable to this office", but claimed that the Assistant Attorney General's superiors had been "unaware" of it and that "other attorneys criticized in recent rulings have been fired or counseled..." (Exhibit "C").

8. My instant motion (p. 3, ¶4; p. 27, "WHEREFORE", #7) expressly seeks a Show Cause Order against the Attorney General for his knowing complicity in a long-history of misconduct, rising to outright criminality, by Assistant Attorney General Weinstein. By leaps and bounds, this misconduct is more serious than anything reported to date about missed deadlines and other missteps of Assistant Attorneys General, which, moreover, to my knowledge, has never implicated supervisory personnel at the Attorney General's office and certainly not the Attorney General himself -- as is the case at bar. As detailed by my motion, Mr. Weinstein's fraud, misrepresentation, and other misconduct on the district court level, in the appellate case management phase, as well as before this Court, has been repeatedly brought to the attention of his superiors -- including Attorney General Vacco himself. Their response has been one of inaction, dereliction, and denial, not only allowing Mr. Weinstein to engage in further misconduct, but claiming that they are "very satisfied" with him (my 2/24/95 Aff. ¶20). As noted in ¶2 of my Reply Brief, the view of Assistant Solicitor General Thomas Hughes is that this Court will decide the matter of Mr. Weinstein's misconduct and that, therefore, he has no

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<sup>2</sup> Footnote 28 to my Appellant's Brief (p. 47) refers to and quotes from the decision of District Court Judge Denise Cote in Pearson v. Coughlin, as reported in the New York Law Journal, 8/3/95, p. 3 "Failure to Monitor Assistant Attorney General".

obligation to take corrective steps.

9. The litany of decisions by district judges of this Circuit condemning the derelictions of the office of the Attorney General leave no doubt as to what must be the severity of this Circuit's response to the record herein of its flagrant misconduct and fraud -- all undenied, undisputed, and uncontroverted.

C. THE ATTORNEY GENERAL'S REFUSAL TO ENTERTAIN A STIPULATION AMENDING THE CAPTION, AS PROPOSED AT THE NOVEMBER 8, 1996 PRE-ARGUMENT CONFERENCE, SHOULD BE INCLUDED AS PART OF THE ORDER TO SHOW CAUSE AGAINST HIM

10. On Friday, April 25, 1997, my daughter spoke to Mr. Alcantara and, thereafter, to Eileen Martinez of the Clerk's office about a letter dated April 18, 1997 from the Clerk's office, not received by me until April 24, 1997 (Exhibit "D"). Said letter notified me that the caption of this action had been changed and advised me of the necessity to change the captions to my briefs, already filed.

11. The April 18, 1997 letter made no reference to my own letter dated March 28, 1997 addressed to the Clerk of the Court (Exhibit "E"), presumably the document triggering the change. That letter followed upon my inquiry of Mr. Heller -- and his inquiry of the Clerk's office -- as to whether such application, pursuant to F.R.A.P. Rule 43, could be made by letter.

12. My March 28, 1997 letter (Exhibit "E") sought the addition of two parties

"who, as public officers, have succeeded to the offices, respectively, of Attorney General and Chair of the Grievance Committee of the Ninth Judicial District. These are Dennis Vacco, the successor to Respondent Oliver Koppell and Janet Johnson, successor to Edward Sumber."

Although it explicitly stated that "no substitution" was being

sought, but, rather, addition because Respondents Koppell and Sumber are being sued "in their personal, as well as official capacities" and that the record showed similar wrongful acts had been committed by their successors, the Clerk's changes, inter alia<sup>3</sup>, substituted Mr. Koppell and Mr. Sumber and removed them from the caption.

13. In bringing the erroneous caption to Ms. Martinez' attention, Ms. Martinez told my daughter that a superseding letter would be issued informing me that the caption was being restored to its original and that a motion would have to be made for the relief sought. According to Ms. Martinez, this was because three days earlier Mr. Weinstein had telephoned and had objected to the changes. The basis for his objection, according to Ms. Martinez, was that the Defendants were not sued in their official capacities alone, but in their personal capacities. My daughter commented to Ms. Martinez -- and, thereafter, to Administrative Attorney Arthur Heller -- as to Mr. Weinstein's bad faith in raising such objection since in his Appellees' Brief (pp. 20-23) he has tried to make it appear that my suit against Defendants is in their official capacities alone (See discussion in my Reply Brief (pp. 25-26)).

14. As reflected by my January 14, 1997 letter to Attorney General Vacco (p. 6)<sup>4</sup>, it was Staff Counsel Bass who, at the November 8, 1996 Pre-Argument Coneference, suggested the appropriateness of a stipulation effecting a change in the caption of this action so as to add

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<sup>3</sup> The new caption (Exhibit "D") also erroneously inserted Dennis Vacco's name as Chief Counsel of the Grievance Committee -- a position held by Gary Casella, whose name had been inadvertently dropped from the Second Circuit's appellate caption, as pointed out by me in correspondence with the Circuit.

<sup>4</sup> My January 14, 1997 letter to Attorney General Vacco is part of Exhibit "D" to my motion (Exhibit "B" thereto).

Dennis Vacco and Janet Johnson as successors to the public offices of Attorney General and Chair of the Grievance Committee for the Ninth Judicial District.

15. Such fact was repeated at ¶15 of my February 24, 1997 Affidavit in opposition to Mr. Weinstein's first extension motion, which sought, as well, a Show Cause Order for sanctions under Rule 11(c)(1)(B) "on Court's initiative" against the Attorney General's office for its bad-faith and fraudulent conduct in connection with the November 8, 1996 Pre-Argument Conference, including its wilful disobedience of the October 23, 1996 Order.

16. As particularized by both those documents, as well as by my Affidavit in support of the instant motion (¶33), Assistant Attorney General Weinstein was intentionally absent at that Conference, following a representation by the Attorney General's office that he was not handling the appeal. Instead, Assistant Attorney General Sanghvi appeared. She was totally unfamiliar with the case, unable to answer Staff Counsel Bass' questions, and could not enter into any stipulations.

17. Following my vigorous protests at the November 8, 1996 Conference that the Attorney General's office was in contempt of the October 23, 1996 Order and had wasted both my time and that of the Staff Counsel at a conference where no issues could be "narrowed", let alone "eliminated" -- which is its purpose -- Staff Counsel Bass directed that Ms. Sanghvi obtain a response from her superiors to the aforesaid proposed stipulations. I never heard from her or anyone else from the Attorney General's office relative thereto (my 2/24/97, ¶¶15-16).

18. Thereafter, when Mr. Weinstein reappeared on the scene, he flatly refused to agree to any stipulations whatever (2/24/97, ¶18). Nor did Ron Turbin, the Chief of the Litigation Bureau of the Attorney

General's office, return my daughter's call seeking "an opportunity to discuss, point by point, the various aspects of the stipulation I sought." (2/14/97, ¶21).

19. As highlighted by ¶4 of my Reply Affidavit, the aforesaid specific misconduct of the Attorney General's office -- and of Mr. Weinstein -- is wholly undenied, undisputed, and uncontroverted.

20. In the interest of judicial economy so as not to burden this Court with a motion to add the names of Dennis Vacco, as succeeding Attorney General, and Janet Johnson, as succeeding Chair of the Grievance Committee for the Ninth Judicial District, I would ask that the Show Cause Order sought by the seventh [7th] branch of the "WHEREFORE" clause of my motion (p. 27) specifically reflect that this is one of the stipulations, proposed at the November 8, 1996 Pre-Argument Conference, to which the Attorney General wrongfully failed to respond. This is additional to the three stipulations specifically indicated therein: (a) "immediate vacatur of the Second Department's June 14, 1991 Order suspending my law 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]; (b) "the transfer to another Judicial Department of all matters in the Second Department involving Plaintiff; and © "disqualification of the Attorney General as attorney for the Defendant-Appellees".

21. I would note that as to the addition of Dennis Vacco as successor to G. Oliver Koppell as Attorney General, Mr. Vacco's personal knowledge of and liability herein for the unlawful and jurisdiction-less acts of Defendants is plainly buttressed by my daughter's September 29, 1994 letter to him -- a copy of which was annexed to my January 14, 1997 letter to him.

22. As to Janet Johnson, who became Chair of the Grievance



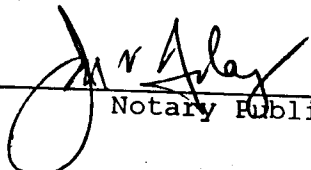
Committee for the Ninth Judicial District on November 1, 1994, she was one of the "Does 1-20, being present members" of the Grievance Committee [R-22] when she was personally served with the Verified Complaint on October 14, 1994. A copy of her signed acknowledgment of service is annexed hereto as Exhibit "F-1". Additionally, and further reflecting that personal service, as well as Ms. Johnson's knowledge and personal liability for Defendants' unlawful and jurisdiction-less acts, is a copy of my daughter's October 19, 1994 letter to her (Exhibit "F-2"). That letter further flags her attention to the egregiously violative nature of Defendants' acts -- and particularly those of Chief Counsel Casella.

23. Because Mr. Vacco and Ms. Johnson have continued to follow the challenged practices of their predecessors with full knowledge of their unconstitutional and criminal nature, I am entitled not only to the automatic substitution of these parties, but their addition, Kincaid v. Rusk, 670 F.2d 737 (7th Cir. 1982).

WHEREFORE, the relief requested by my motion should be granted in its entirety, with the addition that the Order to Show Cause to be issued against the Attorney General specifically include the stipulation to amend the caption of this action so as to add the names of Dennis Vacco and Janet Johnson as parties hereto, both in their official and personal capacities.

  
DORIS L. SASSOWER

Sworn to before me on this  
28th day of April 1997

  
Notary Public

**JACK V. NICOLAIS, JR.**  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN WESCHESTER COUNTY NO. 486333  
MY COMMISSION EXPIRES AUG. 31, 1997