96-7805

UNITED STATES COURT OF APPEALS
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 THE 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.

PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING IN BANC

DORIS L. SASSOWER
Plaintiff-Appellant, *Pro Se*
283 Soundview Avenue
White Plains, New York 10606-3821
914-997-1677

S.D.N.Y. # 94 Civ. 4514 (JES)

PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING IN BANC

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INTRODUCTION

This petition presents the Circuit with a transcendingly important issue: the integrity of the judicial process. The question presented is whether -- and to what extent -- appellate review and "peer disapproval" are "fundamental checks" of judicial misconduct, as claimed by the National Commission on Judicial Discipline and Removal in its 1993 Report -- and whether a remedy for such judicial misconduct exists under 28 U.S.C. §372(c). This Circuit's answer will demonstrate whether judicial discipline should be reposed, as it presently is, in the Circuit[1].

At issue is the as-yet unredressed official misconduct by the District Judge, whose decision [R-4] was shown on the instant appeal to be factually fabricated, fraudulent, and the product of "pervasive bias", as well as the official misconduct of the three-judge appellate panel ["the panel"], whose not-for-publication, no-citation Summary Order and Decision (Exhibit "1") never once refers to the record before the District Judge and fails to make any adjudication of the District Judge's bias, the sole overarching issue raised by Appellant in her Brief. Nor did the panel adjudicate its own disqualifying bias -- which issue Appellant asserted at the time of her five-minute oral argument, from which she was cut off, mid-sentence, by the panel's Presiding Judge, Dennis Jacobs[2]. Like the District Judge's decision on which it relies, the panel's decision is factually fabricated, fraudulent, and prima facie evidence of its actual bias.

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[1] This Circuit's answer will be part of a formal presentation by the Center for Judicial Accountability, Inc. to the House Judiciary Committee to remove federal judicial discipline from the federal judiciary, as described in "Without Merit: The Empty Promise of Judicial Discipline" by E.R. Sassower, Massachusetts School of Law: The Long Term View, Vol. 4, No 1, pp. 90-97. (Annexed as Exhibit "A" to Appellant's separately-filed recusal/vacatur motion, See p. 15 infra).

[2] This Circuit's practice is not to inform parties of the identity of the appellate panel judges until noon of the Thursday of the week before oral argument. Only then did Appellant learn the panel would consist of Dennis Jacobs, as Presiding Judge, and Judges Thomas Meskill and Edward Korman.

The panel's decision, purportedly an "affirmance", expressly does not address any of the District Judge's dispositions of the motion-submissions before him (at 3). This includes 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 Appellant's Complaint -- purportedly on the pleading[3] -- for lack of subject matter jurisdiction under Rooker-Feldman. At the same time, it "affirms" the Judgment [R-2], which dismissed the Complaint by summary judgment to Defendants.

The impropriety of sua sponte, without notice dispositions has been explicitly condemned by Presiding Judge Jacobs himself in Pinaud v. County of Suffolk, 52 F.3d 1139, 1160 (1995), where he wrote:

> "...it would have been improper for the district court to grant summary judgment on any matter, sua sponte, and without notice to the non-moving party. See Fed.R.Civ.P. 56(c); Otis Elevator Company v. George Washington Hotel Corp., 27 F.3d 903, 910 (3d Cir. 1994)."

Without explanation, Presiding Judge Jacobs has not applied that basic due process standard in Appellant's case -- even in the face of the decisional law cited in Appellant's uncontroverted Brief[4] showing that the District Judge's sua sponte and without notice granting of summary judgment to Defendants had to be reversed, on that basis alone, as a matter of law (Br. 57-59; Reply Br. 21).

Among the motion-submissions before the District Judge that the

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[3] In fact, the panel goes outside the pleading, since Appellant's cert petition, referred to in its footnote 1 (at p. 4), is not part of the Complaint [R-22-100], which was filed and served before the cert petition was even written (Br. 11-12)

[4] Defendants' Appellees' Brief did not deny or dispute the factual recitation and legal argument set forth in Appellants' Brief. Indeed, it never even referred to Appellants' Brief. This was pointed out by Appellant's Reply Brief (at 2), which sought sanctions against Defendants for their bad-faith and frivolous opposition to the appeal, as to which the Circuit panel's decision is also silent.

panel does not address is Appellant's voluminously-supported application for summary judgment, with Rule 3(g) Statement [R-168-487]. The District Judge's appealed-from decision [R-4] denied that application, without discussion. By such summary judgment submission, Appellant substantiated the allegations of her Verified Complaint -- allegations that precluded dismissal on the pleadings based on Rooker-Feldman, to wit, that the state judicial forum is permeated with politically-motivated bias, has rendered jurisdiction-less, lawless and fraudulent orders as part of a long-standing, retaliatory vendetta against Appellant -- all without findings and reasons -- and that New York's attorney disciplinary law is facially unconstitutional. Because Defendants failed to meet their burden to come forth with **any** evidentiary or legal opposition [R-626-642]-- even after being improperly relieved of their default in responding -- Appellant was entitled to summary judgment in her favor, as a matter of law (Br. 61-64).

In crafting its "affirmance" decision, the panel omits all allegations of Appellant's Complaint that vitiate a Rooker-Feldman defense, as well as the state of the record. It then knowingly misapplies the Rooker-Feldman doctrine by whipping out its stock "boiler-plate" verbiage, uncorrelated to the Complaint's allegations, the evidence, and the law cited by Appellant[5].

By way of "window dressing", the Circuit panel (at pp. 3-4) acknowledges that review de novo is the standard for reviewing "the district court's determination that, as a matter of law, jurisdiction did not exist ", citing Moccio v. New York State Officers Association, 95 F.3d 195, at 198 (1996). However, from the decision, it is apparent that the panel denied Appellant her legal right to de novo review. This is not only

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[5] See, inter alia, Reply Br. 8, citing Allen v. McCurry, 462 U.S. 90, 95 (1980), Haring v. Prosise, 462 U.S. 306, 313 (1983), Robinson v. Ariyoshi, 753 F.2d 1468 (9th Cir. 1985), vacated on other grounds, 91 L.Ed.2d 56, cited with approval by Stone v. Williams, 766 F. Supp. 158, 162 (S.D.N.Y. 1991), aff'd 970 F2d 1043 (1992), cert denied, 124 L.Ed.2d 243, Kremer v. Chemical Construction Corp., 456 U.S. 461, 480 (1982).

reflected by its complete failure to cite to the factual record before the district court -- including any of the Complaint's allegations -- but because it affirmatively makes false and misleading statements, as comparison with the record makes plain. Thus, to defeat Appellant's constitutional challenge to New York's attorney disciplinary, as applied to her, the panel states "she now is 'effectively seek[ing] review of judgments of [the] state courts,' Moccio 95 F.3d at 197, judgments that have deprived her of her license to practice law..." (at p. 4). Had the panel examined the record, de novo, it would have known that there are no state court judgments that deprived Appellant of her law license -- not even one![6]

The gravamen of Appellant's Verified Complaint is that her law license was suspended by an unconditional and indefinite "interim" order -- **not** by a final judgment. It is that order [R-96-97] and the court rule under which it was issued -- 22 NYCRR §691.4(l) -- that Appellant seeks through federal intervention to declare repugnant to the Constitution of the United States. Conspicuously, the panel does not identify the rule under which Appellant was suspended -- which the District Judge's decision had misidentified [R-7] -- nor does it cite New York's controlling case law, Matter of Nuey, 61 N.Y.2d 513 (1984) [R-528], and Matter of Russakoff, 72 N.Y.2d 520 (1992) [R-529], which recognized §691.4(l) to be statutorily unauthorized and, on its face, constitutionally infirm in failing to provide for a prompt post-suspension hearing (See Br. 56)

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[6] The only state court judgment that exists in the record arises from Appellant's post-suspension Article 78 proceeding against Defendant Second Department. As highlighted in Appellant's Brief (at 10, 74-75) and Reply (at 27-31), Defendant Second Department's judgment in that Article 78 proceeding [R-362] -- which the panel does not cite -- is not an adjudication responsive to the merits, was alleged by the Complaint to be a fraud [R-75: ¶182; R-77: ¶¶189-191; R-80-81: ¶¶291-202], and is a jurisdictional nullity because, by decisional law cited in the record [R-333], Defendant Second Department was legally disqualified and without jurisdiction to render it, Colin v. Appellate Division, First Department, 3 A.D.2d 682, 159 N.Y.S.2d 99 (2d Dept. 1957), citing Smith v. Whitney, 116 U.S. 167 (1886).

In citing Appellant's argument that her facial challenge to the New York attorney disciplinary law, "'do[es] not require review of any state court decisions.' Appellant's Brief at 71" -- which the panel does not deny -- it has clipped the quoted sentence, both beginning and end. The full sentence, which is even more powerful, reads:

> "Clearly, where, as at bar, state court disciplinary rules are facially unconstitutional and not based upon state statutory authority, as Russakoff and Nuey reveal, the declaratory judgment relief sought in Plaintiff's First Cause of Action, does not require review of any state court decisions in Plaintiff's case."

This is a dispositive statement, bearing out precisely what the Supreme Court held in District of Columbia v. Feldman, 460 U.S. 462 (1983), and further reflected by Razatos v. Colorado Supreme Court, 746 F.2d 1429 (1984), where the Tenth Circuit ruled that when the district court "need only look at [the rule] as promulgated, and as construed by state case law", the constitutional challenge conforms to Feldman and does "allow district court subject matter jurisdiction" over a challenge to attorney disciplinary rules, as written, at 1434. The fact that the panel is silent as to the good and sufficient legal arguments raised in the subsequent pages of Appellant's Brief (at 71-75) relating to Rooker-Feldman[7] can only be seen as an implied admission of the merit of the arguments set forth as to the inaptness of Rooker-Feldman as barring this action. The same can be said with respect to all of Appellant's other good and sufficient arguments in Brief (at 31-70), as to which the panel is also silent.

Finally, in order to turn back Appellant's general challenge to the constitutionality of the attorney discipline law, the panel invokes unspecified "contemporary preclusion principles" (at p. 5), whose applicability it does not demonstrate by citation to the factual record,

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[7] Notwithstanding the panel purports that Appellant, on appeal, has claimed that she did not raise all her constitutional challenges previously, this is untrue. Moreover, the use of "we think" (at p. 4) as a basis for depriving Appellant of her day in court further discloses the panel failed to undertake de novo review.

case law, or by discussion of the fundamental prerequisites, without which preclusion cannot be invoked: There must be (1) a final judgment[8], with subject matter and personal jurisdiction over the parties; (2) a full and fair opportunity to litigate; and (3) an adjudication responsive to the issues. The absence of all these prerequisites at bar is evident from the Complaint -- which the panel purports to have examined -- a pretense exposed by its failure to cite to any of its allegations or to identify the supposedly preclusive judgment -- since it knows there is none.

Appellant's Reply Brief (at 28, 9) pointed out that none of the subject state court orders make findings -- let alone the essential findings as to jurisdiction, due process, and the impartiality of the state tribunal -- all challenged by Appellant -- and that even the District Judge's decision made no finding that Appellant had "a full and fair opportunity to litigate". Yet, the panel's decision (at p. 5) rests on the District Judge's decision [R-4] and, again, demonstrates that despite Appellant's entitlement to de novo review of the district court's determination that jurisdiction did not exist, it made no such review.

FACTUAL BACKGROUND: THE UNEXPURGATED VERIFIED COMPLAINT

This appeal arises out of a §1983 civil rights action for serious constitutional violations by state officials, wherein Appellant challenges New York's attorney disciplinary law, as written and as applied to her. As hereinabove stated, none of the innumerable violations of Appellant's rights, as alleged in the Verified Complaint, are identified by the panel's decision (Exhibit "1"), which also does not identify the basis for Appellant's constitutional challenge to the attorney disciplinary

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[8] Judges Meskill and Jacobs are familiar with the "valid final judgment" prerequisite for claim preclusion, as may be seen from Central Hudson Gas & Electric Corporation v. Empresa Naviera Santa S.A., 56 F.3d 359, 1995 U.S. App. LEXIS 11654; 1996 AMC 163, authored by Judge Meskill, with Judge Jacobs on the panel.

law[9]. Likewise, these were obliterated from the District Judge's decision -- a fact highlighted in Appellant's Brief (at 4-11).

The material allegations of the Verified Complaint, purposefully concealed by the two federal court decisions in this case, are allegations of a shocking and heinous nature, inter alia, that on June 14, 1991, Defendant Second Department issued an "interim" Order suspending Appellant's law license "immediately, indefinitely, and unconditionally":

> "without notice of formal charges, without a hearing, without a finding of probable cause, or any other findings, administrative or judicial, and without any jurisdiction whatsoever...[and that it] knew such Order to be unlawful and fraudulent and that it was being rendered for political, personal, and private ulterior motivations, totally outside the scope of their judicial/official duties for the sole purpose of discrediting, defaming, and destroying Plaintiff to cause her to cease her activities in exposing judicial corruption." [R-24]

Nearly 70 allegations of the Verified Complaint relate to the political context in which Defendant Second Department issued and thereafter perpetuated the lawless, retaliatory suspension of Appellant's license (See, Br. fn. 3). These include that the June 14, 1991 "interim" suspension Order was served upon Appellant the day before the last day to file the notice of appeal to the New York Court of Appeals in a public interest Election Law case in which Appellant, as pro bono counsel, was challenging the manipulation of state court judgeships by the leaders of both major political parties and their judicial nominees, and that prior thereto, on the day before Appellant was scheduled to orally argue the case before the Appellate Division, Third Department, Defendant Second Department issued an October 18, 1990 Order directing her to be medically examined to determine her mental capacity.

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[9] Annexed as Exhibit "N" to Appellant's incorporated-by-reference recusal/vacatur motion (pp. 15 infra) is an Appendix identifying the multitudinous respects in which the panel's decision has falsified, misrepresented, and suppressed the material allegations of the Verified Complaint and the proceedings herein. A similar Appendix, relating to the District Judge's decision, is annexed to Appellant's Brief.

The Verified Complaint alleged that both these Orders were factually and legally baseless, fraudulent, and violative of her First, Fifth, and Fourteenth Amendment rights, as well as jurisdictional and due process requirements, explicitly mandated by the very court rules under which they purportedly were issued, e.g., although those rules call for a petition to commence a plenary proceeding thereunder, neither the Order to Show Cause seeking Appellant's medical examination pursuant to 22 NYCRR §691.13(b)(1), nor the Order to Show Cause, pursuant to 22 NYCRR §691.4(1), seeking her immediate suspension for her alleged failure to comply with the October 18, 1990 Order directing her to be examined, was supported by a petition. Nor were they related to any underlying proceeding. As a result, they were jurisdictionally void. The Verified Complaint further alleged that Appellant contested each Order to Show Cause and additionally moved by Order to Show Cause of her own to vacate the October 18, 1990 Order, but that Defendant Second Department's Orders thereon made no findings whatever.

The Verified Complaint alleged that she was deprived of all appellate review of the June 14, 1991 suspension Order: Defendant Second Department denied her leave to appeal to the New York Court of Appeals, which also denied review, both as of right and by leave. Appellant was also denied independent review by way of an Article 78 proceeding because Defendant Second Department refused to disqualify itself from that proceeding which Appellant brought against it. As alleged, Defendant Second Department dismissed it by granting a legally insufficient and factually perjurious dismissal motion of its own attorney, the New York Attorney General, in a decision which was a knowing and deliberate fraud. Thereafter, the State Attorney General opposed Appellant's attempts to obtain review by the New York Court of Appeals of his client's fraudulent decision dismissing, on jurisdictional grounds, the case in its own favor.

The Court of Appeals denied review, as of right[10].

As pleaded by the Verified Complaint, the egregious violations of Appellant's constitutional rights were made possible by the fact that Judiciary Law §90 vests original and exclusive control of attorney discipline in the state Appellate Divisions, thus enabling their misuse of that disciplinary power to retaliate against whistle-blowing attorneys who expose judicial misconduct by state court judges. Additionally, those courts have promulgated statutorily-unauthorized interim suspension rules, without provision for appeal. This includes §691.4(l), the specific rule under which Appellant was suspended. As alleged in Appellant's First Cause of Action for Declaratory Judgment [R-83-87], the New York Court of Appeals, in Nuey [R-528], explicitly recognized that §691.4(l) is statutorily unauthorized. The consequence of §691.4(l) not being grounded in the statute is that there is no statutory right of appeal therefrom.

The Complaint also cited to Russakoff [R-529], wherein the New York Court of Appeals found §691.4(l) to be constitutionally infirm for lack of provision for a post-suspension hearing.

Both Nuey and Russakoff mandate immediate vacatur of finding-less interim suspension orders. Yet, as alleged, Defendant Second Department summarily denied Appellant's repeated vacatur motions based thereon -- disregarding her a fortiori showing of entitlement -- and the New York Court of Appeals, in violation of her equal protection rights,

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[10] The record before the District Judge and panel also presented the "post-Complaint" course of the proceedings. These included an attempt by Appellant to seek review, by leave, to the Court of Appeals in her Article 78 proceeding, and, after that was denied, a petition for certiorari to the U.S. Supreme Court, also denied. As the record before the District Court showed, and as highlighted on the appeal, the State Attorney General also opposed Appellant's cert petition by asserting to the U.S. Supreme Court that the New York Court of Appeals' denial of review of the Second Department's dismissal of her Article 78 proceeding was "not on the merits", while simultaneously claiming in this action before the District Judge that it was on the merits for purposes of Defendants' res judicata /collateral estoppel defense (Reply Br. 31).

denied her leave to appeal, previously granted to attorneys Nuey and Russakoff -- thereby denying her the vacatur relief to which she was, of right, constitutionally entitled.

The Verified Complaint was replete with particularized allegations of fraud, misrepresentation, and other misconduct of Defendant Second Department's appointee, Defendant Casella, Chief Counsel of the Grievance Committee, relating not only to Appellant's suspension, but to a barrage of spurious unrelated disciplinary proceedings commenced against her, at Defendant Second Department's direction -- all without probable cause and without compliance with express jurisdictional requirements of the statutory and court rules invoked. None of Appellant's challenges before Defendant Second Department to the jurisdiction-less, law-less, malicious, and invidious conduct of Defendant Casella resulted in any adjudications other than "no-reason" orders denying her all relief.

PROCEEDINGS IN THE DISTRICT COURT AND THE CIRCUIT PANEL COVER-UP

Precisely because the Complaint's allegations of egregious misconduct by state Defendants confer federal jurisdiction to redress Appellant's constitutional challenge to New York's attorney disciplinary law, as written and as applied, the two federal court decisions omit all reference to them. Such purposeful omission is total in the panel's decision (Exhibit "1") and only slightly less so in the District Judge's decision, which, at least, identifies that Appellant claimed "that defendants deprived her of her license to practice law without granting a hearing thereon" [R-4] and includes her allegation that Defendant Second Department was required to recuse itself from her Article 78 proceeding against itself [R-11]. These allegations, however, are sheared from the panel's decision, from which may be inferred that they were too revealing of defense-vitiating due process violations.

Although the appellate standard for review was de novo, because

the appeal involved the granting of summary judgment to Defendants and the denial of summary judgment to Appellant, the panel's decision never cites the record once. The record shows that Defendants, by their attorney, the State Attorney General, himself a co-Defendant, made a Rule 12(c) dismissal motion, obliterating or affirmatively misrepresenting virtually every pleaded allegation of Defendants' jurisdiction-less, due-process-less, fraudulent conduct so as to invoke the otherwise inapplicable pleaded defenses of Rooker-Feldman, res judicata, immunity, and 11th Amendment and misrepresented the law relative thereto [R-127]. For this reason, Appellant made a sanctions application against Defendants [R-168(b)-487], simultaneously seeking sanctions against them for their Answer, which she demonstrated to be "false and in bad faith" in response to over 150 of the Complaint's allegations [R-275-302]. Additionally, Appellant made repeated sanctions applications against the assigned Assistant Attorney General for his fraudulent oral advocacy, as well as an application for Rule 56(g) sanctions against Defendant Casella for his frivolous, irrelevant, and non-probative 2-½ page affidavit (R-630-638]) in opposition to her summary judgment application [R-168b-487]. All these sanctions applications were fully documented, uncontroverted and incontrovertible. Yet, the District Judge not only failed to adjudicate them, but he concealed them entirely from his decision. Indeed, his decision rewarded Defendants by, sua sponte and without notice, converting their fraudulent, evidentiarily-unsupported dismissal motion into one for summary judgment in their favor -- where his stated basis for conversion, "voluminous affidavits" filed by both parties [R-12] did not exist as to the Defendants (Br. 57-59), whose only affidavit, by Defendant Casella, was 2-1/2 pages in length and the subject of Appellant's unadjudicated Rule 56(g) sanctions application [R-734-740]. Simultaneously, his decision summarily denied Appellant's evidentiarily and legally-supported summary judgment application.

As hereinabove stated, the panel's decision (at p. 3), expressly, does "not address the district court's...rulings" on any of the motion-submissions. This includes Appellants' sanctions applications against Defendants, which like the District Judge, the panel does not even identify as existing. Appellant's Brief (at 41-43) squarely presented the the sanctions issue as embracing not only Defendants' misconduct, but that of the District Judge:

> "the litigation misconduct of Defendants and their co-Defendant counsel, documented in the record before the District Judge, presented a classic Rule 11 case. Indeed, beyond that, it rose to the level of 'fraud upon the court', as that term has been applied in this Circuit, Martina Theatre Corp. v. Schine Chain Theatres, Inc., 278 F.2d 798, 801 (2d Cir. 1960); Kupferman v. Consolidated Research & Mfg. Corp, 459 F.2d 1072, 1078, 1081 (2d Cir. 1972); Gleason v. Jandrucko, 860 F.2d 556 (2d Cir. 1988), Hadges v. Yonkers Racing Corp., 48 F.3d 1320, 1325 (2d Cir. 1995); See also, Cresswell v. Sullivan & Cromwell, 771 F. Supp. 580, 586 (S.D.N.Y. 1991)[11]. The law is well-established that courts possess inherent power and a duty to defend their integrity and protect themselves from "fraud upon the court", Chambers v. Nasco, Inc., 501 U.S. 32 (1991); Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944); Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 580 (1946) and, particularly, where, as here, it involves more than the individual litigants.
>
> At bar, the issues involved corruption by public officials, including high-ranking sitting judges of the State of New York and the state's highest legal officer, the New York State Attorney General, and deliberate misuse of judicial and disciplinary power to retaliate against a judicial whistle-blower, combined with an unconstitutional attorney disciplinary law. Unquestionably, this case transcended the individual litigants. Yet, the District Judge not only ignored Plaintiff's uncontroverted sanctions applications, but disregarded his "own initiative" power under Rule 11(c)(1)(B), as well as his inherent power to evaluate and punish Defendants' fraudulent and deceitful conduct...
>
> The District Judge's refusal to adjudicate the fraud and misconduct before him constitutes his complicity and collusion therewith. It demonstrates his overriding bias and wrongful protection of Defendants -- not just from liability for sanctions, but from ultimate liability in Plaintiff's federal action. Indeed, the very issues that were at the heart of Plaintiff's sanction applications, if resolved, would have made it impossible for judgment to be rendered to

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[11] See also, DR 7-102(A.5) of the Model Rules of Professional Responsibility: a lawyer may not "knowingly make a false statement of law or fact"; ABA Model Rules of Professional Conduct, Rule 3.3, "Candor Toward the Tribunal"; Rule 8.4 "Misconduct".

Defendants...".

Specifically, Appellant's Brief (at pp. 44-50) highlighted that had the District Judge adjudicated Defendants' misconduct by their dismissal motion, wherein they gutted the Complaint's allegations vitiating their defenses, he would have exposed the very strategy he himself intended to employ to dismiss the Complaint. By the same token, the panel did not adjudicate the sanctions issues because this, likewise, would have prevented it from stripping the Complaint of the allegations that made it invulnerable to Rooker-Feldman and preclusion defenses.

Such collusion and complicity in Defendants' fraud, first by the District Judge, and now by the panel, constitutes serious, high-level, judicial misconduct. That it should be engaged in so brazenly, with a record making it easily verifiable, warrants the inference that the judges involved believe there will be no adverse consequences imposed by the Circuit and that they had a judicial "go-ahead" to "throw" this case. There can be no doubt that this case was "thrown", and with it ALL adjudicatory standards and rules of law went out the window.

It is unknown whether there is a regular practice and course of conduct in this Circuit to "throw" cases involving state court judges sued for corruption, with whom this Circuit, no doubt, has long-standing professional and personal ties, or whether the depraved and lawless dismissal of Appellant's §1983 federal action stems from this Circuit's bias against her, originally arising from its pre-existing animus against her ex-husband, George Sassower, from whom she was divorced more than 12 years ago.

This Circuit's hostility toward Mr. Sassower derives from his well-known judicial whistle-blowing by public advocacy, lawsuits, and misconduct complaints against this Circuit's judges, spanning nearly two decades, wherein he has repeatedly alleged that they fabricate, distort,

and suppress material facts in their decisions in order to cover up corruption in the New York State courts, in which the State Attorney General is a collusive, active participant. Like myself, Mr. Sassower came into federal court, seeking enforcement of federally-guaranteed constitutional rights, egregiously violated by state judges -- only to be met with similar perversion of such rights by federal judges.

This petition, setting forth wilful misconduct by two levels of federal judges, the consequence of which is to protect criminal and corrupt conduct by state judges and the State Attorney General, echoes Mr. Sassower's experience. And it reinforces Mr. Sassower's words in the very first §372(c) judicial misconduct complaint he ever filed, #87-8503, which was against a district judge of this Circuit for his dishonest -- and unpublished -- decision and against the three-judge Circuit panel which affirmed it by a not-for-publication, no-citation decision. That Circuit panel included Judge Meskill -- a member of the panel herein. Mr. Sassower aptly stated:

> "If federal judicial officials cooperate with corrupt state judicial officials in the deprivation of constitutional rights, then the federal scheme simply does not exist." (Complaint of George Sassower, filed March 20, 1987, at p. 2, ¶4e)

This is among the most serious of allegations, whose truth is confirmed starkly and unambiguously by the instant case. As such, it more than merits rehearing and rehearing in banc by a fair and impartial tribunal -- which, as the record shows, this Circuit is not.

Appellant raised the issue of this Circuit's bias at the Pre-Argument Conference of this appeal on November 8, 1996 and particularized it in her April 1, 1997 motion, requesting the Circuit to recuse itself sua sponte. That substantive motion, also seeking sanctions against the State Attorney General for his documented fraud and misconduct in the case-management phase of this appeal, was summarily denied by a three-judge

panel (Judges Amalya Kearse, Guido Calabresi, and Louis Oberdorfer)[12]. The panel's one-word general denial of that fact-specific, meritorious motion further demonstrates this Circuit's abandonment of cognizable legal and ethical standards, establishing, prima facie, its actual bias.

Incorporated herein by reference and made part hereof, as if more fully set forth herein, is Appellant's separately-filed formal motion for: (a) recusal, pursuant to the Fifth and Fourteenth Amendments of the U.S. Constitution and 28 U.S.C. §455(a) of this Circuit and, in particular, of the three-judge appellate panel; (b) transfer of the appeal to another Circuit; (c) vacatur for fraud, misrepresentation and other misconduct of an adverse party, as well as of the District Judge, pursuant to Rule 60(b)(3) and 60(b)(6), respectively, and the Court's "inherent power", of the Judgment of the district court and of the Summary Order and Decision affirmance of the panel; (d) immediate vacatur of Defendant Second Department's June 14, 1991 finding-less "interim" order of suspension, pursuant to Nuey and Russakoff; and (e) such other and further relief as is just and proper.

Likewise incorporated herein by reference and made part hereof are Appellant's separately-filed §372(c) judicial misconduct complaints against the District Judge, as well as against the panel members, for their official misconduct, as summarized herein and further detailed in her recusal motion.

DORIS L. SASSOWER
Petitioner-Appellant Pro Se

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[12] Prior to its decision, Appellant submitted an April 28, 1997 Supplemental Affidavit, detailing that Amalya Kearse, the panel's presiding judge, was disqualified by reason of her direct participation in the events forming the basis of Appellant's claim of actual bias by the Circuit.