Recd 10/26/95 4:40 P.M.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DORIS L. SASSOWER,

Plaintiff,

94 Civ. 4514 (JES)

SHOW CAUSE ORDER FOR RECUSAL OF JUDGE JOHN SPRIZZO

-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.

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UPON the Affidavit of Plaintiff, DORIS L. SASSOWER, sworn to on October 26, 1995, the exhibits thereto, and upon the pleadings and all papers and proceedings heretofore had herein, and it appearing that Plaintiff is entitled, pursuant to 28 U.S.C. §§144 and 455 to recusal of the Honorable John E. Sprizzo on the ground of a personal bias against her and in favor of the Defendants and because his impartiality might reasonably be questioned, it is

ORDERED, that Defendants and their counsel appear before Hon. , a judge of this Court, in the United States Court House, at 40 Foley Square, New York, on the day of 1995 at o'clock in the of that day or as soon thereafter as counsel can be heard to show

cause why an order should not be entered recusing said Judge John E. Sprizzo, as prayed for by Plaintiff; referring this motion to another judge, pursuant to 28 U.S.C. §144; and granting Plaintiff such other and further relief as may be just and proper.

LET a copy of this Order to Show Cause be served upon Defendants forthwith, with the supporting papers on which it is based, by personal service upon their attorney, the Attorney General of the State of New York, at his offices located at 120 Broadway, New York or by Certified Mail, R.R.R. on or before the day of October 1995 be deemed good and sufficient service.

Answering papers, if any, to be served day(s) before the return date of this motion.

Dated: October , 1995
New York, New York

E N T E R

U.S. District Judge
Southern District of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DORIS L. SASSOWER,

Plaintiff,

-against-

94 Civ. 4514 (JES)

Plaintiff's Affidavit of Bias and Prejudice in Support of Recusal

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.

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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 above-named Plaintiff, pro se, fully familiar with the facts, papers, and proceedings hereinafter referred to.

2. This Affidavit is submitted to support my good faith request, pursuant to 28 U.S. §§144 and 455(a)(b)(1), for the recusal of the Honorable John E. Sprizzo, the judge assigned to this civil action (herein referred to as "the Court"), on the ground that the Court has exhibited a pervasive personal bias or prejudice against me and in favor of Defendants and because "its impartiality might reasonably be questioned."

3. At the outset, I respectfully call upon the Court

specifically to disclose all facts bearing upon its impartiality to adjudicate this §1983 action. This includes, but is not limited to, its relationships with the state Defendants, including Hon. Guy Mangano, Presiding Justice of the Appellate Division, Second Department, as well as with Anthony Colavita, Esq., former Chairman of the New York State Republican Party and Westchester Republican County Committee. As pleaded at Paragraph "121" of my Complaint, Mr. Colavita was the first-named Respondent in the case of Castracan v. Colavita, et al. In that proceeding brought by me, pro bono, in the public interest under New York's Election Law, I sued Mr. Colavita and other prominent leaders of the two major political parties in the Ninth Judicial District of New York, challenging their manipulation of judgeships by a cross-endorsement Deal[1] made between them in 1989, ensuring election of the pre-agreed-upon nominees for seven judgeships, including the Westchester Surrogate office, over a three-year period, commencing that year.

4. The record of this litigation to date evidences the Court's bias over and again, the result of which has been to severely prejudice, delay, and defeat my legal rights. As hereinafter shown, by virtue of the Court's relaxation and, indeed, complete abandonment of applicable judicial standards, Defendants, through their counsel and co-Defendant, the Attorney-General of the State of New York, have not only been permitted to

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[1] A copy of the written Three-Year Deal is annexed to my Verified Complaint as Exhibit "B".

engage in flagrant litigation misconduct, with impunity, but have been rewarded with undeserved relief, while I, on the other hand, have been denied relief to which I was eminently entitled as a matter of law.

5. The Court's most recent manifestation of such grievously wrongful judicial conduct occurred on September 28, 1995, a date fixed by the Court for presentment of my Order to Show Cause for a Preliminary Injunction, with a TRO. At that time, the Court, demonstrated what can, at best, be characterized as a complete ignorance of the facts of the case, at worst, dissembling and bad-faith. Indeed, after I orally apprised the Court of the salient facts of the case--facts entitling me to relief in the federal courts, as a matter of law, the Court--sua sponte taking over as if it were defense counsel--egregiously misrepresented the law, wrongfully refused to sign the Order to Show Cause after denying my requested relief on the merits for such not as yet calendared motion, which denial it thereafter retracted at my request, agreeing to reserve its decision until the scheduled oral argument of the dismissal/summary judgment motions on October 27th, when it said the issue would be "moot", refused to require Defendants to respond in the interim[2], and, over objection and in violation of my legal rights, excused

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[2] The Court's remarks on this subject exemplify its bias: "I don't need any papers on this issue. I don't need a response. I looked at your papers. I am not required to take a response from him (Defendants' counsel). But if he wants to respond to the issues raised, he can. This issue of whether or not you are entitled to preliminary injunctive relief will be moot on October 27, so why should he respond to it?" (Tr. 34)

Defendants' default in failing to oppose my application for summary judgment in my favor--the court-imposed deadline being long passed.

6. Annexed hereto as Exhibit "A" is a transcript of the proceedings on September 28, 1995, when I sought to argue my right to a TRO in connection with my Order to Show Cause. The most important relief sought by my Order to Show Cause was to "enjoin[] continued enforcement of the judicial Defendants' June 14, 1991 Order[3] suspending [my]...license to practice law". To avoid needless duplication, I respectfully incorporate herein and make part thereof my papers in support of my Order to Show Cause, consisting of my Supporting Affidavit and a Memorandum of Law. Each of those documents, in their opening pages, highlighted allegations of my Verified Complaint showing the extraordinary circumstances surrounding the June 14, 1991 suspension Order. These included my allegations that it:

> "was accomplished in the complete absence of all jurisdiction--without any charges on which the suspension was based, without a hearing, without a finding that [I] was guilty of any professional conduct immediately threatening the public interest, and without reasons--all contrary to law and the judicial Defendants' own rules (22 NYCRR §691.4(l)). (Memo of Law, pp. 1-2, emphasis in the original).

and that:

> "Defendants have repeatedly denied me any hearing as to its alleged basis in the more than four years that have since elapsed...

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[3] The June 14, 1991 suspension Order is Exhibit "A" to my Verified Complaint.

> Likewise, Defendants have consistently opposed and denied all my requests for independent judicial review. The judicial Defendants have not only repeatedly refused to grant me leave to appeal to the Court of Appeals (inter alia, Compl. ¶143), in the disciplinary proceedings under A.D. #90-00315, but subverted the integrity of my Article 78 proceeding challenging their misconduct in the aforesaid disciplinary matters by refusing to recuse themselves therefrom (Compl. ¶¶183-4)." (Aff, ¶10, emphasis in the original)

7. All the foregoing was fully discussed in my Order to Show Cause, which further detailed that there was "no law, state or federal, which would permit [such] 'interim' suspension of an attorney's license" (Memo of Law, p. 7). Additionally, my Order to Show Cause drew the Court's attention to the fact that my pleaded allegations of constitutional violations were

> "succinctly summarized at pages 3-7 of my petition for certiorari to the U.S. Supreme Court..., annexed to my June 23, 1995 Affidavit as Exhibit "2"--to which I respectfully refer the Court. Points I-IV specifically detail the profound constitutional issues relating to the charge-less, finding-less, hearing-less 'interim' suspension of my license--as to which the state courts have denied me any and all appellate review."

8. My Order to Show Cause also emphasized that the serious allegations of my Verified Complaint had to be accepted as undisputed, established fact, in view of Defendants' default in opposing my June 23, 1995 application for summary judgment in my favor sought as part of my opposition to their motion for judgment on the pleadings (Aff., ¶3, 17-21; Memo of Law, pp. 9-10), FRCP Rule 56(e); Local Rule 3(g). That application was

fully supported by meticulous record references establishing the truth of the allegations of the Verified Complaint and was incorporated by reference into my Order to Show Cause[4]. This included my June 23, 1995 Memorandum of Law, establishing this Court's subject matter jurisdiction [Points III and IV].

9. I was informed by Chambers (per Linda Kotowski, Deputy Clerk) that the Court required filing of my proposed Order to Show Cause with the Court two days in advance of its presentment (Exhibit "B"). Such requirement is not found in the Federal Rules, the Local Court Rules, or the Court's published Individual Rules. Indeed, the only time requirement in the Court's Individual Rules as to Orders to Show Cause is that they be on "at least one hour" notice (See Judge Sprizzo's Individual Rules and Procedures, effective December 1, 1994, at p.3T).

10. Nevertheless, as the transcript of the September 28, 1995 court session shows (Exhibit "A"), the Court was--or pretended to be--totally ignorant of the most fundamental aspects of my case. Thus, it purported not to know that my suspension under the June 14, 1991 "interim" Order did not rest on any charges relating thereto (Tr. 3); purported not to know that I had not been afforded any hearing as to the basis of my

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[4] A copy of my uncontroverted 3(g) Statement was physically annexed at Exhibit "C" to my Affidavit in Support of my Order to Show. It specifically recited (at ¶4), as undisputed material allegations, that the judicial Defendants' June 14, 1991 "interim" Order suspending my law license was not based on any charges, hearing, findings, or reasons, and that in the more than four years that have since elapsed, I have further been denied a post-suspension hearing as to the basis upon which I have been "interimly" suspended.

suspension, either before or since (Tr. 3, 8); purported not to know who issued the suspension Order or when (Tr. 3, 4); purported not to know of my unremitting efforts over the last four years to challenge the aforesaid unlawful suspension of my law license (Tr. 5); purported not to know that I had repeatedly sought review by the highest state court, the New York Court of Appeals (Tr. 5); purported not to know I had filed a cert petition to the U.S. Supreme Court seeking review of the New York Court of Appeals' refusal to take jurisdiction or the outcome of such cert petition[5] (Tr. 6); and purported not to know the nature of the relief sought by my instant §1983 Complaint (Tr. 14).

11. As the transcript further shows, the Court also purported to be ignorant of the procedural posture of the case--although its posture was meticulously detailed in my Affidavit supporting my Order to Show Cause (under the heading "Procedural Background", ¶¶11-16, also ¶¶17-21) and was made the subject of correspondence with the Court (Exhibits "E-2", "E-3", "F-3", F-5"). Thus, the Court initially expressed its belief that it was Defendants who had filed for summary judgment relief (Tr. 14); that Defendants had filed a response to my summary judgment application (Tr. 15); and repeatedly referred to a non-existent

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[5] As reflected, inter alia, by my first letter to the Court (Exhibit "F-1") and the transcript of the March 3, 1995 conference (Exhibit "A-1" to my June 23, 1995 Affidavit: Tr. 3-6), the fact that I was filing a cert petition with the U.S. Supreme Court was repeatedly before the Court. The Supreme Court's denial of review was recited at ¶24 of my June 23, 1995 Affidavit in opposition to Defendants' dismissal motion and in support of summary judgment/sanctions.

"cross-motion"--even after being corrected (Tr. 26-27; 31-3).

12. If the Court's ignorance of the fundamental facts and posture of the case is actual--not feigned--such conduct cannot be reconciled with its duty to inform itself prior to engaging in its adjudicative function. This would further raise serious questions as to the basis upon which, at its March 3, 1995 conference, the Court directed me to respond to Defendants' motion for judgment on the pleading, refusing to hear oral argument from me on the subject, on threat of contempt[6]. Indeed, examination of my Verified Complaint readily shows that no legitimate dismissal motion could be made against it--a fact I pointed out at ¶5 of my June 23, 1995 Affidavit in opposition to Defendants' dismissal motion.

13. Yet, buttressing the view that the Court's ignorance was feigned--and not genuine--was its failure to respond appropriately on September 28, 1995 to my oral recitation of heinous constitutional deprivations by the state courts (Exhibit "A", 2-13). The Court expressed no anger or astonishment at my recitation of the blatantly unconstitutional manner in which my law license was suspended. Instead, the Court responded by misrepresenting controlling law so as to deny its jurisdiction over a §1983 civil rights action, whose gravamen rests on biased, harassing, and lawless conduct by public

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[6] See, p. 9 of the transcript of the March 3, 1995 conference, annexed as Exhibit "1-A" to my June 23, 1995 Affidavit in opposition to Defendants' dismissal motion and in support of my application for summary judgment.

officers "acting under color of state law".

14. The Court's knowledge of the controlling law relating to its subject matter jurisdiction need not be presumed merely from its fifteen years as a member of the federal district court bench, passing on scores of §1983 actions. The Court's actual knowledge of the controlling law is shown by its own decision in the case involving the well-known lawyer Vernon Mason, which decision it surely could not have forgotten, Mason v. Departmental Disciplinary Committee, a §1983 action involving a New York attorney disciplinary proceeding. A copy of this Court's decision in Mason was annexed to Defendants' dismissal motion (Ex. "B" to Assistant Attorney General Weinstein's January 19, 1995 supporting affidavit). For the Court's convenience, another copy is annexed hereto as Exhibit "C".

15. Contrary to the Court's statement that it lacks "the power to review even egregious error and corruption" (Tr. 9) and is "particularly restricted from conducting a hearing concerning bar proceedings" (Tr. 10), in Mason, this Court recognized, citing Younger v. Harris, 401 U.S. 37, 50 (1971), and other Supreme Court and Second Circuit cases, that there is no bar to federal subject matter jurisdiction in extraordinary situations. Thus, a federal court can, and must, intervene, where challenged state court proceedings fail to "afford an adequate opportunity to raise constitutional challenges", where they are brought in bad-faith, without basis in fact or law, and where the state tribunal is biased. This Court in Mason further

acknowledged that such principle applies as well to cases involving attorney disciplinary proceedings, specifically citing Middlesex County Ethics Comm. v. Garden State Bar Assoc., 457 U.S. 423 (1982), Anonymous v. Assoc. of the Bar of the City of New York, 515 F.2d 427, (2d Cir. 1975); Erdman v. Stevens, 458 F.2d 1205 (2d Cir. 1972).

16. My Verified Complaint was replete with allegations of groundless, bad-faith disciplinary prosecutions of me, flagrant bias by Defendants and a plethora of unredressed constitutional deprivations by them, bringing it squarely within the law, including the exceptions to the Younger abstention doctrine, as this Court reaffirmed them in Mason. Moreover, as highlighted in my Order to Show Cause, my aforesaid allegations had to be accepted as true by reason of the Defendants's failure to oppose my summary judgment application or to controvert my 3(g) Statement. (See, the Court's decision in Allied Bank of Texas v. Eshaghian, 700 F. Supp. 206, 207 (1988)).

17. In sharp contrast to attorney Mason who--according to this Court's opinion (Exhibit "C")--"[did] not and [could] not claim that under New York law he cannot obtain effective judicial review of his constitutional challenge to the disciplinary proceedings", my Verified Complaint not only made all such claims, but my papers in support of summary judgment made an evidentiary showing of my repeated and tenacious efforts to obtain judicial review by the New York courts--all unsuccessful. These included my four separate attempts to obtain

review by the New York Court of Appeals--both as a matter of right and by leave. Additionally, my "First Cause of Action for Declaratory Judgment" pleaded (at ¶¶210-234) the unconstitutionality of New York's disciplinary law, Judiciary Law §90, inter alia, in failing to provide appellate review to "interimly" suspended attorneys. I pointed out that there is no statutory authorization in Judiciary Law §90 to "interimly" suspend an attorney's license--a fact the New York Court of Appeals itself recognized in Matter of Nuey, 61 N.Y.2d 513 (1984). Such constitutional infirmity was also highlighted at ¶25 of my affidavit in my Order to Show Cause.

18. Additionally unlike attorney Mason, who--according to the Court's opinion (Exhibit "C")--was unable to show bad faith and extraordinary circumstances except by reference to a single impropriety by the Departmental Disciplinary Committee and a single disagreement with it--my Verified Complaint particularized a pattern of malicious abuse of disciplinary power by Defendants spanning a period of years. This included the June 14, 1991 charge-less, hearing-less, finding-less suspension of my law license and a series of unrelated totally baseless disciplinary proceedings against me--all brought without compliance with the due process requirements of the judicial Defendants own rules and vindictively designed to retaliate against me for my "judicial whistleblowing".

19. Moreover, unlike attorney Mason, whose bias claim the Court described as a "bare allegation", with Mason,

apparently, having made no recusal or transfer motions prior to seeking relief in federal court, my Verified Complaint pleaded, in addition to my unsuccessful motions for recusal and transfer, a pattern of knowing and deliberate violation of black-letter law and rules by Defendants spanning a period of years. This included denial of my right to immediate vacatur of the finding-less June "interim" suspension Order under controlling decisional law of the Court of Appeals, Matter of Nuey, supra; and Matter of Russakoff, 79 N.Y. 520 (1992).

20. The Court in Mason (Exhibit "C") relied on the fact that "New York law requires recusal for actual or apparent bias", citing N.Y. Jud. Law §14, Code of Judicial Conduct, Canons 2 and 3 as a ground for finding that there was no basis to believe that attorney Mason's constitutional right to a fair and impartial tribunal would not be respected by the New York courts. My pleaded allegations relating to my Article 78 proceeding against the judicial Defendants established that the judicial Defendants--aided and abetted by the Defendant Attorney General and by the New York Court of Appeals, which declined review--not only violated their legal duty to recuse themselves from a proceeding to which they were parties with a direct interest in the outcome (N.Y. Jud. Law §14), but shamelessly subverted the Article 78 remedy itself (¶¶166-170, 173-178, 182-184, 195-196, 198-200, 202-209), contrary to their own decisional law, Colin v. Appellate Division of Supreme Court, 159 N.Y.S.2d 99 (1957).

21. Even had the Court not read my Verified Complaint

and not read my Order to Show Cause--which further detailed those essential allegations--my oral responses to its inquiries on September 28, 1995 provided all the information necessary to show the extraordinary circumstances present in this case brought it squarely within the Court's jurisdiction.

22. Yet, as the transcript shows (Exhibit "A"), the Court never acknowledged the rule of law it had itself reiterated in Mason v. Departmental Disciplinary Committee, supra. On the contrary, each and every time I asserted lack of due process and equal protection in the state forum, the Court--rather than probing for the undisputed facts establishing its subject matter jurisdiction on such ground--chose, instead, to ignore the existence, let alone applicability of such fundamental rule of law (Tr. 7-13).

23. Thus, the Court pretended, and persisted in the pretense even after correction of its erroneous statements, that I was seeking to review of "the correctness of state court decisions" (Tr. 7), rather than review of whether federally-guaranteed due process and equal protection rights had been violated by the state.

24. Although the Court is required to aid and show solicitude to a pro se litigant, Haines v. Kerner, 404 U.S. 519 (1972), the transcript shows, by its repeated expressions that it lacked subject matter jurisdiction, that it not only sought to mislead me, but improperly assumed the role of advocate for the defense, which had not even been heard in response to my Order to

Show Cause. Indeed, by the time Defendants' counsel, Assistant Attorney General Weinstein, was called upon to articulate Defendants' position, he had no need to do so. Mr. Weinstein confined himself to a single sentence: "I will reiterate what your Honor already stated..." (Tr. 14, ln 2), following which he stated he had "nothing further to say".

25. Tellingly, Assistant Attorney General Weinstein made no affirmative statement that my federally-guaranteed constitutional rights had been respected by the state and the Court did not even request, let alone demand, that he do so and that he respond to my allegations of profound constitutional violations. Nor did the Court inquire of Mr. Weinstein as to the basis upon which the New York courts had plainly violated my equal protection rights by refusing to grant me the immediate vacatur to which I was entitled under Matter of Nuey, supra, and Matter of Russakoff, supra--copies of which New York Court of Appeals' decisions I had annexed as Exhibits "G-1" and "G-2" to my Order to Show Cause. As detailed in my Order to Show Cause, those decisions, as well as the judicial Defendants' own "interim" suspension rule (22 NYCRR §691.4(l)), are "dispositive of my right to injunctive and stay relief as a matter of right, not discretion." (Aff., ¶25).

26. Instead, the only issue the Court cared to ask Assistant Attorney General Weinstein to address was that of "abstention" (Tr. 14). The Court then improperly allowed Mr. Weinstein to postpone his response until the October 27th date

set for argument on his dismissal motion and my application for summary judgment, thereby evading my right to immediate relief by TRO.

27. Yet in my June 23, 1995 Memorandum of Law in opposition to Defendants' dismissal motion and in support of my application for summary judgment--expressly incorporated by reference in support of my Order to Show Cause--I had resoundingly put to rest any applicability of abstention (Point IV) to this case, much as I had the Rooker-Feldman and collateral estoppel defenses (Point III).

28. As the transcript shows (Tr. 20-1), I provided the Court with a copy of my aforesaid Memorandum of Law during the proceeding. I specifically directed its attention to Points III and IV. Perusal of such Points and, in particular, page 16 (Tr. 21-2). These references should have sufficed for an impartial Court to have demanded that Assistant Attorney General Weinstein argue the issue of subject matter jurisdiction forthwith, failing which my papers and oral argument in support of a TRO entitled me to such immediate relief, as of right.

29. Instead, what the Court did was to come up with a defense of "laches" against my right to immediate relief (Tr. 22)--as if the Court were unfamiliar with the doctrine of exhaustion of state remedies, precluding federal intervention where claimants aggrieved by unconstitutional conduct by state actors without giving state courts a fair opportunity to pass on their federal claims. That, in fact, the Court is thoroughly

familiar with such doctrine, may be gleaned from its discussion thereof in Snype v. Hoke, 728 F.Supp. 207 (1990); Carballea v. Smith, 574 F.Supp. 154 (1983); Lopez v. Scully, 614 F.Supp. 1135 (1985)--just to cite a few. As shown by the aforesaid habeas corpus decisions by the Court, the prerequisite for such immediate relief is a showing that all state remedies have been exhausted. Once such showing is made, as in Snype, the habeas corpus petitioner is entitled to immediate relief. Yet, in the case at bar, the Court pretended that my exhaustion of state remedies disentitled me from immediate federal relief (Tr. 22).

30. The Court's disposition of my Order to Show Cause was totally repugnant to my constitutional rights, aberrational, and legally insupportable. Without signing my Order to Show Cause, without fixing a return date, without directing Defendants to respond to it, the Court ruled on the merits by expressly denying me the requested TRO and preliminary injunctive relief (Tr. 23-6)[7].

31. The Court's purported basis for such unjust, wrong, and inappropriate ruling was its conclusory statements:

> "I am not satisfied that a sufficient showing for preliminary injunctive relief has been made" (Tr. 24-5),
>
> "I see no basis to find that you have come close to establishing what the Circuit Court has required for this Court to order interim mandatory injunctive relief" (Tr. 25); and

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[7] Thereafter, upon my request (Tr. 29-30), the Court agreed to reserve decision until the October 27th argument on Defendants' dismissal motion and my summary judgment/sanctions application.

> "I am not persuaded you come close to meeting the standard for what amounts to preliminary injunctive relief, be it called a TRO or a preliminary injunction".

Yet, the transcript unmistakably shows that the Court was--or purported to be--ignorant of the most fundamental facts in the record, the law applicable thereto, and with the posture of the case. As my Memorandum of Law overwhelmingly established, I easily met all criteria for the granting of a preliminary injunction and a temporary restraining order.

32. Further demonstrative of this Court's disregard of probative evidence and law--so as to favor and protect Defendants--is its relieving Defendants of their default without any probative evidence or law that would permit it to do so (Tr. 15-20, 26-9).

32. This Court's March 6, 1995 Order[8] required me to respond to Defendants' dismissal motion and to seek summary judgment relief by June 23, 1995 and for Defendants to file their opposition by July 14, 1995. In compliance with that deadline, I timely served my application for summary judgment upon Defendants.

33. There is no evidence in the record as to why the Attorney General failed to meet the July 14, 1995 deadline imposed by the March 6, 1995 Order. Nor is there even a claim by Assistant Attorney General Weinstein that the Attorney General's default was due to any reliance upon my purported telephone

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[8] The March 6, 1995 Order is annexed to my September 18, 1995 letter to the Court (Exhibit "E-3" herein).

conversation with Ms. DeWitt relative to a possible extension of time to make a cross-motion, which I never made.

34. Yet, as reflected by the following colloquy, the Court, here again, interjected itself on behalf of Defendants. This time, the Court excused them of their default based solely on its own unwarranted speculation--as to which there been no claim by them. Here, too, the Court did not even inquire of Assistant Attorney General Weinstein on the subject. Quite the contrary. It refused my request for testimony and questioning:

[Exhibit "A": Tr. 28, emphasis added]

Court: "If he [Assistant Attorney General Weinstein] understood that he had until September 20, his belief was not unreasonable".

DLS: "When did he have such an understanding? He wasn't even in the case until September 12, according to his letter. That is a total lie. His whole case is a total lie.

Court: "You asked for an extension of some time."

DLS: "Excuse me, your Honor--"

Court: "Sit down. I have checked our notes. There may have been a misunderstanding. As far as I am concerned, I will give you [Assistant Attorney General Weinstein] two weeks' additional time to file your papers."

DLS: "May I be heard, your Honor? I would like him on the stand and I would like to have an opportunity to question, because this is a totally unjustified--

Court: "Who cares? It is just a matter of an extension of time."

35. As the transcript shows, the Court relied on notes, allegedly made by its law secretary, Dorothy DeWitt, to confirm my purported telephone conversation with her. Yet, it

did not refer to Ms. DeWitt's notes to confirm the date and substance of any telephone conversation between Ms. DeWitt and the Attorney General's office.

36. Upon information and belief, no telephone conversation between the Attorney General's office and Ms. DeWitt on the subject of the due date of its papers in opposition to may summary judgment application took place until after the July 14, 1995 date had expired. Any such conversation was after the Attorney General's office received from me notification that I was moving by Order to Show Cause, with TRO, to wit, my August 25, 1995 and September 12, 1995 letters (Exhibit "D-1" and "D-2"). Upon information and belief, Ms. DeWitt's notes--access to which the Court failed and refused to afford me--reflect such fact.

37. The Court's reliance on such ex parte document was ethically improper, fraudulent, and deceitful. This is highlighted by the Court's ruling that a self-selected portion of Ms. DeWitt's unseen notes--which were not even made part of the record by the Court--were "credible" (Tr. 29), rather than its directing Ms. DeWitt, who was before the Court, to state the date the Attorney General's office telephoned her and the substance thereof. Indeed, the Court refused to permit my questioning on the subject (Tr. 29).

38. Although the Court itself recognized (Tr. 16), that even had the Attorney General's office believed it had until September 20, 1995 to oppose my summary judgment application,

that date had also passed, it nonetheless relieved Defendants of that default, contrary to Rule 6 of the Federal Rules.

39. The transcript shows that Assistant Attorney General Weinstein lied his way out of such fact by claiming "Then we obtained an extension of time until October 13, by your order." (Tr. 16-17). That this was an outright lie may be seen from Mr. Weinstein's letter to the Court, dated September 13, 1995 (Exhibit "E-2"). Although that letter expressly requested the Court to so-order an extension by affixing its signature, the Court did not do so.

40. My September 18, 1995 response (Exhibit "E-3") exposed the fact that Assistant Attorney General Weinstein's September 13, 1995 letter to the Court was replete with false and deceitful representations.

41. Yet, as the transcript shows, the Court did not threaten Assistant Attorney General Weinstein with disciplinary action for his palpable deceit. That threat the Court reserved for me, stating:

> "My question will be answered yes or no, and it had better be answered truthfully because otherwise you may not be in this court either." (Tr. 32)

In addition to being completely undeserved, such threat would appear to further reflect the Court's unfamiliarity with my Order to Show Cause and its intent to intimidate me. As documented at ¶34 of my supporting Affidavit--I am "not...in this Court" by reason of the Southern District's unconstitutional due process-less automatic reliance on the judicial Defendants'

jurisdictionally void and due process-less June 14, 1991 Order[9].

42. Notwithstanding I have heretofore exposed Defendants--and Assistant Attorney General Weinstein, in particular--as unabashed liars[10], this has not inhibited the Court from undeserved leniency toward them. Its leniency as to Defendants' default contrasts sharply with the strict standard applied by other judges of this district in cases involving the failure to timely comply with, or the extension of, deadlines is viewed[11]. Thus, even where there was a claimed "misunderstanding" by a defendant in default of compliance with applicable rules as to his answer, Judge Edelstein not only denied relief from such default by stipulation, as well as by order to show cause and a motion on notice, but further required the defendant to show cause why sanctions should not be imposed for his "entirely meritless" motion papers. Allstate Insurance Co. v. Administratia Asigurarilor de Stat, et al., slip op. at 10-11, 35/95 Star. Dec. at 601-02.

43. Likewise, Judge Preska, in National Union Fire Insurance Co. of Pittsburgh v. Sun, et al, No. 93 Civ. 7170,

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9 My Order to Show Cause explicitly sought "(3) Granting such other and further relief as may be just and proper, including 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".

10 See, inter alia, Exhibits "F-1" and "E-3" herein, as well as my June 23, 1995 submissions seeking sanctions.

11 The cases herein cited for this point are reported in Southern District Civil Roundup, New York Law Journal 10/5/95, p.3F cols.1-2, 4T cols.1-3).

34/95 Star. Dec. 105 (SDNY Aug. 16, 1995) recently also denied an after-the-deadline motion for extension of time.

44. Thus, it may readily be seen that the Court has granted to Defendants relief to which they were not entitled and for which they had not even moved.

45. Annexed hereto and incorporated by reference are copies of the correspondence between myself and the Court[12]--further evidencing the biased and prejudiced treatment of me by the Court and its personnel--including by Ms. DeWitt.

46. From the foregoing, it may be seen that the Court has violated fundamental adjudicatory standards, controlling law, and disregarded probative evidence so as to deny me relief to which I am entitled and grant to Defendants relief to which they are not entitled. The Court's pattern of animus and antagonism toward me and favoritism toward Defendants, as revealed by my several appearances before it--which a cold transcript cannot adequately depict--and by the correspondence is so extreme as to display a clear inability and disinterest in rendering fair judgment. Such conduct makes it impossible for me, or any reasonably objective observer, to believe that I could have a fair and impartial trial herein.

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12 Letters dated December 16, 1994 (Exhibit "F-1"), June 26, 1995 (Exhibit "F-2"), July 26, 1995 (Exhibit "F-3"), August 3, 1995 (Exhibit "F-4"), August 25, 1995 (Exhibit "D-1"), September 18, 1995 (Exhibit "E-3"), September 19, 1995 (Exhibit "F-5").

WHEREFORE, it is prayed that the Court be recused from all further adjudication herein, together with such and further relief as may be deemed just and proper.

Doris L. Sassower

DORIS L. SASSOWER

Sworn to before me this
26th day of October, 1995

NOTARY PUBLIC