

DOMINIC M. FRANZA

92A2659

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ELMIRA, N.Y. 14902-500

8/25/93

To: Hon: Paul F.E. Bookson, J.S.C..¹
Part 32, Supreme Court, New York County
111 Centre st
New York, N.Y.

I hereby Authorize Mr Frank Franza, Mrs Gladys Franza, Miss Rosemarie Gonzalez, Mr Peter Verby, Esq. to read this letter in my behalf to this Court.

On the 20th of July, 93 my Family Personally served the D.A."S office and this Court with my Pro se C.P.L. §440.10 Motion.

On the 21st of July, 93 I spoke to Peter Verby my Appellate counsel and he informed me that Mr Brancato as well this Court called him. This was to find out if he was representing me on my C.P.L. §440.10 Motion, Mr Verbys answer was that he was not representing me on my C.P.L. §440.10 Motion. Mr Verby further informed me that this Court was assigning me Counsel.

I don't understand this my Motion makes it plainly clear I made the Motion not any Attorney and have proceeded

Pro se, this Court should of contacted me for this information, as well I never asked for Counsel to be assigned.

At no time in filing my C.P.L. §440.10 did I request Counsel. This Court has no right in assigning me Counsel.

JUDICIARY LAW § 35 subdivision (1)(A) specifically states:

The Court may assign Counsel to represent such person if it, is satisfied that he is financially unable to obtain Counsel.

COUNTY LAW § 722 subdivision (4) states:

This Court may assign Counsel to Defendant when a Hearing has been ordered in a Proceeding upon a Motion Pursuant to C.P.L. §440.10.

This Court has attempted to assign me Counsel the day after my Motion was filed without my requesting Counsel. This Court has found me Financially unable to obtain Counsel when in fact Mr Verby is paid Counsel, how can this Court conclude I am Financially unable to obtain Counsel.

My filing Pro se has nothing to do with me being assigned Counsel, especially since I requested no Counsel, or has this Court the day after my filing ordered a Hearing, even though I have not requested Representation.

The proper procedure should of been for this Court to wait for all the Paper to be submitted Pursuant to C.P.L. §440.30 subdivision (1), then if this Court does not determine the Motion Pursuant to C.P.L. §440.10 subdivision

(2)(3)(4) it must hold a Hearing.

Upon appearing in Court, I would notify this Court if in fact I seek the Assistance of Counsel, or inform this Court I have retained Counsel and have him present with me. This is my Right of choice, it is not for this Court to decide for me.

This Court has ordered Me Verby to represent me on my C.P.L. §440.10 Motion, I was informed as such by Mr Verby, this Order has been without my requesting Counsel. This Action by this Court is Pre-Mature.

Should a Hearing be held upon arrival in Court I will then inform this Court if I seek to be assigned Counsel, or I have retained Counsel. In the event I cannot afford to retain Counsel then should this Court Order Mr Verby to represent me it is for your Honor and Mr Verby to argue the point of assignment by Order of this Court.

The D.A. will argue this procedure will add up an expense having to keep me in the City, and Delaying the Hearing (should this Court hold one) in having Counsel Prepare for Hearing. I remind this Court of JUDICIAL LAW § 19 Judge must not be interested in cost.

With respect to Sept 1st, 93 Court date, Mr Verby has been ordered not to proceed without my presence, due to the fact I have not asked for Counsel, and for reasons previously mentioned. Should Mr Verby act in the capacity of Counsel for the purpose of my C.P.L. §440.10 it would be illegal and void of any meaningful purpose, as well

In filing my C.P.L. §440.10 Motion I have not waived my appearance in writing nor can anyone waive my Right, I wish to attend as my Right and ask this Court to produce me Pursuant to C.P.L. §440.30 subdivision (5).

I have spoken to Mr Verby on the 24th of August, he informed me he has spoken to Mr Brancato to inform him I wish to be present on Sept 1st, 93, I was informed by Mr Verby Mr Brancato would not have me produced, unless the Court ordered him, this is uncalled for and this Court should not condone such actions.

Should this Court Order me to Court, I ask this Court for an Order to be housed in Manhattan House of Detention till final disposition of this Motion. As well the Summary Judgment filed on the 23rd of August.

A matter of grave importance, I have spoken to your Legal Secretary Jamie and was informed by him that I've been directed not to call the Court, speaking to Mr Verby I was informed your Legal Secretary denied access to the Court to Mr Verby my Appellate Counsel.

Since when does one who files Pro se be denied access to the Court as well as anyone for that matter. It is my CONSTITUTIONAL RIGHT to have access to the Court and speak directly to your Honor, I suggest that you reprimand your Legal Secretary as to this, I should hope this direction from your Legal Secretary did not come from you your Honor. I would never ask this Court to speak to me in the capacity as an ex-parte communication, it would besolely for the

purpose of procedural matters Motion matters, scheduling etc only.

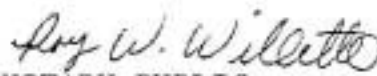
With respect to the matter mentioned pertaining to my C.P.L. §440.10 Motion and Summary Judgment filed on the 23rd of August, 93 I await for this Court as well as the Prosecutor to keep me informed of all going on's as I should be, I remind everyone I have gone Pro se.

I will inform this Court that I will Notify the Court of Appeals, as well the Appellate Division of exactly what is going on and ask that my Appeal be extended until this Court makes a final disposition.


DOMINIC M. FRANZA

SWORN TO BEFORE ME THIS

28 th DAY OF August, 93


NOTARY PUBLIC
ROY W. WILLETTE
N.Y.S. Notary Public
Chemung County #4972995
Commission Expires 10/09/94
To: Hon: Robert Mortgenthau, Esq.

District Attorney

New York County