SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DORIS L. SASSOWER,

Petitioner,

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.

Index No.
95-109141

Affidavit in Opposition to Respondent's Dismissal Motion and in Further Support of Petitioner's Verified Petition, Motion for Injunction and Default, and for Sanctions

ORAL ARGUMENT REQUESTED

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

DORIS L. SASSOWER, being duly sworn, deposes and says:

1. I am the Petitioner in the above-entitled Article 78 proceeding, fully familiar with all the facts, papers, and proceedings heretofore had herein.

2. This Affidavit is submitted in opposition to Respondent's May 30, 1995 motion for dismissal under CPLR §§7804(f) and 3211(a)(7) for "failure to state a cause of action", without prejudice to my position that Respondent's default in either filing and serving an answer or moving to dismiss "at least five days before" the original May 3, 1995 return date of my Verified Petition, as required by CPLR §7804(c), deprives this Court of jurisdiction to entertain this motion.

3. On such default, the Court's power is expressly

limited by CPLR §7804(e), which provides that, in the event of such default, the Court "may either issue a judgment in favor of the petitioner or order an answer to be submitted." Thus, on the May 3, 1995 return date, the failure of Respondent's counsel to ask that Respondent be relieved from its default in timely answering or moving, on good cause shown, and with an affidavit of merit. Siegel, New York Practice, 2d ed. §427 (1991), as the record indisputably shows Respondent wholly failed to do, precluded any other disposition.

Hereto annexed as Exhibit "O"[1] is a copy of the transcript of the May 11, 1995 argument before Referee Julius Birnbaum, showing that Respondent's counsel, nonetheless, and in plain violation of the CPLR §§7804(c) and (e) and 3215(a), sought, and was granted, two adjournments, which further contravened the published rules of this Court governing motion practice adjournments.

4. This Affidavit is also submitted in further support of my Verified Petition and for summary judgment thereon in my favor pursuant to CPLR §§7804(e), 409(b), 3211(c) and for sanctions against Respondent and its counsel personally pursuant to 22 NYCRR §130-1.1 et seq. and Judiciary Law §487(1).

5. Inasmuch as the Court reserved decision on my preliminary injunction motion at the time oral argument was

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[1] This Affidavit continues the sequence of exhibits of the Verified Petition, to which were annexed Exhibits "A" through "N".

scheduled on May 23, 1995 (Exhibit "P"[2], at pp. 24, 27), I respectfully request the Court to consider this Affidavit in further support thereof and in reply to Respondent's May 22, 1995 Affirmation in Opposition to my Order to Show Cause for a preliminary injunction and a default judgment. As the transcript of that argument shows, the Court accepted such Affirmation (Exhibit "P", p. 24), notwithstanding it was untimely and improperly served--and prevented me from elucidating a reply. However, the transcript erroneously fails to reflect my articulated request to submit a written reply--which the stenographer failed to fully record (Exhibit "P", p. 24). As is reflected by the transcript, the Court ignored that request.

6. My request for consideration of this Affidavit as such reply is made without waiving my objection that Respondent's aforesaid Affirmation in Opposition was, and is, not properly before the Court, both by reason of Respondent's being in default and, therefore, having no standing to interpose such opposition paper and because of its untimely and improper service thereof (Exhibit "P", pp. 2, 8-9).

7. On the issue of Respondent's default, I further incorporate by reference my May 11, 1995 Affidavit in support of my application for a default judgment against Respondent, which this Court failed to rule on. (Exhibit "P", pp. 21-22). The record shows said application is wholly uncontested by

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[2] Exhibit "P" is a certified copy of the May 23, 1995 transcript of the argument on my May 11, 1995 Order to Show Cause for a preliminary injunction and default.

Respondent, whose counsel failed to present any opposition thereto or to even address same, either in the course of his oral argument on the May 23, 1995 return date of my Order to Show Cause (Exhibit "P"), or in his papers in opposition thereto. Nor has it done so on its instant dismissal motion[3].

8. The Verified Petition in this Article 78 proceeding demonstrates, by the plain language of the Article VI, Section 22a of the New York State Constitution and Judiciary Law §44.1, that 22 NYCRR §7000.3 is, as written, unconstitutional. Further, by the facts specifically alleged and the exhibits annexed, the Verified Petition shows that 22 NYCRR §7000.3, as applied, is unconstitutional and that Respondent has acted thereunder to unlawfully dismiss facially-meritorious complaints of judicial misconduct and to protect and shield from disciplinary investigation powerful and politically-connected judges against whom such complaints have been filed.

9. Respondent, by it sparse, conclusory, and frivolous motion to dismiss for failure to state a cause of action, has now conclusively revealed that it cannot meet the standards for a dismissal motion "on the pleading" and, additionally, that it has no defense "on the merits". By such submission, the Attorney General, on behalf of Respondent, has shown how completely it has subverted the public interest to a

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[3] Mr. William omits any and all reference to the default application in his chronological recitations in each of those documents. See, ¶¶4-5 of Mr. Williams' Affirmation in Opposition to Preliminary Injunction and ¶¶2 and 5 of Mr. Williams' Affirmation in Support of Dismissal Motion.

"knee-jerk" defense of wrong-doing government agencies.

10. Although the Attorney General can now be seen to have neither facts or law to defend Respondent, it still does not recognize its transcendent duty to protect the public by defending the law and upholding the Constitution--for performance of which duty the taxpayers of this state fund the office of the Attorney General.

11. Instead, as hereinafter demonstrated, Respondent, likewise paid by our state taxpayers, interposes, through the Attorney General, arguments which are legally insufficient and factual statements which it knows to be false, misleading and perjurious.

RESPONDENT'S DISMISSAL MOTION MUST BE DENIED AS A MATTER OF LAW BECAUSE IT FAILS TO MEET THE ELEMENTARY STANDARD FOR DISMISSAL "ON THE PLEADING" AND PRESENTS NO LEGAL AUTHORITY OR EVIDENTIARY PROOF TO SUPPORT A SUMMARY JUDGMENT OF DISMISSAL "ON THE MERITS"

12. As detailed at Point I of my accompanying Memorandum of Law, Respondent has failed to meet the rudimentary standard of a motion to dismiss for failure to state a cause of action--which presumes the truth of the allegations of the pleading and the reasonable inferences flowing therefrom. Instead, Respondent argues, improperly, against the pleaded allegations of the Verified Petition.

13. This is reflected, initially, at ¶6 of Mr. Williams' Affirmation in Support of Respondent's Motion to Dismiss, in which the dismissal application is predicated on a series of conclusory assertions, for which Mr. Williams shows no

legal authority or evidentiary support whatever. In pertinent part, said ¶6 reads as follows:

> "The petition should be dismissed because the Rule is constitutional as written and applied. Moreover, the Commission has discretion[4] to decide whether a complaint merits an investigation, and thus did not abuse its discretion when it dismissed petitioner's complaints without investigating them."

14. Such claims, which Mr. Williams lamely and illogically expands upon at ¶9, 10, 11 of his Affirmation, are 180 degrees contradictory to the facts set forth in the allegations of the Verified Petition. This is reflected, inter alia, by the Verified Petition's following paragraphs:

(A) "FOURTEENTH", "EIGHTEENTH", "NINETEENTH", "TWENTY-NINTH", "THIRTY-FIRST" alleging the unconstitutionality of Respondent's Rule 22 NYCRR §7000.3, as written and as applied;

(B) "THIRTEENTH", "SEVENTEENTH", "TWENTY-THIRD", "THIRTY-FIRST" alleging Respondent's mandatory duty under Article VI, Section 22a of the New York State Constitution and Judiciary Law §44.1 to investigate complaints filed with it; and

(C) "TWENTIETH", "TWENTY-FIRST", "TWENTY-SECOND", "TWENTY-THIRD", "TWENTY-FOURTH", "TWENTY-SIXTH", TWENTY-SEVENTH", "TWENTY-EIGHTH", and "TWENTY-NINTH" alleging that Respondent's summary dismissal determinations of Petitioner's nine complaints were contrary-to-law, arbitrary, capricious, and a knowing and deliberate cover-up of judicial misconduct by powerful, politically-connected judges.

15. The aforesaid factual allegations of the Verified Petition assert that Respondent has a mandatory, non-discretionary constitutional and statutory duty to investigate

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[4] See, ¶¶16-17 infra for discussion.

facially-meritorious complaints to which, by promulgation of its 22 NYCRR §7000.3, it has failed to adhere and for which, by the authorities cited at ¶¶7 and 8 of Mr. Williams' Affirmation, Article 78 relief clearly lies.

16. Notwithstanding Mr. Williams' use of the term "discretion" at ¶¶6 and 11 of his Affirmation, he concedes, at ¶10, that Article VI, Section 22a of the Constitution imposes upon Respondent:

> "the mandate to investigate only those complaints alleging acts of judicial misconduct".

Indeed, review of his position--also set forth in his opposition to the preliminary injunction[5]--is not that Respondent has no duty to investigate, but, rather, that such duty only comes into play when a complaint sets forth allegations of judicial misconduct--an interpretation he holds (at ¶11) to be "in harmony" with Judiciary Law §44.1(b), albeit that statutory provision expressly requires that there by a determination by Respondent that a summarily-dismissed complaint "on its face lacks merit".

17. As to the 22 NYCRR §7000.3, Mr. Williams, by

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5 See, ¶8 of Mr. Williams' May 22, 1995 Affirmation in Opposition to the preliminary injunction:

> "...Section 22.a emposes [sic] a duty to investigate allegation [sic] of judicial misconduct if a complaint on its face presents a legally cognizable allegations [sic] of judicial misconduct..."

See, also pp. 19-20 of the May 23, 1995 transcript of hearing on my Order to Show Cause, annexed hereto as Exhibit "P".

arguing (at ¶11) that "[t]he Rule is consistent with each of the aforementioned provisions", is deemed to accept that the seeming "discretion" of the Rule is circumscribed within the constitutional and statutory mandate requiring Respondent to investigate a complaint setting forth allegations of judicial misconduct, absent a determination by Respondent that such complaint "on its face lacks merit".

18. In view of such conceded investigative mandate--and Mr. Williams' concession that my nine complaints were not investigated (at ¶6)[6], the only way Mr. Williams is able to defend Respondent's summary dismissals of those complaints is by pretending that they do not set forth allegations of judicial misconduct. Yet, nowhere in Respondent's dismissal motion is there an affirmative statement to that effect or, more importantly, that Respondent made a determination that my complaints on their face lacked merit.

19. The most cursory review of the nine complaints annexed to my Verified Petition as Exhibits "C", "D", "E", "F", "G", "H", "I", "J", and "N"--even without the substantiating evidentiary enclosures they supplied to Respondent--reveal that, as a matter of law, they presented Respondent with legally-cognizable allegations of judicial misconduct. Under such circumstances, by Mr. Williams' own concession:

(A) Respondent was compelled "to perform a duty enjoined upon it by law" [§7803(1)]--its mandatory duty to

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[6] See, also ¶26 infra.

investigate--to which I had a clear legal right, entitling me to mandamus or prohibition.

(B) Respondent's summary dismissals of my facially-meritorious complaints, was, as alleged in paragraph "EIGHTEENTH" of my Verified Petition, without or in excess of its jurisdiction [CPLR §7803(2)].

(C) Respondent's dismissal determinations were "in violation of lawful procedure, affected by error of law, arbitrary and capricious and an abuse of discretion" [§7803(3)]--there being no basis therefor whatsoever in law or in fact.

20. Finally, Respondent's dismissal motion wholly ignores the fact that Article 78 is the "appellate remedy" by which judicial review of Respondent's determinations is obtainable and by which Respondent may be compelled to act on my January 22, 1993 letter (Exhibit "M") so as to review my December 4, 1992 complaint of judicial misconduct (Exhibit "F"), which was not presented to Respondent for consideration (Exhibit "K-4"), but dismissed by its Clerk by letter dated January 20, 1993 (Exhibit "L-4"). As alleged at paragraph "TWENTY-SIXTH" of the Verified Petition:

> "Respondent has, for more than two years, failed and refused to act upon Petitioner's letter dated January 22, 1993 (Exhibit "M") notwithstanding same showed that Respondent's stated basis for dismissal was erroneous."

THE FACTS AND LAW ENTITLE PETITIONER TO SUMMARY JUDGMENT IN HER FAVOR UNDER CPLR §3211(c)

21. As shown in my accompanying Memorandum of Law, my right to all branches of relief, requested in my April 10, 1995 Notice of Petition, has been established. No evidentiary facts have been shown by Respondent which would entitle it to a trial, since the absence of any affidavit on its behalf by someone with personal knowledge of the facts or other written proof raises no factual issue.

22. The legal authorities and legislative history, appearing at Point II of my accompanying Memorandum of Law, show that Judiciary Law §44.1 and Article VI, Section 22a of the New York State Constitution impose upon Respondent a mandatory duty to investigate complaints of judicial misconduct, from which it may be relieved only upon its determination that a complaint "on its face lacks merit".

23. Consequently, Respondent's self-promulgated Rule, 22 NYCRR §7000.3, which facially shows that Respondent has, without limitation, given itself unfettered discretion to dismiss or investigate complaints of judicial misconduct, without any such determination, is, as written, unconstitutional and statutorily unauthorized.

24. As applied, 22 NYCRR §7000.3 is also unconstitutional--a fact proven by Respondent's summary dismissals of my nine complaints of judicial misconduct filed with it, copies of which are annexed to my Verified Petition as Exhibits "C", "D", "E", "F", "G", "H", "I", "J", and "N".

25. Examination of my aforesaid nine complaints shows each to be facially-meritorious--a fact further established by review of the supporting exhibits and evidentiary proof which I submitted to Respondent at the time each complaint was filed with it.

26. Nonetheless, all nine facially-meritorious complaints were dismissed without investigation--a fact conceded by Mr. Williams[7], reflected by 22 NYCRR §7000.1(j) defining "investigation" and further shown by the sequence of Respondent's letters of acknowledgement and dismissal of my complaints, annexed as Exhibits "K", "L", "N-1", "N-2" to my Verified Petition.

27. Review of Respondent's determinations dismissing my October 24, 1991, September 19, 1994, October 5, 1994, October 26, 1994, and December 5, 1994 complaints of judicial misconduct (Exhibits "L-2", "L-5", and "L-6") show that Respondent stated no basis whatever for its dismissal decision.

28. As to Respondent's determinations dismissing my May 20, 1986, October 5, 1989, and January 2, 1992 complaints of judicial misconduct (Exhibits "N-1", "L-1", and "L-4") review of the evidentiary proofs supporting the complaints and proffered therein me show that, contrary to Respondent's determinations, said complaints met the standard of Respondent's jurisdiction, as set forth in its own informational brochure, inter alia:

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[7] ¶6 of Mr. Williams' Affirmation in Support of Dismissal Motion.

> "improper demeanor, conflicts of interest,...bias, prejudice, favoritism, corruption, prohibited...political activity..."

29. Respondent has further not complied with paragraph "TWENTY-FIRST" of the Verified Petition requesting, pursuant to CPLR §409 and §7804(e) that:

> "Respondent file with the Court a certified transcript of the record of the proceedings, including the original complaints filed by Petitioner, together with the exhibits and evidentiary proof supplied by Petitioner in support thereof, so that the Court may further verify the substantial and documented nature of her complaints."

30. Failure to comply with such request, which is Respondent's official statutory duty, requires, at very least, an enforcing direction from the Court, so that it may determine for itself the truth of paragraph "TWENTY-SECOND":

> "That the supporting exhibits and evidentiary proof supplied and proffered by Petitioner in support of her aforesaid complaints established, prima facie, judicial misconduct by the judges complained of or probable cause to believe that the judicial misconduct complained of had been committed."

31. Examination of the documentary materials submitted to Respondent with my complaints and proffered to it establishes that, as alleged in my Verified Petition, Respondent has, knowingly and deliberately, engaged in a "pattern and practice of protecting politically-connected judges -- including Justice William B. Thompson, one of its own judicial members" (paragraph "NINETEENTH") from disciplinary investigation, even where the complaints against them allege and document judicial misconduct

"rising to a level of criminality" (paragraph "TWENTY-THIRD").

32. The overwhelming evidentiary proof of Respondent's complicity in and wilful "cover-up" of high-level judicial misconduct compels the Court, if it is to properly discharge its own official duty and ethical responsibility[8], to grant such relief as requesting the Governor for appointment of a Special Prosecutor and referring Respondent, its members and staff, "for appropriate criminal and disciplinary investigation" (Notice of Petition, (c) and (d)).

PETITIONER MEETS THE THREE-PRONG INJUNCTIVE STANDARD TO ENJOIN RESPONDENT FROM DISMISSING COMPLAINTS UNDER 22 NYCRR §7000.3

33. The frivolousness of Respondent's dismissal motion, exposed herein, and the facts and law presented in support of my Verified Petition demonstrate my entitlement to this Court's granting of my Order to Show Cause to enjoin Respondent from its dismissal of complaints under 22 NYCRR §7000.3. Indeed, the papers before this Court show plainly my likelihood of "ultimate success on the merits"--thereby meeting the first prong requirement for the granting of injunction relief [See, Point III of my accompanying Memorandum of Law].

34. As shown by the May 23, 1995 transcript (Exhibit "P"), at the time of oral argument on the preliminary injunction and default application, this Court prevented me from arguing in support of my position that the Verified Petition fully met the

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[8] §100.3(b)(3) of the Chief Administrator's Rules Governing Judicial Conduct, published as Appendix "D" to Respondent's 1994 Annual Report.

three-prong test for injunctive relief (Exhibit "P", pp. 9-10). It refused, even to the point of threatening me with contempt and finally expelling me from the courtroom, to permit me to place on record anything more than a bare beginning as to the first prong.

35. However, from the visual display which was part of my presentation, to which I referred in the course of this Court's questioning of me (Exhibit "P", p. 12-13), the Court was able to see that I further met the second and third prong requirements for injunctive relief, namely irreparable injury and the balance of equities favoring the injunction, to wit, that the public is directly and dramatically injured by Respondent's failure to adhere to the constitutional and statutory mandate to investigate complaints of judicial misconduct. Annexed hereto as Exhibit "Q" is a copy of the chart, which was part of that display, reproduced from the "Introduction", appearing on the very first page of Respondent's own 1994 Annual Report. Such chart, and the accompanying text, constitute a written admission by Respondent of the magnitude of its summary dismissal dispositions upon the public.

36. At the May 23, 1995 oral argument, I sought to introduce various sworn statements of complainants who had filed facially-meritorious complaints of judicial misconduct with Respondent--only to have them summarily dismissed.

37. Following objection by Mr. Williams, this Court stated that I could mark same for identification at the close of the proceeding (Exhibit "P", pp. 6-7). However, the Court

thereafter prevented me from doing so by expelling me from the courtroom when I sought to complete my oral argument and directing removal by the court officers of all my papers and belongings from the counsel table, thereafter denying me my right to re-enter the courtroom. This resulted in such sworn statements not being marked so that they could properly be part of the record.

38. Therefore, I annex hereto as Exhibits "R" and "S", respectively, the Affirmation of George Alessio, Esq., and the Affidavit of Dr. Monte Weinstein, each attesting to his own direct personal experience with Respondent, and its summary dismissal of their legitimate complaints of judicial misconduct filed with it by them. Such exhibits are submitted in further support of my Verified Petition and in opposition to Respondent's dismissal motion.

39. As this Court is further aware, members of the public and Center for Judicial Accountability, Inc. packed the courtroom for the May 23, 1995 oral argument--and eagerly sought to testify--on the issue of the irreparable injury to the public of Respondent's unconstitutional and statutorily-unauthorized summary dismissals, without investigation, of their facially-meritorious complaints of judicial misconduct (Exhibit "P", pp. 5-6).

40. It must be emphasized that Respondent has neither alleged nor shown that there would be any injury to the public interest by the granting of the injunctive relief sought:

> "enjoining Respondent from summarily dismissing complaints of judicial misconduct, pursuant to 22 NYCRR §7000.3, without a prior determination that such complaints on their face lack merit, until such time as this Court adjudicates the subject Petition challenging the constitutionality and legality of the aforesaid commission rule"

Indeed, in view of Mr. Williams' contention[9] that 22 NYCRR §7000.3 is "consistent" with Article VI, Section 22a of the State Constitution and Judiciary Law §44.1, there can be no prejudice since the injunction will stay Respondent only from doing what Mr. Williams claims is not doing, namely, dismissing facially-meritorious complaints. As to such complaints, Mr. Williams concedes, as discussed at ¶16-17 hereinabove, that Respondent has a mandatory investigative duty.

41. Although this Court expressed the view that it was not "leaning" toward holding a hearing on the preliminary injunction motion (Exhibit "P", p. 26), members of the Center for Judicial Accountability, Inc. are ready and eager to offer their testimony to the Court, and if the Court does not incline toward granting of injunctive relief on the papers before it, although no issues of fact are raised in opposition thereto, I request an immediate hearing for such purpose pursuant to CPLR §2218.

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9 See, ¶11 of Mr. Williams' Affirmation in Support of Dismissal Motion, discussed at ¶¶16-17 infra.

SANCTIONS AND COSTS AGAINST RESPONDENT AND ITS COUNSEL, PERSONALLY, PURSUANT TO 22 NYCRR 130-1.1 ET SEQ. AND JUDICIARY LAW §487(1), ARE WARRANTED

42. As detailed hereinabove and documented by my accompanying Memorandum of Law, Respondent's dismissal motion is not only procedurally improper and contrary to basic rules of law as to form and content of such motions, but is substantively devoid of law and facts to sustain the bald claims made therein. Moreover, as shown hereinabove, it is knowingly false, misleading, fraudulent, and deceitful.

43. This is but the latest in a pattern of dishonest, dilatory and abusive conduct by Mr. Williams, as Respondent's counsel, first described in my May 9, 1995 letter to Administrative Law Judge Stanley Ostrau, annexed as Exhibit "T" hereto and reflected, as well in the transcript of the proceedings on May 11, 1995 before the Referee (Exhibit "O").

44. Such misconduct was, thereafter, continued by Mr. Williams, who failed and refused to respond to my letter to him, dated and faxed on May 15, 1995, relative to compliance by him with CPLR §2214(b), requiring service of any answering papers to my Order to Show Cause for a preliminary injunction and default, at least two days before the return date. A copy of said letter is annexed hereto as Exhibit "U".

45. Thereafter, on May 22, 1995, I telephoned Mr. Williams who stated, in response to my inquiry, that he would not be putting in written opposition to my Order to Show Cause, but would be arguing orally. My faxed letter to him, confirming our

conversation and asking him to advise me if such letter was in any way inaccurate so that I could be "guided accordingly", is annexed hereto as Exhibit "V".

46. I received no response from Mr. Williams to the aforesaid letter. However, at 7:30 in the evening of the night before the May 23, 1995 return date of my Order to Show Cause, I received, by fax, an affirmation from Mr. Williams in opposition to the preliminary injunction. Said untimely and improperly-served document was described by me at the May 23, 1995 hearing as "an absolutely spurious, deceitful and frivolous affirmation in opposition" (Exhibit "P", p. 9).

47. At oral argument, I further stated that I would offer said opposing Affirmation "in support of an application for sanctions against Mr. Williams, personally, and the Attorney General" (Exhibit "P", p. 9). As merely illustrative of the grotesque misrepresentations of fact and law contained therein:

(A) Mr. Williams' aforesaid Affirmation dodged the issue raised by my Order to Show Cause as to the unconstitutionality of 22 NYCRR §7000.3 and the dismissal practices of Respondent thereunder by: (i) omitting any discussion of 22 NYCRR §7000.3--<u>the very subject of the injunction motion</u>; and (ii) misrepresenting Judiciary Law §44.1(b) at page 5 of his Affirmation by wholly omitting the operative language requiring Respondent, as a precondition to summary dismissal, to "<u>determine[] that the complaint</u> on its face...lacks merit".

(B) Mr. Williams' aforesaid Affirmation deflected the issue of Respondent's unconstitutional and statutorily-unauthorized dismissal of my complaints by making the demonstrably insupportable and flagrantly false claim (¶13) that "petitioner's complaints did not on their face allege judicial misconduct"--a claim exposed as deceitful and fraudulent by any objective examination of Exhibits "C", "D", "E", "F", "G", "H", "I", "J", and "N", annexed to the Verified Petition.

48. Although, as hereinabove set forth at ¶18, Mr. Williams does not affirmatively repeat the outrageous and sanctionable lie that my complaints do not allege judicial misconduct, he did repeat such brazenly dishonest statement at the May 23, 1995 oral argument, in the presence of members of the Center for Judicial Accountability, Inc. and members of the public (Exhibit "P", pp. 20-21)--to which the Court failed to accord me a right of reply (Exhibit "P", p. 21).

49. Mr. Williams further made a material representation of fact to the Court on May 23, 1995 by promoting its erroneous belief that my application for default was not then before the Court for argument (Exhibit "P", pp. 21-22)--which the Court, likewise refused to permit me to correct (Exhibit "P", p. 23).

50. The foregoing continuum of dishonest and unethical acts by Assistant Attorney General Williams, on behalf of this state's highest law enforcement officer, who is representing a public agency created to enforce ethical standards, gives ample

ground for invocation of the sanctions and costs allowable under 22 NYCRR §130-1.1 et seq. and Judiciary Law §487(1).

51. Such shameful and disreputable conduct by the Attorney General's office only further reinforces the public perception of its conflict of interest, requiring its disqualification as Respondent's counsel. As shown by the May 23, 1995 transcript (Exhibit "P"), following the ejection of myself and my paralegal by the Court, there was a near-riot by members of the Center for Judicial Accountability, Inc. and others who were particularly incensed as to the manner in which the Attorney General was proceeding in this matter (Exhibit "P", pp. 32-34).

52. As shown by my May 9, 1995 letter to Administrative Judge Ostrau--a copy of which was sent to the Court--(Exhibit "T"), at the outset of this litigation[10], I sought, to no avail, the Court's "immediate aid" on the conflict-of-interest issue. As set forth by me:

> "The Commission on Judicial Conduct of the State of New York has its own counsel, paid for by the taxpayers of this State, and is well equipped to defend its own interests in this litigation. By contrast, the People of this State have only the Attorney General to defend their interest from unconstitutional and unlawful acts of the Commission. The public interest is that the Article 78 proceeding be adjudicated on the merits, whereas the Commission's interest is in avoiding such adjudication at all costs."

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10 See, also Exhibit "O", pp. 13-14, 33-35.

53. In view of the overwhelming evidence that, as written and applied, 22 NYCRR §7000.3 is unconstitutional, there is no justification for Respondent not undertaking its own representation in the case at bar, where the People of this state have no other governmental counsel to protect the public interest and all other agencies of government charged with law enforcement have, after being served with Notice of Right to Seek Intervention, failed to even communicate to the Court on the subject.

54. The Court has ignored the threshold issue of the Attorney General's conflict-of-interest, having me removed from the courtroom when I attempted to raise such issue at the May 23, 1995 oral argument (Exhibit "P", p. 29)[11].

FINAL COMMENTS

This case challenging the Commission on Judicial Conduct's failure to meets its constitutionally and statutorily-mandated duty to investigate facially meritorious complaints of judicial misconduct, touches on politically-sensitive issues involving extraordinary judicial self-interest. Every judge in this state is potentially the subject of complaint, with a personal interest in the outcome of this litigation.

Because of the intense judicial pressure on any judge adjudicating this matter to keep the Commission as non-functional as it presently is so that meritorious complaints of judicial

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[11] See, also ¶¶9, 14 of my May 11, 1995 Order to Show Cause (¶9, 14).

misconduct continue to be summarily dismissed, it is appropriate to raise the issue for this Court's consideration as to whether this case should not be assigned to a retired or out-of-state judge, who is not vulnerable to such pressures.

The aberrant and peremptory procedural rulings of this Court to date, indicated herein, reflect that this Court is not conducting itself according to fundamental legal principles and its own rules. The public perception of this is recorded in the anger and statements made by members of the public following this Court's expelling me and my assistant from the courtroom on May 23, 1995:

> "All I want to do is, your Honor, to see that justice is available in the court house, as opposed to what it currently is, the least likely place to get justice is in the court house, the fact that a double standard exists." (Exhibit "P", p. 31)

WHEREFORE, it is respectfully prayed that Respondent's dismissal motion be dismissed for lack of jurisdiction; and if not so dismissed, that it be denied in all respects; that Petitioner be granted a summary judgment in her favor pursuant to CPLR §3211, there being no triable issue of fact; if not, that an evidentiary hearing be immediately scheduled as to any matters requiring trial; that in the event Respondent's dismissal motion under §3211(a)(7) is granted, Petitioner be granted leave to replead pursuant to §3211(e) and discovery of all facts presently unavailable to Petitioner and within Respondent's possession and control; together with costs, expenses, and sanctions pursuant to 22 NYCRR §130-1.1 et seq., in the maximum amount allowable, i.e., $10,000, and such damages as are properly awardable under Judiciary Law §487(1) for Respondent's counsel's deliberate deceit and collusion to obstruct justice and defeat the public interest at stake herein.

Doris L. Sassower

DORIS L. SASSOWER

Sworn to before me
this 8th day of June 1995

Louise Di Crocco

Notary Public

LOUISE DI CROCCO
Notary Public, State of New York
No. 4718571
Qualified in Westchester County
Commission Expires March 30, 1996

12-10-96