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P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Tel. (914) 421-1200
Fax (914) 428-4994

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MARIBEL TORRES
JUDGEWATCH@AOL.COM
WWW.JUDGEWATCH.ORG

Elena Ruth Sassower, Coordinator

BY HAND

September 27, 2000

SEP 27

New York State Attorney General Eliot Spitzer
120 Broadway
New York, New York

RE: Your ethical and professional duty, *inter alia*:

- (1) to withdraw your Law Department's fraudulent "Brief for Respondent" in *Mantell v. Commission* (Appellate Division, First Dept.: Cal #2000-3833, S. Ct. NY Co. #99-108655),
- (2) to withdraw from your representation of the Commission therein as inconsistent with Executive Law §63.1, and;
- (3) to intervene therein and in *Elena Ruth Sassower v. Commission* (S. Ct. NY Co. #99-108551) on behalf of the public interest, advanced in each proceeding by the *pro se* petitioners

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STATE ATTORNEY'S OFFICE
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Dear Mr. Spitzer:

This is to put you on notice that your Law Department's litigation misconduct in Supreme Court/New York County by its fraudulent defense of the New York State Commission on Judicial Conduct in three separate Article 78 proceedings: *Doris L. Sassower v. Commission* (NY Co. #95-109141)¹, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission* (NY Co. #99-108551), and *Michael Mantell v. Commission* (NY Co. #99-108655), resulting in three fraudulent judicial decisions, has now metastasized to the Appellate Division, First Department in the first of these cases to go up on appeal, *Mantell v. Commission*.

¹ Although *Doris L. Sassower v. Commission* was defended by Attorney General Vacco's Law Department, its litigation misconduct becomes attributable to you. This, not only because you are successor Attorney General, but by reason of your knowing and deliberate failure to repudiate it, upon repeated notice of your ethical and professional duty to do so.

EB

This appellate misconduct, wherein your Law Department has sought to mislead the Appellate Division, First Department into relying upon the fraudulent decisions in *Doris L. Sassower v. Commission* and *Elena Ruth Sassower v. Commission* to uphold the fraudulent decision in *Mantell v. Commission*, is now the subject of a fact-specific and fully-documented motion by me, served upon your Law Department last Thursday, September 21st and returnable this Friday, September 29th.

Among the relief sought by my motion is an order referring you for disciplinary and criminal prosecution. In support thereof, the motion appends a representative sampling of CJA's repeated *written* notice to you of the fraudulence of the three judicial decisions in those three proceedings – and of your mandatory ethical and professional duty to take steps to vacate them for fraud and to investigate the defense misconduct of the Law Department that preceded them, covering up the Commission's corruption. These include: (1) CJA's January 27, 1999 letter (Exhibit "K")², which I gave to you, *in hand*, following my public exchange with you on that date at the Association of the Bar of the City of New York (Exhibit "L"); (2) CJA's hand-delivered August 6, 1999 letter to you, addressed to the attention of your counsel, David Nocenti (Exhibit "N")³, following my July 26, 1999 telephone conversation with him, which I had expressly requested be deemed "notice" to you (Exhibit "M", ¶102)⁴; (3) CJA's hand-delivered October 25, 1999 letter to you, addressed to the attention of Mr. Nocenti, as well as of Peter Pope, Chief of your "Public Integrity Unit", and of William Casey, its "Chief of Investigations" (Exhibit "O"); (4) CJA's hand-delivered October 29, 1999 memorandum to you, addressed to the attention of Messrs. Nocenti, Pope, and Casey (Exhibit "P"); (5) CJA's faxed February 7, 2000 memorandum to you, addressed to the attention of Messrs. Nocenti, Pope, and Casey (Exhibit "Q"), hand-delivered on February 25, 2000; (6) CJA's hand-delivered February 25, 2000 memorandum, to which you the first named recipient (Exhibit "R")⁵; (7) CJA's

² The exhibit references herein are to my September 21, 2000 motion before the Appellate Division, First Department.

³ All hand-delivered correspondence to you was left with the receptionist in your 25th floor executive suite.

⁴ ¶102 is included among the annexed pages from my July 28, 1999 affidavit in support of my omnibus motion for your disqualification and for sanctions, etc. (*See fn. 8 herein*).

⁵ A "post-it" was affixed thereto identifying that the hand-delivered February 25, 2000 memorandum was to be brought to the attention of Messrs. Nocenti, Pope, and Casey.

March 17, 2000 memorandum, to which you are the first named recipient (Exhibit "U"), sent certified mail/return receipt to the attention of Messrs. Nocenti, Pope, and Casey; (8) CJA's hand-delivered April 24, 2000 memorandum (Exhibit "V"), to which you are a named recipient⁶.

Such repeated written notice, imposing upon you and your executive level staff an obligatory supervisory duty that, *if met*, would have prevented the appellate misconduct of your Law Department in *Mantell v. Commission*, raise questions as to what, if anything, you did to verify the serious allegations of fraud and corruption, contained in these repeated notices – whose accuracy you never denied or disputed⁷. CJA, therefore, requests that you and your executive level staff⁸ set forth this pertinent information in affidavits to the Appellate Division, First Department so that it can have such evidence in considering my motion. Simultaneous therewith, it is your ethical duty to advise the Appellate Division, First Department that you are withdrawing your Law Department's "Brief for Respondent", the subject of the motion, and, likewise, withdrawing from representation of the Commission as inconsistent with the requirement of Executive Law §63.1 that it be in the "interests of the state". Indeed, pursuant to Executive Law §63.1, you should notify the Appellate Division, First Department that the "interests of the state" compel your intervention in *Michael Mantell v. Commission*, as well as in the soon-to-be-perfected appeal *Elena Ruth Sassower v. Commission*, on behalf of the public interest advanced by the *pro se* petitioners in each proceeding.

⁶ A "post-it" was affixed thereto identifying that the hand-delivered April 24, 2000 memorandum was to be brought to the attention of Messrs. Nocenti, Pope, and Casey.

⁷ This includes CJA's analyses of the three fraudulent judicial decisions, annexed to my September 21, 2000 motion as Exhibits "D", "E", and "G" (at pp. 15-29).

⁸ This should include Mr. Pope, whose official misconduct as head of your "Public Integrity Unit" in failing and refusing to return my repeated urgent phone calls and his supposed "comfort[]" with the Law Department's handling of my Article 78 proceeding in Supreme Court/New York County, is recited at pages 44-48 of my July 28, 1999 affidavit in support of my omnibus motion to disqualify you and for sanctions, etc. Although a copy of that voluminous motion was hand-delivered for you under CJA's August 6, 2000 letter, a copy of the pertinent pages of that affidavit is annexed hereto for your convenience (*see* ¶¶98, 100-103). Also annexed is a copy of an item in the July 21, 2000 New York Law Journal (at pp. 1, 2) about your having elevated Mr. Pope to head your Criminal Division, in addition to your "Public Integrity Unit".

Such appellate intervention, on behalf of the public interest, is all the more exigent as the Commission's flagrant corruption continues UNABATED. CJA's last April 24, 2000 memorandum transmitted to you documents establishing this on-going flagrant corruption: a copy of the Commission's April 6, 2000 letter dismissing, *without* investigation and *without* reasons, CJA's *facially-meritorious*, fully documented March 3, 2000 judicial misconduct complaint against Acting Supreme Court Justice Wetzel for his fraudulent judicial decision in *Elena Ruth Sassower v. Commission* and against Administrative Judge Crane, who had "steered" that proceeding to him in violation of random assignment rules⁹ – misconduct born of bias and self-interest, as particularized at pages 4-29 of CJA's February 23, 2000 letter to Governor Pataki¹⁰ and substantiated by the copy of the case file I had previously supplied the Commission.

Since then, the Commission has refused to respond to CJA's legitimate questions about its April 6, 2000 dismissal of CJA's March 3, 2000 judicial misconduct complaint – a dismissal not only violating Judiciary Law §44.1, but the most fundamental conflict of interest rules. This is reflected by the enclosed correspondence: (1) CJA's May 17, 2000 letter to the Commission's Administrator and Counsel, Gerald Stern; (2) CJA's June 26, 2000 letter to the Commission's Chairman, Eugene Salisbury; and (3) Chairman Salisbury's July 19, 2000 letter to CJA. Such correspondence further reflects the Commission's refusal to respond to CJA's fact-specific showing that, in 1994, it improperly obtained authorization from the State Archives and Records Administration to destroy 19 years worth of records of judicial complaints which it had dismissed, *without* investigation, and that, to date, it continues to unlawfully destroy the records of *uninvestigated* judicial complaints after a five-year retention¹¹.

The Commission has also dismissed a further *facially-meritorious*, fully-documented judicial misconduct complaint – likewise in blatant violation of Judiciary Law §44.1 and the most fundamental conflict of interest rules. This

⁹ A copy of CJA's March 3, 2000 judicial misconduct complaint against Justices Wetzel and Crane was transmitted to you under CJA's March 17, 2000 memorandum. An additional copy is annexed as Exhibit "S" to my September 21, 2000 motion before the Appellate Division, First Department.

¹⁰ A copy of CJA's February 23, 2000 letter to Governor Pataki was hand-delivered to you under CJA's February 25, 2000 memorandum. An additional copy is annexed as Exhibit "G" to my September 21, 2000 motion before the Appellate Division, First Department.

¹¹ See pages 8-11 of CJA's May 17, 2000 letter to Mr. Stern; pages 2-3 of CJA's June 26, 2000 letter to Chairman Salisbury.

August 3, 2000 judicial misconduct complaint, which CJA filed against Chief Judge Kaye, is based on her wilful violation of her mandatory administrative and disciplinary responsibilities under §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct and of her supervisory duties as the State's Chief Judge. This, by reason of her wilful non-response to CJA's April 18, 2000 letter to her, constituting a formal misconduct complaint against Michael Colodner, counsel of the Office of Court Administration, for his deceitful response, on her behalf, to CJA's March 3, 2000 letter to her for appointment of a special inspector general to investigate the Commission's corruption and for demotion of Justice Crane as administrative judge, based on his unlawful interference with random selection in my Article 78 proceeding. You already have a copy of CJA's April 18, 2000 letter to Chief Judge Kaye, as it was transmitted to you with CJA's April 24, 2000 memorandum. Herewith transmitted is the follow-up to it: (1) CJA's June 30, 2000 letter to Chief Judge Kaye; (2) CJA's *facially-meritorious* August 3, 2000 judicial misconduct complaint against Chief Judge Kaye; and (3) CJA's September 25, 2000 letter to the Commission's new Clerk, Jean Savanyu, for clarifying information regarding the Commission's purported dismissal of the August 3, 2000 judicial misconduct complaint against Chief Judge Kaye.

Of course, blatant disregard of conflict of interest rules is not confined to the Commission's dismissal of judicial misconduct complaints in which it is self-interested. Nor is it confined to Chief Judge Kaye, whose self-interest in keeping the Commission a dysfunctional façade is particularized in CJA's August 3, 2000 judicial misconduct complaint (at pp. 6-7). You and your staff suffer from multiple conflicts of interest. The facts relating to these conflicts were particularized (at ¶¶14-53) in my July 28, 1999 affidavit in support of my omnibus motion in Supreme Court/New York County to disqualify you from representing the Commission – and not denied or disputed by you¹². As true then – and equally so today – it is these multiple conflicts of interest which account for your Law Department's litigation misconduct in defense of the Commission and for your wilful refusal to take corrective steps in the face of CJA's repeated notice, substantiated by dispositive evidentiary proof.

Multiple conflicts of interest also afflict the U.S. Attorney for the Southern and Eastern Districts of New York, preventing them from discharging their duty to investigate the criminal complaints which CJA filed against you, based on your active complicity in the Commission's corruption and knowing cover-up of high-

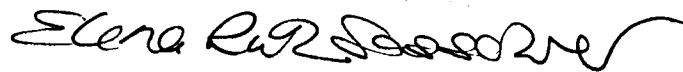
¹² This is highlighted by my September 24, 1999 Reply Memorandum of Law: pp. 7, 20, 29-35.

September 27, 2000

level, systemic governmental corruption involving other state agencies and public officers. The flagrancy with which staff of the U.S. Attorneys for the Southern and Eastern District of New York, who have personal and professional relationships with you and your staff, have disregarded conflict of interest rules -- copies of which they have refused to disgorge -- is reflected in CJA's most recent correspondence to Mary Jo White, U.S. Attorney for the Southern District of New York, and to Loretta E. Lynch, U.S. Attorney for the Eastern District of New York. This correspondence follows CJA's April 24, 2000 letters to them, copies of which were transmitted to you by CJA's April 24, 2000 memorandum. The enclosed letters consist of: (1) CJA's August 9, 2000 and September 6, 2000 letters to Ms. White; and (2) CJA's August 14, 2000 and September 6, 2000 letters to Ms. Lynch.

Needless to say, your failure to now belatedly rise above your conflicts of interest by meeting your obligations to the public to safeguard the integrity of the appellate process in *Mantell v. Commission* and *Elena Ruth Sassower v. Commission* and to secure independent investigation of the *readily-verifiable* proof of systemic governmental corruption involving the Commission will be further evidence against you when, eventually, your official misconduct herein is reviewed by an independent tribunal.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosures

cc: Appellate Division, First Department
Michael Mantell, Esq.
Assistant Attorney General Constantine Speres
New York State Commission on Judicial Conduct
Chief Judge Judith Kaye
Governor George Pataki
Mary Jo White, U.S. Attorney for the Southern District of New York
Loretta E. Lynch, U.S. Attorney for the Eastern District of New York
Robert Morgenthau, District Attorney, New York County
New York State Ethics Commission
Association of the Bar of the City of New York

could, presumably, have provided it to her -- were it to actually exist. My letter, therefore, specifically challenged Respondent to "back up" its counsel's claim, stating that a copy would be served upon it for such purpose (Exhibit "N", p. 3). Indeed, my hand-delivered May 28th letter to the Court bore receipt stamps from the offices of the Attorney General, as well as Respondent, reflecting that copies had already been delivered to them (Exhibit "N", p. 1).

97. Neither Respondent nor the Attorney General came forward with any legal authority. Nor did they otherwise respond to my fact-specific, document-supported May 28th letter, reciting the defense misconduct and pointing out Ms. Olson's disqualification as a potential witness herein (Exhibit "N", p. 4).

* 98. On Friday June 11th, (1:10 p.m.), I telephoned Mr. Palozzola and apprised him of the on-going litigation misconduct of the Attorney General's office. I again sought to ascertain the status of the "public integrity section". Mr. Palozzola informed me that Peter Pope had just been appointed to head the unit, but was unable to specify the date of the appointment or provide me with a press release on it²¹. Mr. Palozzola further stated that he believed that Mr. Pope was aware of the instant Article 78 proceeding against Respondent and is "comfortable" with how it was being handled by the Litigation Bureau. I thereupon telephoned Mr. Pope (212-416-6051) (1:17 p.m.), leaving a message for him with his secretary, Holly, who was not sure whether Mr. Pope was heading the "public integrity unit". At 4:20 p.m. I left a second message with Holly, requesting that Mr. Pope return the call before the end of the day, as the case, whose

²¹ Mr. Pope's position, as it appears on press releases posted on the Attorney General's website is "Special Counsel to the Attorney General" (Exhibits "A-4" and "A-5").

index number I provided, was on for a conference before the Court on Monday, June 14th. I advised her that it was my intention to seek sanctions against the Attorney General's office for its litigation misconduct herein.

99. At the June 14th court conference, at which Ms. Olson again appeared on Respondent's behalf, I identified that:

"An issue in this litigation, threshold issue, is the integrity of the judicial process and whether the Attorney General, our highest legal officer, is going to be held to fundamental, rudimentary ethical standards of conduct." (Exhibit "O", p. 7, lns. 15-19)

This followed my summary of the false and misleading nature of Ms. Olson's May 25th letter, which I described as "an illustrative example of [the] bald-faced deceit on this Court that the Attorney General is ready to perpetrate." (Exhibit "O", p. 7, lns. 21-23) As for the dismissal motion, I stated that it confirmed my contention that Respondent had "no legitimate defense" (p. 22, lns. 10-11) and that "It is, from beginning to end, filled with falsification, concealment, omission, misrepresentation, distortion" (p. 22, lns. 13-15). I alerted the Court to the fact I already had "over 40 pages addressed to their factual falsifications in their dismissal motion" and that "their four points [of law] are entirely predicated on their falsification of the pleading, entirely" (p. 26, lns. 16-20) -- concluding by stating that it was my intention not only to oppose the motion, but to seek "sanctions, severe sanctions, criminal sanctions" (p. 28, ln. 7).

100. The following day, Tuesday, June 15th (11:15 a.m.), I telephoned Mr. Pope for the third time, once again leaving a message with his secretary Holly, requesting a return call and specifying that he should obtain from Mr. Palozzola my voluminous correspondence with

the Attorney General on the subject of systemic governmental corruption. On Monday, June 21st (2:15 p.m.), I telephoned Mr. Pope a fourth time, leaving a message with Sasha. I also called him, a fifth time, on Wednesday, July 7th (10:03 a.m.), leaving a message with Holly that I was working on a motion to impose severe sanctions on the Attorney General, including criminal penalties, and that if Mr. Pope was too busy to return my call, that he designate someone to do so.

101. Immediately thereafter, I telephoned Mr. Palozzola, advising him that I had just left a fifth telephone message for Mr. Pope, who had returned none of my previous calls. In response to my query as to whether he had transmitted my correspondence to Mr. Pope -- as I had requested him to do in our June 11th conversation -- Mr. Palozzola told me that he had not, but that his office was only two doors down from Mr. Pope's office and that Mr. Pope was aware of it, as likewise the Litigation Bureau. Mr. Palozzola again repeated that Mr. Pope was "comfortable" with Litigation's handling of the case. I told him that Mr. Pope could not possibly be "comfortable" with it -- since the Litigation Bureau was replicating the same fraudulent defense strategy, particularized in "*Restraining 'Liars'*". Indeed, I stated that I had already drafted a 70-page memorandum in support of a sanctions motion, detailing that virtually every line of the Attorney General's dismissal motion falsified, distorted, and omitted the material allegations of the Verified Petition and that it was my intention to seek sanctions, including disciplinary and criminal referral, against Mr. Spitzer, personally.

Mr. Palozzola's only response to my plea for the Attorney General's oversight -- the purpose of my call to him -- was that I should make my sanctions motion. He scoffed at my

assertion that the Attorney General had a duty to take supervisory steps so as to avoid my having to burden to the Court with such motion and was perfectly contented by the possibility that, as in the three litigations detailed in "*Restraining 'Liars'*", the Court might cover-up the Attorney General's misconduct by ignoring it -- a possibility I raised with him. He rejected the notion that the Attorney General, as this State's chief law enforcement officer, has any duty to ensure the integrity of the judicial process.

102. On Monday, July 26, 1999 (9:30 a.m.), I learned from David Nocenti, counsel to Mr. Spitzer, that conflict-of-interest issues involving employees of the Attorney General's office can be directed to a four-person "Employee Conduct Committee" -- one of whose members is Mr. Rifkin. I also learned from him that the Attorney General has not actually set up the "public integrity unit" in any formal way and that Mr. Pope is one of several Assistant Attorneys General to whom public integrity matters are directed.

I reported to Mr. Nocenti the salient facts pertaining to the Attorney General's conflict of interest and litigation misconduct in this proceeding -- and the refusal of those in supervisory positions to effect supervision. I named for him the Assistants Attorneys General handling the case, as well as all the supervisory personnel to whom I turned. Requesting that our phone conversation together be deemed notice to Mr. Spitzer (from whom he stated he was "two doors" away) that I was going to be seeking sanctions against him, personally, I noted that New York's Disciplinary Rules of the Code of Professional Responsibility had reinforced the supervisory duties of law firms²². I complained that the consequence of Mr. Spitzer's failure to

²²

See my accompanying Memorandum of Law, p. 7.

take corrective action in the three cases featured in "*Restraining 'Liars'*", was the continued *modus operandi* of litigation misconduct by the Attorney General's office. I stated that I would send him a copy of this sanctions motion and asked that he obtain from Mr. Palozzola, in the interim, my document-supported correspondence with Mr. Spitzer and, in particular, my March 26, 1999 ethics complaint.

103. Thereafter (11:00 a.m.), I telephoned Mr. Palozzola and requested that he provide my aforesaid correspondence to Mr. Nocenti. I told him that my sanctions motion was nearly complete, that it contained a recitation of my communications with the Attorney General's office, and asked him to confirm for me his statement that Mr. Pope had told him that he was "comfortable" with Litigation's handling of the case. He confirmed that this was what Mr. Pope had told him.

D. THE ATTORNEY GENERAL DID NOT -- AND COULD NOT -- MEET THE STANDARD FOR A POST-DEFAULT CPLR §3012(d) APPLICATION EXTENDING HIS TIME TO RESPOND TO THE VERIFIED PETITION

104. As hereinabove detailed, when the Attorney General sought an extension of time in which to oppose the Verified Petition, Respondent was already in default. I pointed this out to the Attorney General in my May 12th letter (Exhibit "T", pp. 1, 4) -- and, on May 14th, the return date of the Verified Petition, opposed Ms. Olson's attempt to obtain an extension from the Senior Court Attorney by citing CPLR §7804(c), requiring Respondent's answer to be served "at least five days before" the return date and CPLR §7804(f), requiring any objection in point of law that Respondent desired to raise by motion be "within the time allowed for answer". Ms.

7/21/00 NYLJ

Two top-level personnel changes will take effect in the State Attorney General's office on Monday. Peter B. Pope, currently special counsel to Attorney General Eliot Spitzer and head of the Public Integrity Unit, will take over as deputy attorney general in charge of the criminal division. Debra Cohn, who currently runs the criminal division, will move to a newly created position of **deputy attorney general for policy**. Details are published on page 2.

Staff Changes Made By Attorney General

TWO TOP-LEVEL personnel changes will take effect in the State Attorney General's Office on Monday.

Peter B. Pope, currently special counsel to Attorney General Eliot Spitzer and head of the Public Integrity Unit, will take over as deputy attorney general in charge of the criminal division.

Mr. Pope, a graduate of Harvard College and Yale Law School, previously held positions as vice president and inspector general of the New York City School Construction Authority, vice president at Goldman, Sachs and Co., deputy chief of the labor racketeering unit in the New York County District Attorney's office, law clerk to Southern District U.S. Judge Robert W. Sweet and legislative assistant to Rep. Charles D. Rangel. He will continue to lead the Public Integrity Unit.

Debra Cohn, who currently runs the criminal division, will move to a newly created position of deputy attorney general for policy. In her new capacity, Ms. Cohn will coordinate case development and litigation strategies.

Both Mr. Pope and Ms. Cohn will be paid \$130,000 in their new jobs.