CENTER for JUDICIAL ACCOUNTABILITY, INC.
TEL (914) 421-1200 • FAX (914) 684-6554
E-MAIL probono@delphi.com
Box 69, Gedney Station • White Plains, NY 10605

FAX COVER SHEET

DATE: 5/9/95 TIME: 6'15 pm

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TO: Richard Rifkin - Ethics Commission

FAX NUMBER: 518-432-8255

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FROM: ERS

MESSAGE: What steps will the Ethics Commission be taking to ensure that Sassower v. Commission will be adjudicated ON THE MERITS?

374-8515

DORIS L. SASSOWER

283 SOUNDVIEW AVENUE • WHITE PLAINS, N.Y. 10606 • 914/997-1677 • FAX: 914/684-6554

By Fax and Mail
212-374-7256

May 9, 1995

Justice Stanley Ostrowe
Administrative Judge
60 Centre Street, Room 690
New York, New York 10007

RE: Doris L. Sassower v. Commission on Judicial Conduct of the State of New York
Index No. 95-109141

Honorable Sir:

I regret having to burden the Court with this communication. However, judicial intervention is imperative due to the apparent belief on the part of the Attorney General's office that, unlike other litigants, it is not bound by the published rules of this Court.

Such published rules explicitly state:

> "... notice of an oral application for an adjournment must be given to all parties in advance. It is the expectation of the court that counsel will confer with one another and resolve scheduling difficulties on their own and with professional courtesy." (emphasis in the original)

For the second time in two weeks, however, the Attorney-General's Office has knowingly and deliberately bypassed the aforesaid rule. Last week, it obtained an adjournment of the Article 78 proceeding in the above-matter on the May 3rd calendar to June 15th, without notice to me and in my absence.

I do not know what representations the Attorney General's Office made on May 3rd. According to the Submissions Part Clerk, no notations were made relative to the adjournment granted by Special Referee Julius Birnbaum.

Aside from the fact that the Attorney General's Office did not inform me of its intention to apply for an adjournment from the Court on May 3rd, it was aware that I would oppose such lengthy adjournment application had I been informed thereof.

As your Honor knows, Article 78 proceedings are summary in nature. It was not the legislative intent that public officers, who are the subject of such proceedings, should engage in obstructive and dilatory tactics, but, rather, that such proceedings be heard expeditiously.

It was most gratifying to learn that as soon as your Honor became aware of the foregoing, such improperly-adjourned proceeding was, on your direction, restored to the calendar of May 11th. I was advised that written notification to said effect would be sent out--and it was received by me on Monday, May 8th.

On Friday, May 5th, I received a telephone call from Assistant Attorney-General Oliver Williams, who informed me that he had personally been the one who had made the application before Referee Birnbaum on May 3rd. I told him that the case was restored to the May 11th calendar. Nonetheless, he insisted he would see me in court in June.

Today, Mr. Williams telephoned to notify me that he would be applying for an adjournment on May 11th. However, when I sought more details, including the basis therefor, and to discuss the matter, pursuant to the second sentence of the quoted court rule admonishing counsel to "confer with one another and resolve scheduling difficulties on their own and with professional courtesy", Mr. Williams arrogantly refused to answer my inquiry and hung up the phone on me.

This is particularly shocking in light of the fact that when I spoke to Mr. Williams last Friday, I informed him that if he could provide me with a legitimate basis for the dismissal motion he intends to make, I would <u>withdraw</u> my petition. His refusal to do so is compelling evidence that his intended motion to dismiss for failure to state a cause of action is frivolous and oppressive. Review of the petition fully supports this conclusion.

It is intolerable that the Attorney General's Office, with its massive governmental resources, should be permitted to disregard this Court's published rules so as to deliberately and maliciously impose upon a citizen acting in the public interest the burden of a trip from White Plains, New York to lower Manhattan simply to oppose Mr. Williams' improper adjournment application simply because he chooses not to comply with the requirement of working out a reasonable schedule for his response to my petition.

I, therefore, respectfully ask that the Court again enforce the aforesaid published rule so as to immediately put the Attorney General on notice that <u>no</u> adjournment request by him will otherwise be granted.

If I am required to make such burdensome trip to Court and lose the morning waiting around for the application to be heard by the Special Referee because the Attorney General will not comply with the published rules--for which time Mr. Williams is being compensated, while I am not--I, respectfully, request that such application be presented to the Court, directly, with a court reporter present so that a proper record can be made. Should that not be possible, due to the Court's busy schedule, I most respectfully request that a conference be had with the Court's law secretary, again with a court reporter present.

Finally, this Court's immediate aid is also imperative for reasons relating to the integrity and efficacy of the Article 78 vehicle. 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.

Yet, the Attorney General has ignored the obvious conflict of interest and has so completely subordinated the People's interest to the defense of the Commission on Judicial Conduct that the Attorney General has not yet been heard from on the subject of its right to seek intervention--notice of which was annexed to my Article 78 petition.

In view of the profound consequences to the People of this State of a commission which, as my petition demonstrates, is <u>not</u> doing its constitutional and statutory duty, I respectfully submit that a conference with the Court would be most beneficial to resolve the threshold issue as to the Attorney General's transcending duty to respond to my Notice of Right to Seek Intervention and protect the public from a malfunctioning commission.

Most respectfully,

DORIS L. SASSOWER

DLS/er
cc: Dennis Vacco, Attorney General, By Fax: 212-416-8139
Oliver Williams, Assistant Attorney General
By Fax: 212-416-6009
New York State Ethics Commission, By Fax: 518-432-8255
District Attorney, New York County
U.S. Attorney, Southern District