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September 14, 1995

Richard Rifkin, Executive Director  
New York State Ethics Commission  
39 Columbia Street  
Albany, New York 12207-2717

Dear Mr. Rifkin:

The purpose of this letter is to expand our March 22, 1995 ethics complaint (Exhibit "A") against the New York State Commission on Judicial Conduct to encompass its litigation misconduct in our Article 78 proceeding against it, Sassower v. Commission on Judicial Conduct, (NY Co. Index #95-109141). Such misconduct, fully documented by the within transmittal<sup>1</sup>, was knowingly and deliberately engaged in by its attorney, the New York State Attorney General, to protect the Commission from the consequences of our Article 78 challenge because it had no facts and no law on which to otherwise found a defense.

By this letter, we are also initiating a complaint against the New York State Attorney General. Like the Commission on Judicial Conduct, the State Attorney General is within the Ethics Commission's jurisdiction (Executive Law §94.1). In addition to its litigation misconduct on behalf of the Commission on Judicial Conduct, the Attorney General violated his transcendent ethical duty as "the People's attorney". That ethical duty required him to independently evaluate the public interest in the litigation particularly, where--as here--he had been served with a Notice of Right to Seek Intervention on behalf of the public.

However, in violation of elementary conflict-of-interest rules, the clearly conflicting interests of the People and the Commission in the Article 78 proceeding were decided not by separate attorneys within the Attorney General's office, but by the same attorney, Assistant Attorney General Oliver Williams, Esq. That he made no submission to the court relative to the intervention issue and was only able to defend the Commission on

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<sup>1</sup> Copies of the court papers in Sassower v. Commission are transmitted herewith--except for the Notice of Right to Seek Intervention, the Notice of Petition, and the Petition, which are already in the Ethics Commission's possession. For your convenience, such documents have been inventoried and are enumerated for ease of reference (##1-9).

Judicial Conduct through litigation misconduct reflects his conscious knowledge that all the facts and the law were in the People's favor--and that they, rather than the Commission, were entitled to the Attorney General's representation.

By way of background to our instant complaint against the Attorney General, we wish to point out that this is not the first time we are bringing to your attention its litigation misconduct in defending Article 78 respondents. As reflected by our March 22, 1995 ethics complaint (Exhibit "A", p.2), in the Article 78 proceeding entitled Sassower v. Mangano, et al., the Attorney General knowingly made a legally insufficient and factually perjurious dismissal motion on behalf of the judges of the Appellate Division, Second Department before those very judges, opposing recusal and transfer of the proceeding. Copies of all the Article 78 papers that were before the Appellate Division, Second Department were provided with our March 22, 1995 ethics complaint--establishing, irrefutably, the gross misconduct of the judges of the Appellate Division, Second Department, as well as the fraud, perjury, and deliberate disregard of fundamental ethical rules by their attorney, the Attorney General.

Thereafter, by letter dated April 6, 1995 (Exhibit "B"), we supplemented those papers with a copy of our cert petition to the U.S. Supreme Court, which, additionally, summarized the Attorney General's continuing litigation misconduct in Sassower v. Mangano, et al. before the New York Court of Appeals. For the purposes of completeness--and reflecting still further misconduct by the State Attorney General--enclosed herewith is the Attorney General's bad-faith opposing memo, together with our reply.

To substantiate this instant complaint of litigation misconduct by the Attorney General--this time not acting directly in defense of judges sued for misconduct, but on behalf of the public agency which, demonstrably, covers-up and protects them from the consequences of their corrupt and abusive behavior--we transmit herewith the papers in our Article 78 proceeding, Sassower v. Commission on Judicial Conduct. As the record in that case shows, the Attorney General once again followed his modus operandi of filing a legally insufficient, factually perjurious dismissal motion--this time before a judge under the Commission's own disciplinary jurisdiction, raising yet another ethical question<sup>2</sup>.

Our detailed opposing papers specify multitudinous respects in which we were entitled to sanctions against the Attorney General for his frivolous and harassing defense of the Commission<sup>3</sup>.

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<sup>2</sup> See Doc 5/pp.21-2.

<sup>3</sup> See, Doc 5 and Doc 6 in their entirety.

Because the gravamen of our March 22, 1995 ethics complaint (Exhibit "A") was the Commission on Judicial Conduct's protectionism of powerful, politically-connected judges reflected by its summary dismissal of our facially-meritorious, fully-documented judicial misconduct complaints against them, we will highlight Assistant Attorney General Williams' misrepresentations in the Sassower v. Commission Article 78 proceeding concerning those complaints. The most cursory examination of such complaints, which were annexed to the Article 78 Petition as Exhibits "C", "D", "E", "E", "F", "G", "H", "I", "J", "K", discloses that they allege heinous acts of judicial misconduct rising to a level of criminality which would warrant prosecution and removal from office.

Conceding that the Commission on Judicial Conduct had not investigated those complaints<sup>4</sup>, Assistant Attorney General Williams pretended that the complaints did not need to be investigated because they "did not on their face allege judicial misconduct"<sup>5</sup> (!!). He then compounded this flagrant and gross deceit upon the court by refusing to produce the substantiating documentation of judicial misconduct provided with our complaints to the Commission--notwithstanding such documents had been duly demanded in accordance with CPLR §§7804(e), 409, 2214(c)<sup>6</sup>.

As may be seen from the transmitted court papers in Sassower v. Commission, Supreme Court Justice Herman Cahn, instead of upholding basic standards of conduct and principles of adjudication by punishing the Attorney General for his demonstrated litigation misconduct, rewarded him with a decision so factually and legally indefensible as to be explicable only as a reflection of his disqualifying bias and self-interest<sup>7</sup>. Thus, to escape the fact that our eight summarily-dismissed facially-meritorious complaints showed, prima facie, the unconstitutional application of the Commission's self-promulgated rule, 22 NYCRR §7003, and the Commission's protectionism of the

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<sup>4</sup> See, Doc 3/¶11; Doc 4/¶6.

<sup>5</sup> See, Doc 3/¶13; and, for discussion, Doc 5/¶¶18-19, 48.

<sup>6</sup> See, Article 78 Petition/¶"TWENTY-FIRST"; Doc 5/¶¶29-32; Doc 6/p.5; Doc.8.

<sup>7</sup> See, "Disciplining Judges for On-Bench Conduct: Can 'Legal Error' Constitute Misconduct?: Determining Generally When 'Error' is Misconduct", by Gerald Stern, Administrator of the Commission on Judicial Conduct, as part of his Pace Law Review article, "Is Judicial Discipline in New York State A Threat to Judicial Independence", Vol.7, No.2 (Winter 1987). The pertinent pages are annexed hereto as Exhibit "C".

powerful, politically-connected judges who were the subject of those complaints, Justice Cahn pretended--without the slightest elaboration--that "the issue is not before the court".

In the event you did not see my "Letter to the Editor", published in the August 14, 1995 New York Law Journal, concerning Justice Cahn's deliberately dishonest decision, which I faxed to Suzanne Dugan, the Ethics Commission's Deputy Counsel, after our lengthy conversation together last Friday, I enclose another copy (Exhibit "D").

As you already know from the Article 78 Notice of Petition and Petition already in your possession<sup>8</sup>, the issue of the Commission on Judicial Conduct's summary dismissals of our facially-meritorious, documented complaints was not only squarely before the court, but was the basis upon which your May 2, 1995 letter (Exhibit "E") informed us that the Ethics Commission would hold our ethics complaint in abeyance pending resolution by the court. Thus, by this letter, we give you notice that in view of Justice Cahn's pretense that the prima facie evidence of the Commission on Judicial Conduct's protectionism, reflected by its summary disposition of our facially-meritorious complaints, was "not before the court", the Ethics Commission may now proceed to investigate such evidence, encompassed as it was by our March 22, 1995 ethics complaint (Exhibit "A").

More fundamentally, the implicit premise upon which your May 2, 1995 letter concluded, to wit, that "The Ethics Commission is prepared to follow whatever dictates the court may issue", is the integrity of the judicial process. Inasmuch as the record of the Article 78 proceeding, herein transmitted, establishes Justice Cahn's blatant disregard of fundamental adjudicatory standards and outright falsification of the factual record, his decision is entitled to no respect. Indeed, it must be vacated as the product of fraud, misrepresentation, and other misconduct by the respondent and its counsel (CPLR §5015.3).

Because the Commission on Judicial Conduct and the Attorney General appear perfectly willing to be the beneficiaries of a judicial process which they have corrupted and show no signs of taking any corrective steps consonant with their ethical duty as

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<sup>8</sup> See, Article 78 Notice of Petition/(a)(b)(c); Article 78 Petition/¶ NINETEENTH, TWENTIETH, TWENTY-FIRST, TWENTY-SECOND, TWENTY-THIRD, TWENTY-FOURTH, TWENTY-FIFTH, TWENTY-SIXTH, TWENTY-SEVENTH, TWENTY-EIGHTH, TWENTY-NINTH, THIRTY-THIRD, "WHEREFORE" clause: (a), (b), (c).

lawyers<sup>9</sup> and duty as public officials--which, in the case of the Commission on Judicial Conduct includes initiating its own complaint (Judiciary Law §44.2) against Justice Cahn for a decision which the record shows to be misconduct, not "mere error", (Exhibit "C")--intervention by the Ethics Commission is more imperative now than ever before.

On the subject of intervention, we note that your May 2, 1995 letter (Exhibit "E") contained no statement that the Ethics Commission had made any determination as to whether it would intervene in the Article 78 proceeding on behalf of the public interest. Like the Attorney General, the Ethics Commission never advised us--or, more importantly, Justice Cahn--of any determination as to its intervention intentions.

In that connection, we wish to bring to your attention a document that we discovered in the file at the County Clerk's office after Justice Cahn had rendered his decision. It is a letter from Assistant Attorney General Williams, dated May 22, 1995, addressed to Justice Cahn (Exhibit "F"), purportedly "on behalf of the New York State Ethics Commission"--although the Ethics Commission is not listed as an indicated recipient<sup>10</sup>.

Even that letter contains no statement that the Ethics Commission determined that it would not intervene. Rather, its sole claim--one obvious from the face of the Article 78 papers--is that the Ethics Commission is not a party to the Article 78 proceeding. From that undisputed fact, the Assistant Attorney General Williams' letter leapfrogs over the issue of the Ethics Commission's right, indeed, its duty, to intervene on behalf of the public interest with the statement, "Accordingly, the Ethics Commission will not be submitting any responsive papers in this proceeding...." (Exhibit "F").

So that there is no confusion on this critical point, we specifically request information as to when--if ever--the Ethics Commission members determined that the transcending public interest at stake in the Article 78 proceeding Sassower v.

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<sup>9</sup> See ABA Model Rules of Professional Conduct, inter alia, Rules 3.3 "Candor Toward the Tribunal", Rule 8.2 "Reporting Professional Misconduct" and Rule 8.4 "Misconduct" and comparable provisions of the New York State Bar Association's Code of Professional Responsibility.

<sup>10</sup> The only listed recipient--other than Justice Cahn, to whom the letter was addressed--is "Doris L. Sassower". However, she not was not aware of the letter's existence--and did not receive a copy--until, as hereinabove described, it was found in the court file.

Commission did not require the Ethics Commission's intervention. Additionally, we request that the important question of intervention by the Ethics Commission at this juncture--which we are herein requesting--be presented to the Commissioners for determination.

So that the Commissioners' understanding of this profoundly serious matter may be fully informed, we respectfully request that the litigation papers in Sassower v. Commission be presented for their review, together with all documentation provided by us in support of our March 22, 1995 ethics complaint (Exhibit "A").

Finally, we do not know the particulars of the contact between the Ethics Commission and the Attorney General's office reflected by the May 22, 1995 letter (Exhibit "F")--or the representations made by the Attorney General, upon which, to the public's detriment, the Ethics Commission may have relied in not intervening at that time. However, we are aware of your long association with the Attorney General's office, reflected by your biography (Exhibit "G"). In the fifteen years before becoming Executive Director of the Ethics Commission, you occupied several high-level positions in the Attorney General's Office, including during the critical period in which it engaged in the litigation misconduct in Sassower v. Mangano, et al. on behalf of the judges of the Appellate Division, Second Department. Consequently, we expect you to recognize that there is a strong "appearance of impropriety" in your participating in decision-making relative to our ethics complaints, involving, as they do, the conduct of the Attorney General's office.

Copies of this letter are being sent to the Commission on Judicial Conduct and the Attorney General so as to give them formal notice of their on-going ethical duty in this matter. That ethical duty requires them to take corrective steps, including moving to vacate Justice Cahn's egregiously dishonest and indefensible decision.

A copy of this letter is also being sent to the Assembly Judiciary Committee, which has received extensive communications from us relative to our two Article 78 proceedings, including the cert papers in Sassower v. Mangano and the court paper in Sassower v. Commission. As I mentioned to Ms. Dugan, a meeting with the two counsel of the Assembly Judiciary Committee has been scheduled in October to discuss these cases--to which we invite the Ethics Commission to attend. We also invite representatives from the Commission on Judicial Conduct and the Attorney General's office to participate.

September 14, 1995

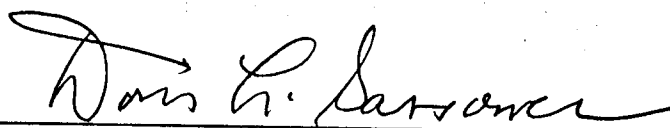
We trust that the Assembly Judiciary Committee will demand an accounting from both the Attorney General and the Commission on Judicial Conduct for the grotesque official misconduct clearly established by those historic, ground-breaking cases.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability, Inc.

Read and approved by:



DORIS L. SASSOWER, Director  
Center for Judicial Accountability, Inc.

cc: Assembly Judiciary Committee  
Patricia Gorman, Counsel  
Joanne Barker, Counsel  
New York State Attorney General Dennis Vacco  
New York State Commission on Judicial Conduct  
Henry T. Berger, Chairman  
Gerald Stern, Administrator

Enclosures: see accompanying page

Enclosures:

- A. Exhibits annexed hereto
- B. Doris L. Sassower v. Commission on Judicial Conduct of the State of New York:
  - 1. DLS' Article 78 Petition, with Notice of Petition and Notice of Right to Seek Intervention
  - 2. DLS' Order to Show Cause for Preliminary Injunction, Default
  - 3. A.G. Affidavit in Opposition to Preliminary Injunction
  - 4. A.G. Dismissal Motion
  - 5. DLS' Affidavit in Opposition to Dismissal Motion and in Further Support of Verified Petition, Motion for Injunction and Default, and for Sanctions
  - 6. DLS' Memorandum of Law in Opposition to Dismissal Motion and in Further Support of Verified Petition, Motion for Injunction and Default, and for Sanctions
  - 7. DLS' Notice to Furnish Record to the Court Pursuant to CPLR §§409, 7804(e), and 2214(c)
  - 8. DLS' Affidavit in Support of Proposed Intervenors
  - 9. NYLJ reprint of Supreme Court Memorandum Decision, per Herman Cahn
- C. Doris L. Sassower v. Hon. Guy Mangano, et al.
  - 1. A.G. Memorandum in Opposition
  - 2. DLS' Reply Memorandum