

COURT OF APPEALS  
STATE OF NEW YORK

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ELENA RUTH SASSOWER, Coordinator  
of the Center for Judicial Accountability, Inc.,  
acting *pro bono publico*,  
Petitioner-Appellant,

**NOTICE OF MOTION  
FOR DISQUALIFICATION  
AND DISCLOSURE**

-against-

AD 1<sup>st</sup> Dept. #5638/01  
S.Ct./NY Co. #108551/99

COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF NEW YORK,

Respondent-Respondent.  
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PLEASE TAKE NOTICE that upon the annexed Affidavit of Petitioner-Appellant, ELENA RUTH SASSOWER, dated May 1, 2002, "Law Day", the exhibits annexed thereto, and upon all the papers and proceedings heretofore had, ELENA RUTH SASSOWER will move this Court at 20 Eagle Street, Albany, New York 12207-1095 on Monday, May 20, 2002 at 10:00 a.m. or as soon thereafter as Respondent-Respondent and its counsel can be heard for an order:

1. Disqualifying this Court's Chief Judge and Associate Judges from participating in the above-captioned appeal for interest, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, as well as for bias, pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct;

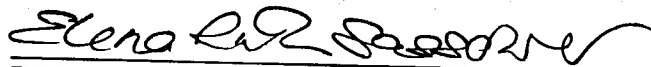
2. Designating justices of the Supreme Court to serve as Associate Judges of this Court for all purposes of this appeal, pursuant to Article VI, §2a of the

New York State Constitution, with the condition that the so-designated judges make disclosure pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct of material facts bearing upon their personal, professional, and political relationships with, and dependencies on, the persons and entities whose misconduct is the subject of this appeal or exposed thereby.

3. Such other and further relief as may be just and proper, including disciplinary and criminal referrals, pursuant to §§100.3D(1) & (2) of the Chief Administrator's Rules Governing Judicial Conduct and DR 1-103(A) of New York's Disciplinary Rules of the Code of Professional Responsibility, of the documentary proof herein presented of longstanding and ongoing systemic corruption by judges and lawyers on the public payroll.

Dated: May 1, 2002, "Law Day"  
White Plains, New York

Yours, etc.



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**NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT**

**Respondent-Respondent**

**801 Second Avenue**

**New York, New York 10017**

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7. Consequently, on this motion, the Court will be grappling with the same statutory and rule provisions of judicial disqualification and disclosure that are the substantive content of the appeal as they relate to the lower courts. Here – as there – the decisive question is the legal sufficiency of the subject motion/application in establishing statutory disqualification for interest, as well as my entitlement to “discretionary” recusal for bias, both actual and apparent, and for disclosure. Thus, while the substance of this appeal calls upon the Court to enunciate the fundamental adjudicative standards that must govern a judge when confronted with a judicial disqualification/disclosure application – as to which it appears this Court has *never* spoken -- this motion requires the Court to teach by its own example. There is no better way for this Court to instruct our State’s judiciary<sup>4</sup>.

8. It is my contention – so stated before the Appellate Division, First Department (my Appellant’s Brief: pp. 38-9; my reargument motion: Exhibits “B-1”, p. 6) -- that:

“Adjudication of a recusal application should be guided by the same legal and evidentiary standards as govern adjudication of other motions. If the application sets forth specific supporting facts, the judge, as any adversary, must respond to those specific facts. To leave unanswered the ‘reasonable questions’ raised by such application would undermine its very purpose of ensuring the appearance, as well as the actuality, of the judge’s impartiality.

The law is clear...that ‘failing to respond to a fact attested in the moving papers...will be deemed to admit it’, Siegel, New York Practice, §281 (1999 ed., p. 442) -- citing *Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 599 (1975), itself citing *Laye v. Shepard*, 265 N.Y.S.2d 142 (1965), aff’d 267 N.Y.S.2d 477 (1<sup>st</sup> Dept. 1966) and

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<sup>4</sup> Cf. “*The Judge’s Role in the Enforcement of Ethics – Fear and Learning in the Profession*”, John M. Levy, 22 Santa Clara Law Review, pp. 95-116 (1982).

Siegel, McKinney's Consolidated Laws of New York Annotated, Book 7B, CPLR 3212:16. 'If a key fact appears in the movant's papers and the opposing party makes no reference to it, he is deemed to have admitted it' *id.* Undenied allegations will be deemed to be admitted. *Whitmore v. J. Jungman, Inc.*, 129 N.Y.S. 776, 777 (S.Ct., NY Co. 1911)".

Further, based on treatise authority placed before the Appellate Division, First Department (my Appellant's Brief, p. 38; my reargument motion: Exhibit "C", p. 5) and, prior thereto, before Justice Wetzel [A-252; A-237]:

"The judge is ordinarily obliged to disclose to the parties those facts that would be relevant to the parties and their counsel in considering whether to file a judicial disqualification motion', Flamm, Richard E., Judicial Disqualification, p. 578, Little, Brown & Co., 1996."

9. Consistent with §100.3E of the Chief Administrator's Rules Governing Judicial Conduct that "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned"<sup>5</sup>, all seven of this Court's judges must recuse themselves so as to avoid the appearance of their bias.

\* Six judges, however, are statutorily disqualified for interest, pursuant to Judiciary

Law §14:

"A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which... he is interested."

<sup>5</sup> In reviewing the Commission's determinations of public discipline against judges, this Court routinely repeats, as the standard, the need to avoid the "appearance of impropriety", *Matter of Sardino*, 58 N.Y.2d 286, 290-291 (1983); *Matter of Sims*, 61 N.Y.2d 349, 358 (1984), citing cases, *Matter of Duckman*, 92 N.Y.2d 141, 153 (1998). Likewise, in public statements, Chief Judge Kaye reiterates that "judges must disqualify themselves when their impartiality might reasonably be questioned.", citing the Chief Administrator's Rules and the Model Code of Judicial Conduct, "*Safeguarding a Crown Jewel: Judicial Independence and Lawyer Criticism*", 25 *Hofstra Law Review* 703, 713 (Spring 1997).

10. These six judges, in the order in which their statutory disqualification is discussed, are: Associate Judge Albert M. Rosenblatt, Chief Judge Judith S. Kaye, Associate Judge George Bundy Smith, Associate Judge Victoria A. Graffeo, Associate Judge Carmen Beauchamp Ciparick, and Associate Judge Howard A. Levine. As herein demonstrated, their disqualifying interest is based on *their participation in the events giving rise to this lawsuit or in the systemic governmental corruption it exposes -- as to which they bear disciplinary and criminal liability.*

11. Consequently, the interests of these six judges are personal and pecuniary. This contrasts sharply with the *ex officio* interests of this Court's judges in *Morgenthau v. Cooke*, 56 N.Y.2d 24 (1982), and the shared generic judicial interests in *Maresca v. Cuomo*, 64 N.Y.2d 242 (1984) -- two appeals where no motions were even made for the Court's disqualification. It also contrasts sharply with *New York State Association of Criminal Defense Lawyers, et al. v. Kaye, et al.*, 95 N.Y.2d 556 (2000), where the Court, in denying a formal motion to disqualify those of its judges who had participated in the Court's challenged approval of administrative rule-making, explicitly stated:

"The respondent Judges have no pecuniary or personal interest in this matter and petitioners allege none. Nor do petitioners allege personal bias or prejudice." (at 561).

12. Moreover, the "rule of necessity", invoked by the Court in each of these three cases, is inapplicable to the instant motion, based, as it is, on the individual disciplinary and criminal liabilities of the Court's judges. Replacement Supreme Court justices would not be so encumbered. Nor would they be material witnesses to