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

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

SEP 27 2000  
MARIBEL TORRES  
E-MAIL: [judgewatch@nyc.gov](mailto:judgewatch@nyc.gov)  
NEW YORK CITY OFFICE  
Web site: [www.judgewatch.org](http://www.judgewatch.org)

Elena Ruth Sassower, Coordinator

BY HAND

September 27, 2000

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

SEP 27

State Comptroller

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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MANAGING 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)<sup>1</sup>, *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*.

<sup>1</sup> Although *Doris L. Sassower v. Commission* was defended by Attorney General Vacco's Law Department, its litigation misconduct become 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.

EX "9-1"

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 21<sup>st</sup> and returnable this Friday, September 29<sup>th</sup>.

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")<sup>2</sup>, 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")<sup>3</sup>, following my July 26, 1999 telephone conversation with him, which I had expressly requested be deemed "notice" to you (Exhibit "M", ¶102)<sup>4</sup>; (3) CJA's hand-delivered October 25, 1999 letter to you, addressed to the attention of Mr. Nocenti, as well as to Peter Pope, Chief of your "Public Integrity Unit", and to 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")<sup>5</sup>; (7) CJA's

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

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

<sup>4</sup> ¶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).

<sup>5</sup> 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 recipient<sup>6</sup>.

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 disputed<sup>7</sup>. CJA, therefore, requests that you and your executive level staff<sup>8</sup> 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.

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<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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 to you transmitted 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 rules<sup>9</sup> – misconduct born of bias and self-interest, as particularized at pages 4-29 of CJA's February 23, 2000 letter to Governor Pataki<sup>10</sup> 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 retention<sup>11</sup>.

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

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<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> 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 §§100.3D and E 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 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 complaint.

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 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 (at ¶¶14-53) – and not denied or disputed by you<sup>12</sup>. 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-

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<sup>12</sup> 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