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Elena Ruth Sassower, Coordinator

BY HAND

August 12, 1998

Alan Rothstein, General Counsel
Association of the Bar of the City of New York
42 West 44th Street
New York, New York 10036-6689

RE: The City Bar's Responsibilities under the Professional and Ethical Codes of Conduct

Dear Mr. Rothstein:

Following up our yesterday's telephone conversation, enclosed are: (1) the cert petition in *Sassower v. Mangano, et al.*; (2) our June 20, 1998 letter to the U.S. Solicitor General; (3) our June 27, 1998 letter to the Public Integrity Section of the U.S. Justice Department; (4) the Attorney General's notification, dated August 4, 1998, that respondents are waiving their right of opposition.

In view of the serious corruption issues particularized by the cert petition and further highlighted in our correspondence with the Solicitor General and Justice Department, we request the City Bar's *amicus* support in obtaining Supreme Court review. Due to the shortness of time for the City Bar to participate in this all-important cert stage -- where an *amicus* brief would need to be submitted by the August 19th date on which respondents -- had they not waived a response -- were due to have submitted their reply brief, we request that the City Bar take emergency action to communicate with the Solicitor General its endorsement of our request for his *amicus* support and that it reinforce his obligations under Rule 8.3 of the ABA's Model Code of Professional Conduct¹ to make disciplinary and criminal referrals consistent with the record.

The City Bar is already familiar with the record in *Sassower v. Mangano*. Over a year ago, on August 5, 1997, I hand-delivered to the City Bar the record on appeal and appellate briefs. On October 14,

¹ Rule 8.3, "Reporting Professional Misconduct", and Rule 8.4, "Misconduct" are reprinted in the cert petition at A-20.

1997, I hand-delivered our petition for rehearing with suggestion for rehearing *en banc* and, on November 8, 1997 hand-delivered copies of our §372(c) judicial misconduct complaints against the district judge and appellate panel.

Of course, it is not just the Solicitor General which has obligations to make disciplinary and criminal referrals under Rules 8.3 and 8.4. Those obligations apply also to the City Bar and we request that it meet its obligations thereunder, based on the record in *Sassower v. Mangano*, long in its possession. Plainly, such ethical obligations will be all the more essential should the Supreme Court not grant review.

On a different subject, I reiterate my request for the date on which the City Bar rendered its evaluation approving Alvin Hellerstein for a federal judgeship in the Southern District of New York. If you deem such information as "confidential", please explain the reason therefor so that we may incorporate it in our formal statement to the Senate Judiciary Committee in opposition to Mr. Hellerstein's confirmation.

As discussed, the basis for CJA's opposition to Mr. Hellerstein rests on his performance as Chairman of the City Bar's Judiciary Committee when our 1992 critique of the federal judicial screening process and Andrew O'Rourke's City Bar rating was directed to him by then President Feerick. This was discussed with you in mid-December of last year, when I called you about the City Bar's responsibilities in the face of Governor Pataki's nomination of Mr. O'Rourke to the State Court of Claims and discussed, as well with Daniel Kolb, successor Chairman of the City Bar's Judiciary Committee, in our frequent conversations throughout December and January when, to no avail, I sought to get the City Bar to retract its insupportable approval rating of Mr. O'Rourke, consistent with its obligations under New York's DR 8-102(a) of the New York's Code of Professional Responsibility and Rule 8.3(a) of the ABA's Model Code of Professional Conduct.

For your information, a copy of CJA's July 30, 1998 and August 3, 1998 letters to the Senate Judiciary Committee, protesting its sham confirmations procedures, are enclosed. Since the Senate is in recess until September 1st, there is still time for the City Bar to meet its ethical duty and address the evidence of Mr. Hellerstein's self-interested protectionism, as reflected by his February 3, 1993 letter to us.

Finally, in the event you are unaware of CJA's April 24, 1998 testimony before the Commission on Structural Alternatives for the Federal Courts of Appeals -- which highlighted (at p. 3) the City Bar's faulty procedures for screening federal judicial candidates, including its "screening out" of adverse information -- as to which it took no corrective steps, enclosed is a copy.

Yours for a quality judiciary,

A handwritten signature in blue ink, reading "Elena Ruth Sassower", with a stylized flourish at the end.

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

Enclosures