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Elena Ruth Sassower, Coordinator

BY FAX: 212-344-3318 (3 pages)

March 12, 2002

New York Civil Liberties Union
Arthur Eisenberg, Legal Director
125 Broad Street
New York, New York 10004

RE: *Amicus* and other assistance in securing review by the New York Court of Appeals of the public interest lawsuit, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* (NY Co. #108551/99; Appellate Division, First Dept. #5638)

Dear Mr. Eisenberg:

Following up my yesterday's fax, I wish to emphasize how little is required to verify the appropriateness of the "tone" in my litigation papers – by which you mean my use of such words as "fraud" and "fraudulent"[1]. You don't even have to read the less than 3 pages of my analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-52-54; A-189-194] or the 13-pages of my analysis of Justice Lehner's decision in *Michael Mantell v. Commission* [A-321-334; A-299-307].

Thus, to verify that 22 NYCRR §7000.3 is irreconcilably contrary to Judiciary Law §44.1 – something which should be obvious to you from your own visual comparison of the Commission's self-promulgated rule and the statute – all you need review is a single page of my analysis of Justice Cahn's decision, *to wit*, A-53.

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[1] The definition of "fraud" is set forth at page 2 of my 66-page Critique of Respondent's Brief – which I hand-delivered to NYCLU on May 3, 2001. As you know, the Critique – whose accuracy is undenied and undisputed by the Attorney General and Commission – is the centerpiece of the second branch of my August 17, 2001 motion to strike Respondent's Brief as a "fraud on the court". The Appellate Division, First Department purports to deny that motion, *without reasons and without findings*, in the last sentence of its December 18, 2001 decision. *See* my discussion at pages 4-13 of my 19-page analysis of that appellate decision – which is Exhibit "B-1" of my January 17, 2002 reargument motion.

To verify that the law pertaining to the Commission's receipt of a complaint from a complainant – which is Judiciary Law §44.1 – is different from the law pertaining to the Commission's initiation of a complaint by its Administrator – which is Judiciary Law §44.2 – which, again, should be obvious to you from visual inspection of these separate statutory provisions and from your reading of the Court of Appeals' decisions in *Nicholson*, 50 NY2d 597, 610-611, and *Commission v. Doe*, 61 NY2d 56, 60 – copies of which I sent you – all you need review is less than five pages of my analysis of Justice Lehner's decision, *to wit*, A-326-330 under the Point III heading,

> "The Decision's Claims that the Commission has Discretion as to Whether to Investigate Judicial Misconduct Complaints is Not Based on any Examination of the Plain Language of Judiciary Law §44.1, its Legislative History, or Caselaw Pertaining Thereto, but Rests on the Court's own *Sua Sponte* and Demonstrably Fraudulent Argument".

Moreover, as to "standing", I should think that the Civil Liberties Union would itself readily recognize that something is gravely, gravely wrong when ten judges sitting on two different Appellate Division, First Department panels on Mr. Mantell's appeal and my own are unable to buttress their single sentence add-on as to lack of "standing" to sue the Commission with ANY factual findings or discussion of legal authority. I would remind you that you yourself told me in our phone conversation last August that I had some good arguments in the third "highlight" of my Critique of Respondent's Brief (pp. 40-47) addressed to the "standing" issue – and, in particular, my arguments relating to declaratory relief. Yet the appellate panel on my appeal addresses NONE of these arguments – a fact pointed out at pages 15-16 of my 19-page analysis of it appellate decision – annexed as Exhibit "B-1" to my reargument motion. Such analytical discussion closes with my assertion,

> "... even a non-lawyer, like myself, reading *Society of Plastics Industries v. County of Suffolk* can discern how bogus and deceitful a defense based on lack of standing is to *the facts of this case*. This is further evidenced by the Court's failure to come forth with *any* findings of fact and law on the standing issue." [Exhibit B-1, p. 16].

I respectfully request that you read *Society of Plastics Industries v. County of Suffolk*, 77 NY2d 761 – a case to which the Appellate Division cites with an inferential "*see*"[2] -- and tell me whether you

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[2] As set forth at page 10 of my 19-page analysis of the appellate decision -- annexed as Exhibit "B-1" to my reargument motion –

> "According to The Blue Book: A Uniform System of Citation (Harvard Law Review Association, 17th edition, 2000), '*see*' before a legal citation means that there is 'an inferential step between the authority cited and the proposition it supports'. In other words, 'the proposition is not directly

don't agree that it actually supports my "standing" to sue the Commission.

In view of the State's "overriding interest in the integrity and impartiality of the judiciary", *Nicholson*, at 607, and the clear significance of my lawsuit in advancing that "overriding interest" – evident from the most cursory examination of my Verified Petition's six Claims for Relief [A-37-45] -- I believe it is a most modest request that you verify A-53 and A-326-330 of my analysis of the decisions of Justices Cahn and Lehner, re-read pages 40-47 of my Critique on "standing", and read *Society of Plastics*. You can even delegate such tasks to *any first year law student* interning with the Civil Liberties Union. I believe it's that simple.

Please advise, as soon as possible, as to the outcome of that modest review.

Thank you.

Yours for a quality judiciary,

Elena

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

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stated by the cited authority' (at pp. 22-23). Thus, the Court's decision on my appeal rests on only a single supposedly on-point case – its *Mantell* appellate decision."