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 REARGUMENT Vacatur for Fraud, Lack of Jurisdiction, Disclosure & Other Relief

-against-

Mo. No. 581/Mo. No. 719

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, sworn to October 15, 2002, 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 Tuesday, November 12, 2002 at 10:00 a.m. or as soon thereafter as Respondent-Respondent, New York State Commission on Judicial Conduct, and its counsel, the New York State Attorney General, can be heard for an order granting reargument and:

1. Vacating the Court's two decision/orders herein, each dated September 12, 2002, for fraud and lack of jurisdiction;

2. Granting Petitioner-Appellant's May 1, 2002 "Law Day" motion for disqualification/disclosure;

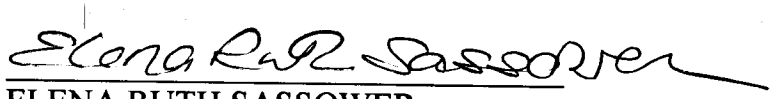
3. Referring Petitioner-Appellant's May 1, 2002 "Law Day" notice of appeal and her June 17, 2002 motion to strike, for sanctions, disciplinary and criminal referrals, and to disqualify the Attorney General from representing the Commission to Supreme Court justices designated pursuant to ¶2 of her May 1, 2002 "Law Day" disqualification/disclosure notice of motion for adjudication;

4. Such other and further relief as may be just and proper.

In the event reargument is denied, disclosure by the Court's judges, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, as to whether, to their knowledge, they are now, or previously have been, the subject of judicial misconduct complaints filed with the Commission, and other 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.

Dated: October 15, 2002
White Plains, New York

Yours, etc.



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TO: ATTORNEY GENERAL OF THE STATE OF NEW YORK
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COURT OF APPEALS
STATE OF NEW YORK

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

Petitioner-Appellant,

AFFIDAVIT IN SUPPORT OF REARGUMENT, Vacatur for Fraud, Lack of Jurisdiction, Disclosure & Other Relief

-against-

Mo. No. 581/Mo. No. 719

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the *pro se* Petitioner-Appellant, fully familiar with all the facts, papers, and proceedings in this important public interest Article 78 proceeding against Respondent-Respondent New York State Commission on Judicial Conduct [hereinafter "Commission"].

2. This affidavit is submitted in support of the relief requested in the accompanying notice of motion.

3. The reargument motion is timely, having been made within 30 days of the Court's two subject September 12, 2002 decision/orders – the thirtieth day falling on a Saturday and the next business day being October 15, 2002 (Exhibit "A"). This motion is made returnable on November 12, 2002 so as to coincide

with the return date of my motion for leave to appeal, which will be timely served on October 24, 2002.

4. By decision/order dated September 12, 2002 (Exhibit "B-1"), this Court, with Judge Rosenblatt taking "no part", dismissed my May 1, 2002 "Law Day" motion to disqualify the Court's judges and for disclosure[1] – without identifying the statutory and rule provisions and grounds invoked by the motion (Exhibit "B-2"). As against Chief Judge Kaye and Judges Smith, Levine, Ciparick, and Graffeo, the stated reason for dismissal was "upon the ground that the Court has no authority to entertain the motion made on nonstatutory grounds". As against Judge Rosenblatt, the Court's stated reason was that the motion was "academic".

Additionally, the Court referred what it called my "application seeking recusal" to Chief Judge Kaye and Judges Smith, Levine, Ciparick, Wesley, and Graffeo "for individual consideration and determination by each Judge", with each of these six judges then respectively denying the "referred motion for recusal" – with no stated reasons and no disclosure.

Not identified by the decision/order -- and implicitly denied -- was the "other and further relief" specifically requested by my notice of motion (Exhibit "B-2"):

> "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

[1] Such motion had been previously designated "Mo. No. 581" – and such number appears on the decision/order (Exhibit "B-1").

Responsibility, of the documentary proof herein presented of longstanding and ongoing systemic corruption by judges and lawyers on the public payroll."

5. By a second decision/order dated September 12, 2002 (Exhibit "C-1"), the Court, with Judge Rosenblatt taking "no part", dismissed, "on the Court's own motion", my May 1, 2002 "Law Day" notice of appeal[2]. The stated reason was "upon the ground that no substantial constitutional question is directly involved" -- with no reference to the Court's own interpretive decision in *Valz v. Sheepshead Bay*, 249 N.Y. 122, 131-2 (1928), on which my notice of appeal explicitly rested (Exhibit "C-2").

Not identified – and implicitly denied – was my unopposed request, in my papers before the Court[3], that if, notwithstanding its *Valz* decision, the Court dismissed the appeal of right, it grant leave to appeal *sua sponte*.

6. Additionally, by the same September 12, 2002 decision/order as dismissed my notice of appeal (Exhibit "C-1"), the Court dismissed my separate June 17, 2002 motion[4], identifying it as "to strike respondent's memorandum of law &c." The Court stated no reason for dismissing this motion, whose relief, as more fully set forth in the notice of motion (Exhibit "C-3"), was to strike the

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[2] The Court's "own motion" was not accompanied by any *sua sponte* dismissal number, as is its usual practice.

[3] My May 1, 2002 disqualification/disclosure motion (fn. 2); my June 7, 2002 affidavit in response to *sua sponte* inquiry (fn. 6); my June 7, 2002 reply affidavit to opposing memorandum of law on disqualification/disclosure motion (Exhibit "C", pp. 21-22).

[4] Such motion had been previously designated "Mo. No. 719" – which is the number appearing on the decision/order (Exhibit "C-1").

Attorney General's May 17, 2002 memorandum of law in opposition to my disqualification/disclosure motion and his May 28, 2002 letter in response to the Court's *sua sponte* jurisdictional inquiry based on findings that each such document was a "fraud on the court", for sanctions against the Attorney General and Commission, to refer them for disciplinary and criminal investigation and prosecution, to disqualify the Attorney General from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules, and "such other and further relief...including referral of the record herein to the New York State Institute for Professionalism in the Law for study and recommendations for reform."

7. As hereinafter shown, these two September 12, 2002 decision/orders are judicial frauds. Aside from being devoid of citation to legal authority and recitation of fact -- thereby concealing that they are legally unfounded and factually insupportable -- the reasons they state for their dispositions, to the extent they give any, are false and known by the Court to be false, based on the record before it. Such decision/orders are the manifestation of the Court's disqualifying interest and actual bias, for which, upon the granting of reargument, I am entitled to the Court's disqualification, as well as to vacatur of the decision/orders for fraud and lack of jurisdiction.

8. These decision/orders, in each and every respect, have a common criminal purpose: to cover up the systemic judicial corruption evidentiarily-

established by the record herein, as to which my disqualification/disclosure motion demonstrated that six of the Court's judges are involved or implicated (at ¶¶9-115). The highest of these six is Chief Judge Kaye, whose administrative misconduct relating to the record herein prior to appeal was shown to warrant her removal from the bench – and who would have been removed, but for the Commission's corruption – the subject of this appeal. This, based on the August 3, 2000 *facially-meritorious* judicial misconduct complaint I filed against her with the Commission[5] and her subsequent related misconduct, particularized by my disqualification/disclosure motion (at ¶¶68-97).

9. For the convenience of the Court, a Table of Contents follows:

Table of Contents

[5] My August 3, 2000 judicial misconduct complaint against Chief Judge Kaye is Exhibit "O-1" to my August 17, 2001 motion to disqualify the Appellate Division, First Department, etc.

* * *

The Court's Wilful Refusal to Enunciate and Demonstrate Procedural Standards for Adjudicating Judicial Disqualification/Disclosure Issues

10. Over 150 years ago, this Court recognized that "the first idea in the administration of justice is that a judge must necessarily be free from all bias and partiality". The case was *Oakley v. Aspinwall*, 3 N.Y. 547 (1850), cited in my papers[6] for the proposition that a court statutorily disqualified for interest is without jurisdiction. Perhaps more significant, however, is that the statutory disqualification there at issue involved one of the Court's *own* judges – as to which there had been a waiver by counsel, following disclosure by the judge "with a proper sense of duty" of his statutory disqualification

11. In eloquent language, the Court in *Oakley* emphasized what this Court has wilfully flouted – that a judge who is statutorily-disqualified:

> "should himself suggest it and withdraw, as the judge with great propriety attempted to do in the present case. He can not sit, says the statute. It is a legal impossibility, and so the courts have held it. (*Edwards v. Russell*, 21 *Wend.* 63; *Foot v. Morgan*, 1 Hill, 654.).

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[6] *See* my May 1, 2002 Jurisdictional Statement (p. 10); my June 7, 2002 affidavit in response to *sua sponte* jurisdictional inquiry (p. 17).

> The law applies as well to the members of this court as to any other; or if there be any difference it is rather in favor of its more stringent application to the judges of a court of last resort, as well, because of its greater dignity and importance as a tribunal of justice, as that there is no mode of redress appointed for the injures which its biased decisions may occasion. The law and the reasons which uphold it apply to the judges of every court in the state, from the lowest to the highest." (at 551-552).

12. The introductory pages of my May 1, 2002 disqualification/disclosure motion (Exhibit "B-2") expressly called upon the Court to demonstrate, by its own role model example[7], "the fundamental adjudicative standards that must govern a judge when confronted with a judicial disqualification/disclosure application" – as to which I stated, "it appears this Court has *never* spoken" (¶7). I stated (¶5) that the same statutory and rule authority I was invoking for the Court's disqualification and for disclosure -- Judiciary Law §14 and §§100.3E and 100.3F of the Chief Administrator's Rules Governing Judicial Conduct – had been invoked by my August 17, 2001 motion to disqualify the Appellate Division, First Department and for disclosure. The Appellate Division had denied such motion "*without* findings, *without* reasons, *without* even identifying that the motion sought disqualification and disclosure and, indeed, by *falsifying* its requested relief" in the same December 18, 2001 decision as is the subject of my appeal to the Court. I also stated (¶5) that these provisions were invoked by my December 2, 1999 application to disqualify Justice Wetzel and for disclosure – which he had denied

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[7] "*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).

"*without* findings, *without* identifying any of the grounds it set forth as warranting his disqualification, and by concealing and totally ignoring its requested disclosure relief" in the same January 31 2000 decision that I had appealed to the Appellate Division.

13. In the face of the lower courts' *sub silentio* repudiation of the very statutory and rule provisions designed to ensure judicial impartiality, I proffered an explicit adjudicative standard for the Court to demonstrate in adjudicating my disqualification/disclosure motion (¶8):

> "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 (1st Dept. 1966) and 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)".

14. The Commission, the state agency which regularly prosecutes judges of our very lowest courts for violating judicial disqualification and disclosure, did not

deny or dispute the appropriateness of this adjudicative standard – or of the further proposition[8]:

> "when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party." Corpus Juris Secundum, Vol. 31A, 166 (1996 ed., p. 339),

for which I had cited this Court's decision in *People v. Conroy*, 90 NY 62, 80 (1884),

> "The resort to falsehood and evasion by one accused of a crime affords of itself a presumption of evil intentions, and has always been considered proper evidence to present to a jury upon the question of the guilt or innocence of the person accused."

15. Nor did the Commission dispute the treatise authority my disqualification/disclosure motion cited (¶8) for the proposition,

> "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.

16. Indeed, the record on my disqualification/disclosure motion[9] contained the Commission's own argument before the Court in its brief in *Matter of Edward J. Kiley*, "It is cause for discipline for a judge to fail to disclose on the record or offer to

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[8] *See* my December 22, 2000 appellant's brief (p. 39); my June 7, 2002 reply affidavit to the Attorney General's opposing memorandum of law on disqualification/disclosure (Exhibit "C", pp. 4-5).

[9] *See* my June 7, 2002 reply affidavit to the Attorney General's opposing memorandum of law on disqualification/disclosure (Exhibit "C", p. 2).

disqualify under circumstances where his impartiality might reasonable (sic) be questioned" (7/10/89 Brief in *Matter of Edward J. Kiley*, at p. 20), as well as the instruction in the Commission's Annual Reports, which since 1998, has expressly stated:

> "All judges are required by the Rules [Governing Judicial Conduct] to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned."

17. This is the context in which, as hereinafter shown, the Court not only failed to demonstrate the proposed procedural standards, but replicated the misconduct of the Appellate Division and Justice Wetzel in *sub silentio* repudiating Judiciary Law §14 and §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct, including by the most flagrant falsification and material concealment.

The Court's Fraudulent Dismissal of my Disqualification Motion against Chief Judge Kaye and Judges Smith, Levine, Ciparick and Graffeo

18. The Court's dismissal of my motion for the disqualification of Chief Judge Kaye and Judges Smith, Levine, Ciparick, and Graffeo is predicated on its assertion that "the Court has no authority to entertain the motion made on nonstatutory grounds" (Exhibit "B-1"). Apart from the conspicuous absence of *any* legal citation for the proposition that "the Court has no authority to entertain"

a nonstatutory grounded motion[10] – a proposition the Court also does not discuss -- the clear implication is that my disqualification motion was "made on nonstatutory grounds". This is a flagrant lie. My motion was *expressly* made on the statutory ground of interest, proscribed by Judiciary Law §14.

19. The very first branch of my May 1, 2002 notice of motion (Exhibit "B-2") could not have been clearer in seeking an order:

> "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..." (emphasis added)

20. Likewise, my moving affidavit (¶9), quoting the pertinent language of 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",

could not have been clearer in identifying that "the decisive question is the legal sufficiency of the subject motion...in establishing statutory disqualification for interest" (¶7, emphasis added). Indeed, virtually the entirety of my affidavit's 68-pages was devoted to proving my explicit assertion that "Six judges...are statutorily disqualified for interest, pursuant to Judiciary Law §14" (at (¶9, emphasis added). This, based on

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[10] "[u]nder our State constitutional system, the Court of Appeals decides the scope of its own power and authority", *New York Association of Criminal Defense Lawyer v. Kaye*, 95 N.Y.2d 556, 560 (2000) (Exhibit "D").

> *"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"* (¶10, italics in the original).

21. This is overwhelmingly evident from the introductory seven pages of my affidavit, as well as its page eight "Table of Contents" (Exhibit "B-2").

22. In *New York State Association of Criminal Defense Lawyers, et al. v. Kaye, et al.*, 95 N.Y.2d 556, 558 (2000) (Exhibit "D") – cited at ¶¶11 and 13 of my motion (Exhibit "B-2") -- the Court placed in a footnote (fn. 2) its recognition that a statutorily-based motion for judicial disqualification raises "an issue of law for decision by the Court". The Court there adjudicated, by a fact-specific, reasoned decision, the statutorily-based motion that New York State Association of Criminal Defense Lawyers made for its disqualification. This was "safe" for it to do, as that motion could readily be denied. Indeed, the Court's decision itself pointed out,

> "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).

23. By sharp contrast, my disqualification motion *both alleged and documented* the "personal and pecuniary" interests of the six judges I contended were statutorily disqualified: Judge Rosenblatt, Chief Judge Kaye, and Judges Smith, Graffeo, Ciparick, and Levine. Such was expressly highlighted by my ¶11 (Exhibit "B-2").

24. This is not the first time that the Court has falsified the record so as to purport that a proper disqualification motion could not be "entertain[ed]" because it was "made on nonstatutory grounds". The Court did the same thing in *Schulz v. New York State Legislature*, 92 N.Y.2d 917 (1998) (Exhibit "E-2") – cited in fn. 2 of *Criminal Defense Lawyers v. Kaye* (Exhibit "D")[11].

25. *Schulz* is also a case where it was "not safe" for the Court to acknowledge the true nature of the disqualification motion at issue. That Mr. Schulz made his motion on the statutory ground of interest – albeit not citing Judiciary Law §14 -- is evident from his motion (Exhibit "G")[12]. Indeed, like my own disqualification motion, Mr. Schulz' motion *both alleged and documented* the disqualifying interests of the four judges against whom it was specifically directed, *to wit*, Chief Judge Kaye and Judges Bellacosa, Levine, and Ciparick[13].

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[11] This citation is prefaced with "*see*", following which is the proposition that a statutorily-based disqualification motion raises "an issue of law for decision by the Court". According to The Blue Book: A Uniform System of Citation (Harvard Law Review Association, 17th edition, 2000), "*see*" before a legal citation means there is "an inferential step between the authority cited and the proposition it supports". In other words, "the proposition is not directly stated by the cited authority'" (at pp. 22-23). As *Schulz* does not directly state that proposition, it would appear that *Criminal Defense Lawyers v. Kaye* is the first case to so state it – tucked in a footnote.

[12] At issue were the financial interests of four of this Court's judges, *inter alia*, by their investment in bonds whose constitutionality was challenged by Mr. Schulz' notice of appeal. *Cf. Matter of Fuchsberg*, 426 N.Y.S.2d 639 (Court on the Judiciary, 1978).

[13] Due to its volume, the substantiating documentation that Mr. Schulz appended to his disqualification motion, consisting of the financial disclosure forms of Chief Judge Kaye and Judges Bellacosa, Levine, and Ciparick, filed with the Ethics Commission for the Unified Court System is not annexed. The Court is requested to access Mr. Schulz' original motion for such annexed documents. This original motion should be available to the Court, as it is not scheduled to be destroyed, pursuant to the Court's Records Retention and Disposition Schedule, until September 22, 2003, "five years from date of disposition of the motion".

26. The Court's pretense that my motion was not made on a statutory ground, like its pretense that Mr. Schulz' motion was not made on a statutory ground -- when each clearly was -- is inexplicable except as a reflection of its knowledge that it would otherwise have had to "entertain" those motions by fact-specific, reasoned decisions, as it did in *Criminal Defense Lawyers v. Kaye* (Exhibit "D") – and that doing so would require it to concede its statutory disqualification.

27. By virtue of the Court's fraud that my disqualification motion was "made on nonstatutory grounds", I am entitled to vacatur for fraud of the Court's insupportable dismissal thereof.

28. Concomitant therewith, I am entitled to vacatur for lack of jurisdiction of the Court's other dispositions made by its September 12, 2002 decision/orders (Exhibits "B-1", "C-1"). This, unless the Court denies or disputes the treatise authority, prominently in the record before it[14], as to the jurisdictional consequences of an undecided motion for judicial disqualification/disclosure:

> "So long as the affidavit [to disqualify] is on file, and the issue of disqualification remains undecided, the judge is without authority to determine the cause or hear any matter affecting substantive rights of the parties", 48A Corpus Juris Secundum, §145;
>
> "As a general rule...once a challenged judge has...been made the target of a timely and sufficient disqualification motion, he immediately loses all

[14] *See* my May 1, 2002 Jurisdictional Statement, fn. 1; my June 7, 2002 reply affidavit to the Attorney General's opposing memorandum of law on disqualification/disclosure: Exhibit "C", p. 17.

> jurisdiction in the matter except to grant the motion and in some circumstances to make those orders necessary to effectuate the charge.", Judicial Disqualification: Recusal and Disqualification of Judges, Richard E. Flamm, Little, Brown & Company.

29. Thus, until my statutorily-based disqualification motion is decided by exercise of the Court's "authority to entertain" the motion – as was expressly not done by its pretextual dismissal (Exhibit "B-1") -- the Court is without jurisdiction to make other substantive rulings. Such rulings as were made by the September 12, 2002 decision/orders must be immediately vacated for lack of jurisdiction – quite apart from vacatur for fraud.

30. Moreover, if, upon "entertain[ing]" my statutorily-based disqualification motion, the Court is unable to specifically deny and dispute its particularized evidentiary showing of "personal and pecuniary" interests of six of its judges, the Court must grant the disqualification motion, as a consequence of which it would be without jurisdiction to reinstate its other rulings herein. *Oakley v. Aspinwall, supra*, "In this state the statutory disqualification of a judge deprives him of jurisdiction", *Wilcox v. Royal Arcanum*, 210 NY 370, 377 (1914), citing, *Oakley. See also* Chief Judge Kaye's decision in *Beer Garden, Inc. v. New York State Liquor Authority*, 79 NY2d 266, 278 (1992), additionally relevant to the "appearance" of bias, herein flouted by the Court:

> "'Next in importance to the duty of rendering a righteous judgment, is that of doing it in a manner as will beget no suspicion of the fairness and integrity of the judge.' So vital is deemed the observance of this principle that it has been held that a judge disqualified under a statute cannot act even with

> the consent of the parties interested, because the law was not designed merely for the protection of the parties to the suit, but for the general interests of justice.' (*Matter of City of Rochester*, 208 N.Y. [188], at 192, 101 N.E. 875, quoting *People ex rel. Roe v. Roe v. Suffolk Common Pleas*, 18 Wend 550, 552; *see also, Matter of Pelaez v. Waterfront Commn.*, 88 A.D.2d 443, 447-448, 454 N.Y.S.2d 132.)"

The Court's Fraudulent Dismissal of my Disqualification Motion against Judge Rosenblatt

31. The Court's dismissal of my motion to disqualify Judge Rosenblatt is based on its assertion that same is "academic" (Exhibit "B-1"). No reason is given as to why this should be so – other than, impliedly, because Judge Rosenblatt "took no part" in the decision. This euphemism that Judge Rosenblatt "took no part" – as if he were out sick or on vacation -- is a fraud, covering up Judge Rosenblatt's disqualification for interest – as to which adjudication was NOT "academic".

32. Examination of ¶26 of my motion shows why. It clearly and unambiguously identifies that the seriousness of Judge Rosenblatt's disqualifying interest presents "a reasonable question as to whether ANY of Judge Rosenblatt's six Court of Appeals colleagues could impartially evaluate, or be perceived as able to impartially evaluate, the instant appeal".

33. The Court thus knew that adjudication of the nature and extent of Judge Rosenblatt's disqualifying interest would make plain the "reasonable question" that his fellow judges could not be fair and impartial, entitling me to their disqualification pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct.

The Fraudulent Denials of my "Application for Recusal" by Six of the Court's Judges – Without Reasons and Without Requested Disclosure

34. The Court's decision/order on my disqualification motion (Exhibit "B-1") falsely makes it appear that I have made a separate "application seeking recusal". This, by using the phrase "application seeking recusal" both in its prefatory paragraph, as well as in the second of its two ordering paragraphs.

35. This is a further deceit. No separate "application seeking recusal" was ever made. Rather, I made a single disqualification motion, whose first branch not only sought to disqualify the Court's judges for interest, but for "bias, pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct" (Exhibit "B-2").

36. Tellingly, by the end of the Court's very short order (Exhibit "B-1") my twice-described "application for recusal" is transformed to my "motion for recusal", which "Chief Judge Kaye and Judges Smith, Levine, Ciparick, Wesley and Graffeo each respectively denies".

37. §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, invoked by my motion's first branch to challenge the Court for both bias and interest (Exhibit "B-2"), has a single title, "Disqualification" and says nothing about "recusal". In pertinent part, §100.3E states,

> "(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

> "(a)(i) the judge has a personal bias or prejudice concerning a party; or (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;"
> ...
> (d) the judge knows that the judge...(iii) has an interest that could be substantially affected by the proceeding; (iv) is likely to be a material witness in the proceeding;"

38. The Court's failure to provide clear interpretive caselaw as to the difference between "disqualification" and "recusal" – such as not reflected by §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, promulgated with the Court's approval -- is evident from the fact that in *Criminal Defense Lawyers v. Kaye* (Exhibit "D"), the Court had to correct the prestigious New York State Association of Criminal Defense Lawyers on the subject:

> "The motion at bar is labeled as one for recusal. Because it is statutorily-based, however, it is properly treated as a motion for disqualification..." (at fn. 2).

In other words, the Court there distinguished a "statutorily-based" motion as one for "disqualification" from a motion not "statutorily-based", which, inferentially, is one for "recusal"[15].

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[15] Such distinction was remarked upon by my June 7, 2002 reply affidavit to the Attorney General's opposing memorandum of law on disqualification/disclosure (Exhibit "C", p. 25), which cited *Criminal Defense Lawyers v. Kaye*, in addition to quoting from Judicial Disqualification: Recusal and Disqualification of Judges, *supra*. This, because the Attorney General's opposing memorandum of law had continually used the word "recusal" to describe the relief I was seeking – notwithstanding he was representing "the state agency with unparalleled expertise on the subject" which knew the difference between "recusal" and "disqualification".

39. This distinction, presumably understood by the Court before its decision in *Criminal Defense Lawyers v. Kaye*, is not consistently reflected in prior Court decisions. Thus, in *Schulz* (Exhibit "E"), the Court, after dismissing Mr. Schulz' disqualification motion on the pretext that it was made on non-statutory grounds, referred his supposed "application seeking recusal" to the individual subject judges -- with each judge thereupon respectively denying "the referred motion for disqualification" (emphasis added).

40. In *Matter of Sims v. Commission on Judicial Conduct*, 62 N.Y.2d 884 (1984) (Exhibit "F-1") and *New York Criminal and Civil Courts Bar Association v. State of New York*, 46 N.Y.2d 730 (1978) (Exhibit "F-2") – each cited in *Schulz* and each involving the Court's referral of disqualification motions to individual subject judges for determination[16] -- the word "recusal" is never used. Indeed, in *New York Criminal and Civil Courts Bar Association* the respective subject judges expressly deny "the referred motion for disqualification" (emphasis added).

41. In any event, what the Court did in *Association of Criminal Defense Lawyers v. Kaye* underscores what it should have done in my case, as likewise in

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[16] In *Sims* (Exhibit "F-1"), the Court's stated reason for dismissing and referring the motion was that "the Court has no jurisdiction to entertain the motion made on nonstatutory grounds". Examination of a copy of the motion, obtained from the Commission, shows that Judge Sims' motion, which was against Judge Jason, was, indeed, "made on nonstatutory grounds". It also revealed that the Commission made no argument as to the Court's "authority to entertain" such motion, confining itself to an assertion by its Administrator, Gerald Stern, that the motion is "totally devoid of merit. The stated grounds for disqualification are absurd".

In *Criminal and Civil Courts Bar Association* (Exhibit "F-2"), the Court stated no reasons for dismissing and referring the motion to Chief Judge Breitel and Judges Jasen and Jones. I was unable to verify if such motion was made on "nonstatutory grounds". This, because it was long ago destroyed pursuant to the Court's records destruction policy, confirmed by Chief Motion Clerk Suzanne Aiardo.

Mr. Schulz'. Rather than dismissing each supposedly non-statutorily-based motion, with a pretense that there was some separate recusal "application" that it was referring, the Court should have stated that it was "properly treat[ing]" each motion as one for "recusal" and referring it to the individual judges.

42. In referring my "application seeking recusal", the Court cites no legal authority (Exhibit "B-1"). This contrasts with *Schulz* (Exhibit "E"), where the Court cited three cases, albeit with an inferential "*see*". None of these cases, *Sims* (Exhibit "F-1"), *New York Criminal and Civil Courts Bar Association* (Exhibit "F-2"), and *Matter of Waltemade*, 37 N.Y.2d [ll][17], in fact explicate why the Court should not itself assess whether a particular set of circumstances create an objective, reasonable appearance that a given judicial member cannot be fair and impartial.

43. That none of the six judges who each respectively denied my motion – Chief Judge Kaye, Judges Smith, Levine, Ciparick, Wesley, and Graffeo – substantiate their denials with any reasons reflects their knowledge that they cannot remotely justify them. Indeed, the most cursory examination of the motion shows these denials to be wholly indefensible. This is also why none of these six judges disclose any of the facts bearing upon the appearance that they cannot be fair and

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[17] *Matter of Waltemade* is cited, albeit with variations, by both *Matter of Sims* (Exhibit "F-1" and *New York Criminal and Civil Courts Bar Association* (Exhibit "F-2"). *Waltemade* (at 11) refers to Chief Judge Loughran's response to a 1947 inquiry regarding judicial disqualification, "In so far as any relationship or interest outside of statutory prohibition is concerned, the practice of the Court is for the individual Judge to decide the question", Frank, Disqualification of Judges, 35 Law and Contemporary Problems 43, 65, (emphasis added).

impartial, such as expressly identified by my motion under the title heading, "The Duty of this Court's Judges to Make Disclosure of Pertinent Facts Bearing upon their Interest and Bias" (at ¶¶116-121, 98).

44. Finally, the fact that each of the six judges individually "consider[ed] my "referred motion for recusal" underscores their knowing participation in fraud. Such "consideration" as each judge gave to the motion before denying recusal would have made obvious to each that the motion was statutorily-based and sought disqualification for interest under Judiciary Law §14. That not a single judge saw fit to dissent from the Court's fraudulent pretext that the motion was made "on nonstatutory grounds" further reinforces the conspiratorial and collusive nature of their deceit. Indeed, any one judge "with a proper sense of duty", could have disqualified himself and, by requisite disclosure, exposed the fraudulent acts of his colleagues.

45. As hereinabove set forth, I am entitled, upon the granting of reargument, to vacatur for fraud of the Court's pretextual dismissal of my statutorily-grounded disqualification motion, and, by reason thereof, to vacatur for lack of jurisdiction of the Court's other substantive rulings. Should the Court not grant the disqualification motion by reason of the proscribed interest of its judges, it must grant disqualification by reason of their bias. Such bias is not merely "apparent", but has been actualized by each of their legally and factually indefensible dispositions herein.

46. Though not statutory-based, the issue of bias is one for evaluation by the Court as a whole, NOT the individual judges. The Court has provided no legal

citation or discussion for its assertion that "the Court is without authority to entertain" a disqualification motion "made on nonstatutory grounds" – and such is seemingly contradicted by its statement in *Criminal Defense Lawyers v. Kaye*, "under our State constitutional system, the Court of Appeals decides the scope of its own power and authority." (Exhibit "D", at 560).

47. Moreover, this Court has recognized that a judge does not have limitless "discretion" in deciding a motion for his recusal. His "discretion" may be "abused" and, if so, will be reversed on appeal -- most glaringly, where it is "shown to affect the result", *Matter of Moreno*, 70 N.Y.2d 407 (1987). Since there is no appellate tribunal before which to bring the "abuse of discretion" of the Court's individual judges in denying recusal – as likewise in failing to make reasonably-requested disclosure – these issues are properly evaluated by the Court, upon reargument, if they do not first disqualify themselves for interest.

The Court's Wilful Refusal to Build Interpretive Caselaw Governing Appeals of Right on the Due Process Ground Enunciated in *Valz v. Sheepshead Bay* by its Fraudulent Dismissal of my Notice of Appeal

48. My May 1, 2002 "Law Day" notice of appeal was expressly predicated on the Court's interpretive decision in *Valz v. Sheepshead Bay*, 249 N.Y. 122, 131-2 (1928) (Exhibit "C-2").

49. The language of *Valz*:

> "Where the question of whether a judgment is the result of due process is the decisive question upon an appeal, the appeal lies to this court as a matter of right"

was quoted on the very first page of my May 1, 2002 "Law Day" jurisdictional statement. The next 20 pages were then devoted to demonstrating that my right of appeal fell squarely within the due process parameters of *Valz*, cited by treatise authorities, because:

> "The threshold and Decisive Issue on this Appeal is the Appellate Division, First Department's Wilful Violation of Petitioner-Appellant's Right to a Fair and Impartial Tribunal and the Manifestation of its Disqualifying Interest and Bias by its Obliteration of all Adjudicative Standards, Including a Decision that is Totally Devoid' of Evidentiary and Legal Support" (jurisdictional statement, at p. 1, emphasis in the original).

50. This was further reiterated by my June 7, 2002 affidavit in response to the Court's *sua sponte* jurisdictional inquiry, which also cited to the 1952 edition of Cohen & Karger's Powers of the New York Court of Appeals, repeated 40 years later in 1992:

> "The precise scope of the doctrine of the *Valz* case is difficult of appraisal, and the case is not readily reconcilable with other decisions of the Court...." (at p. 273)
>
> "[It is] an exceptional ruling [but one that] apparently still has vitality in entirely analogous situations" (at p. 274).

51. My June 7, 2002 affidavit then stated

> "27. Only this Court knows the 'entirely analogous situations' to which it has been recognizing its jurisdiction over appeals of right based on *Valz*, as it has failed to build precedential caselaw on the subject. As a general rule, the Court does not specify the successful arguments or precedential authority on which it accepts review – which are not set forth in the decisions ultimately rendered on the merits. Thus, in *Matter of General Motors Corporation v.*

Rosa, 82 N.Y.2d 183, 188 (1993) (Exhibit "A-1"), Chief Judge Kaye's decision identifies 'The appeal is before this Court as a matter of right on constitutional grounds (*see*, CPLR 5601[b][1])', but not the constitutional grounds on which the appeal was recognized or precedential authorities therefor.

27. Plainly, the papers filed in support of the Notice of Appeal in *Matter of General Motors* would illuminate those grounds and cited precedents. However, the Court has destroyed these original papers, pursuant to the records destruction policy identified at ¶56 of my May 1, 2002 disqualification/disclosure motion.

28. In view of treatise citation to *Valz* for the proposition that 'where the decisive question is whether a judgment is the result of due process, an appeal lies to the Court of appeals as a matter of right', the appellant in *Matter of General Motors* – which was General Motors -- could rightfully have invoked *Valz*. In any event, the Court's jurisdiction over my appeal of right is analogous to *Matter of General Motors*, if not *a fortiori*.

29. Notwithstanding the Court's document destruction policy, I obtained from counsel for *General Motors* his notice of appeal and Jurisdictional Statement, as likewise his simultaneous motion for leave to appeal. Copies are annexed so that the Court can undertake its own comparison (Exhibits "B-1", "B-2" and "C").

30. Even without benefit of General Motors' further papers in response to the Court's *sua sponte* inquiry[fn.11] – which may or may not have cited *Valz* -- these documents give ample indication that the Court's recognition of the appeal of right therein by its summary order, 599 N.Y.S.2d

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fn.11 "According to Ms. Tacy, the Court's computerized records reflect that General Motors responded to the Court's *sua sponte* jurisdictional inquiry with two letters. No response was received from respondents. Respondents did, however, oppose General Motor's motion for leave to appeal, to which the Court accepted General Motors' reply. As yet, I have been unable to obtain these additional documents."

800 (1993) (Exhibit "A-2"), 'Motion for leave to appeal denied upon the ground that an appeal lies as of right', rested on General Motors' contentions that it had been denied 'a fair and impartial hearing' by the administrative law judge, who assumed an advocacy role, and, additionally, that it had been denied 'due process of law' because the Commissioner of the New York State Division of Human Rights, who had been the Division's General Counsel when the case was first prosecuted, thereafter decided it, and, further, that the record was 'devoid' of critical evidence. This is reinforced by examination of the appellant's Brief, which I also obtained.

32. Insofar as General Motors' Jurisdictional Statement asserted:

> 'The Court of Appeals has jurisdiction of this Motion (sic), pursuant to CPLR 5601(b)(1), because the Order and Memorandum of the Appellate Division, Fourth Department, construe and apply the provisions of Article I, Section 6 of the New York State Constitution and the Fifth and Fourteenth Amendments to the United States Constitution' (Exhibit "B-2", p. 3),

the Appellate Division, Fourth Department's appealed-from decision, 187 A.D.2d 960 (1992) (Exhibit "A-3") both as to the Administrative Law Judge's fairness and impartiality, and the applicability of the 'rule of necessity' to the Commissioner, does not more directly construe and apply Article I, Section 6 of the New York State Constitution and the Fifth and Fourteenth Amendments to the United States Constitution than the Appellate Division, First Department's appealed-from decision in my case, both as to Justice Wetzel's fairness and impartiality and its own fairness and impartiality.

33. Judge Kaye's decision in *Matter of General Motors* (Exhibit "A-1") reinforces the transcending constitutional issue upon which my appeal of right is premised:

'The participation of an independent, unbiased adjudicator in the resolution of disputes, is an essential element of due process of law, guaranteed by the Federal and State Constitutions (*see*, US Const, 14th Amend, §1; NY Const, art I, §6; *see also, Matter of 1616 Second Ave. Rest. v. New York State Liq. Auth.*, 75 NY2d 158, 161; Redish and Marshall, *Adjudicatory Independence and the Values of Procedural Due Process*, 95 Yale LJ 455, 475-505 [1986])....' (at p. 188).

34. Indeed, the cited pages from '*Adjudicatory Independence and the Values of Procedural Due Process*' stress that 'None of the core values of due process...can be fulfilled without the participation of an independent adjudicator.' (at p. 476); it is 'a *sine qua non* of procedural due process' (at p. 477), 'there can never be due process without a sufficiently independent adjudicator' (at p. 479), and, further,

'Review of historical evidence demonstrates that the right to an independent adjudicator was considered a crucial element of procedural justice by the common law, by those that established the law of the colonies, and, perhaps most important, by the Framers of the United States Constitution. This historically fundamental role adds significant weight to the conclusion that the right to an independent adjudicator constitutes the floor of due process.' (at p. 479)."

...

36. As my Jurisdictional Statement reflects (at p. 7), I have transmitted to the Court a full copy of the substantiating record. The Court can thereby confirm for itself the truth and accuracy of everything my Jurisdictional Statement describes as to the Appellate Division's annihilation of due process and that the threshold issue, dispositive of all others, is the legal sufficiency of my August 17, 2001 motion for its disqualification and for disclosure – denied by the appellate panel, *without* findings, *without* reasons, *without* legal authority and by falsifying the motion's relief in its December 18, 2001 decision -- which it had *no* jurisdiction

to render by virtue of its disqualification for interest under Judiciary Law §14, *Oakley v. Aspinwall*, 3 N.Y. 547 (1850), *Wilcox v. Royal Arcanum*, 210 N.Y. 370, 377 (1914).

37. Before the Court is put to the burden of examining the record, however, I believe it appropriate to attest, under oath, to the truth and accuracy of the recitation in my Jurisdictional Statement. Likewise, so there is no question but that my 19-page analysis of the Appellate Division decision is a sworn document[fn.12], I hereby especially attest to the truth and accuracy of that analysis. Further, I attest to the truth and accuracy of every document bearing my signature, which is part of the record herein. It is for this reason that I have made this submission by affidavit, not by letter.

38. Because the record herein documentarily establishes that the Commission, aided and abetted by the Attorney General, has been the beneficiary of FIVE fraudulent judicial decisions without which it would NOT have survived, it has been my view that the duty of Attorney General Spitzer and the Commission was to present the Court with sworn statements, particularly as to the truth and accuracy of my 19-page analysis. This is reflected by my May 3, 2002 letter to Mr. Spitzer and my May 8, 2002 letter to the Commission – Exhibits "D-1" and "E" to my accompanying June 7, 2002 reply affidavit. Their answer to these two letters, as to my further May 8, 2002 letter to Ms. Fischer[fn.13] -- has been Ms. Fischer's knowingly false and deceitful May 17, 2002 opposing memorandum and May 28, 2002 letter.

39. Although Ms. Fischer exclusively handled the appeal in the Appellate Division and has direct, first-hand knowledge as a result, her unsworn letter [responding to the Court's *sua sponte* jurisdictional inquiry] does NOT, in any respect, deny or dispute the accuracy of my Jurisdictional

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fn.12 "It is incorporated by reference in my January 17, 2002 affidavit in support of my reargument motion, to which it is annexed as Exhibit "B-1"."

fn.13 "Exhibit "F" to my June 7, 2002 affidavit in reply to Ms. Fischer's opposing memorandum"

> Statement's recitation of the proceedings in the Appellate Division and my declaration that the Appellate Division decision is ''totally devoid' of evidentiary and legal support'. Even as to her penultimate paragraph, identifying that my appeal rests on '[my] alleged deprivation of [my] right to a 'fair tribunal' at the hands of a 'biased' First Department', she makes NO affirmative claim that the Appellate Division was a 'fair tribunal' and that my due process rights were respected. Neither does she deny or dispute that such issue is, as I have contended, 'threshold and decisive'. Similarly, her May 17, 2002 opposing memorandum [to my disqualification/disclosure motion]."

52. Thus, before the Court on my notice of appeal were two questions: (1) whether the Court's decision in *Valz* entitled me to an appeal of right because the threshold and decisive issue was due process; and (2) whether my right of appeal was "analogous...if not *a fortiori*" to that recognized by the Court in taking jurisdiction over the appeal of right in *General Motors v. Rosa*. This was then topped by Chief Judge Kaye's own subsequent decision in *General Motors v. Rosa* reinforcing the due process significance of my appeal's threshold and decisive issue: the violation of my right to a fair and impartial tribunal by the Appellate Division, First Department.

53. This is the background context to the Court's dismissing my notice of appeal "upon the ground that no substantial constitutional question is directly involved" (Exhibit "C-1") – which is its meaningless boilerplate.

54. The Court's knowledge that its invocation of such boilerplate is a fraud is evident from its failure to even identify that my notice of appeal was specifically predicated on the Court's decision in *Valz* (Exhibit "C-2") – let alone to deny or

dispute that *Valz* entitles me to an appeal of right. Likewise, by its failure to deny or dispute that the Court's taking jurisdiction over the appeal in *General Motors v. Rosa* and its subsequent decision therein are corroborative of my right..

55. Finally, in dismissing my notice of appeal "on the Court's own motion" (Exhibit "C-1"), the Court does not deny or dispute that it has the power to *sua sponte* grant leave to appeal. It simply conceals my express request that it do so "in the interest of judicial economy and justice" if, notwithstanding *Valz*, it dismissed my appeal of right (*see* fn. 3 *supra*).

56. Faced with an uncontroverted and incontrovertible record establishing, *inter alia*, that the Commission "has been the beneficiary of FIVE fraudulent judicial decisions without which it would NOT have survived", the Court's failure to *sua sponte* grant leave to appeal, where it *sua sponte* dismissed the notice of appeal on a boilerplate, further manifests its disqualifying interest and actual bias. No other conclusion can be drawn about the Court that is vested with "primary responsibility for the administration of the judicial branch of government"[18].

The Court's Wilful Violation of its Mandatory Disciplinary Responsibilities Under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct by its Fraudulent Denial of my June 17, 2002 Sanctions/Disqualification Motion, Without Reasons

57. My June 17, 2002 motion for sanctions and to disqualify the Attorney General stated, as its overarching proposition,

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[18] *New York Association of Criminal Defense Lawyers v. Kaye*, 95 N.Y.2d 556, 560 (Exhibit "D").

"2. ...no tribunal – and certainly not our state's highest – can permit fraud and deceit in advocacy before it. This is all the more so when the fraud and deceit are practiced by our state's highest legal officer, the State Attorney General, whose transcendent duty to the People of this State, like that of this Court, is to uphold 'the administration of justice'.

3. This Court itself recognized in *Matter of Rowe*, 80 N.Y.2d 336, 340 (1992)[fn.1]:

> 'the courts are charged with the responsibility of insisting that lawyers exercise the highest standards of ethical conduct...Conduct that tends to reflect adversely on the legal profession as a whole and to undermine public confidence in it warrants disciplinary action (*see Matter of Holtzman*, 78 NY2d 184, 191, *cert denied*, __ US __, 112 S Ct 648; *Matter of Nixon*, 53 AD2d 178, 181-182; *cf., Matter of Mitchell*, 40 NY2d 153, 156)'.

4. Such responsibility is reflected by the mandatory nature of §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, entitled, "Disciplinary Responsibilities", whose subsection (2), directly applicable to this motion, states:

> "A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action."

5. Just as my May 1, 2002 motion requires the Court to grapple with the same statutory and rule provisions for judicial disqualification and disclosure as are the substantive content of the appeal[fn.2], this motion requires the Court to

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fn.1 "Such decision was five weeks before *Wieder v. Skala*, 80 N.Y.2d 628, 636 (1992), discussed at ¶47 of my May 1, 2002 disqualification/disclosure motion. *See*, also, fn. 5 of my February 20, 2002 motion to the Appellate Division, First Department for leave to appeal."

fn.2 "*See* my May 1, 2002 disqualification/disclosure motion, ¶¶5-7."

> grapple with the same statutory and rule provisions for attorney conduct and with Executive Law §63.1 as are the appeal's substantive content[fn.3]. It also requires the Court to grapple with a judge's disciplinary responsibilities under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, likewise the substantive content of the appeal.
>
> 6. Here, too, this Court must teach by its own example[fn.4]. Otherwise, the judicial process will continue to be polluted with fraud, misrepresentation, and concealment, *obscuring the material facts of the most straightforward cases and the operative law relative thereto.*" (emphasis in the original)

58. Substantiating my entitlement to the relief requested by my notice of motion (Exhibit "C-3") were my two fact-specific critiques, already before the Court: (1) my 31-page critique of the Attorney General's May 17, 2002 memorandum of law in opposition to my May 1, 2002 disqualification/disclosure motion[19]; and (2) my 19-page affidavit critique of the Attorney General's May 28, 2002 letter in response to the Court's *sua sponte* jurisdictional inquiry[20]. These presented line-by-line analyses showing that the Attorney General's submissions were:

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fn.3 "These issues of transcending "public importance" are particularized by my February 20, 2002 motion for leave to appeal, ¶¶11-13, 15(b), 16-17."

fn.4 "I again call the Court's attention to the superlative, must-read article cited at fn. 4 of my May 1, 2002 disqualification/disclosure motion: "*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*", John M. Levy, 22 Santa Clara Law Review, 95-116 (1982)."

19 Annexed as Exhibit "C" to my June 7, 2002 reply affidavit to the Attorney General's opposing memorandum of law on disqualification/disclosure.

> "*from beginning to end*, based on knowing and deliberate falsification, distortion, and concealment of the material facts and law. In sum, both are demonstrated 'frauds on the court', triggering this Court's disciplinary responsibilities under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct and related obligations under DR 1-103(A) of New York's Disciplinary Rules of the Code of Professional Responsibility, 'Disclosure of Information to Authorities', *Wieder v. Skala*, 80 N.Y.2d 628, 636 (1992)." (emphasis in the original)

59. Also substantiating my entitlement to the requested relief (Exhibit "C-3") was my correspondence with Attorney General Spitzer, his supervisory staff, as well as with the Commission, establishing their knowledge of, and consent to, the fraudulent submissions herein of Assistant Solicitor General Fischer by their refusal to take corrective steps, upon notice of their obligation to do so. This, in the wake of Attorney General Spitzer's "*Crisis of Accountability*" speech[21] at the Court of Appeals' "Law Day" celebration (affidavit, ¶¶7-8, 10).

60. My affidavit pointed out (¶11) that the Attorney General's fraudulent, deceitful advocacy on the Commission's behalf was a replay of his advocacy in the lower courts – which he had gotten away with. The Appellate Division, First Department having denied my fully-documented August 17, 2001 sanctions motion against the Attorney General and Commission "*without* reasons, *without* findings, and by falsifying the relief sought", by its December 18, 2001 decision,

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[20] This is my June 7, 2002 affidavit in response to the Court's *sua sponte* jurisdictional inquiry.

the subject of my appeal to the Court; Justice Wetzel having denied my fully-documented July 28, 1999 omnibus motion for sanctions against the Attorney General and Commission, "*without reasons* and *without findings*" by its January 31, 2000 decision, the subject of my appeal to the Appellate Division.

61. I further identified (¶¶15-19) that notwithstanding each of these prior sanctions motions had also sought to disqualify the Attorney General from representing the Commission for violation of Executive Law §63.1 and multiple conflicts of interest, the Attorney General had never claimed that his representation of the Commission was in "the interests of the state", as required by the plain language of Executive Law §63.1 and had never denied or disputed that "there is NO state interest served by fraud and that [his] fraudulent defense tactics...establish[ed] the absence of *any* legitimate defense in which the state would have an 'interest'." Nor had he ever denied or disputed the myriad of conflicts of interest, afflicting him and his staff, particularized by my motion papers, including his relationship with the Commission's Chairman, Election Law lawyer, Henry T. Berger, who had helped secure him his "razor-margin" 1998 electoral victory as Attorney General.

62. My affidavit therefore identified (¶¶20-21, 24) that I would be entitled to the Attorney General's disqualification, *as a matter of law*, on this motion, unless the Attorney General came forward with affidavits responsive to the

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[21] Mr. Spitzer's "*Crisis of Accountability*" speech is annexed to my June 7, 2002 reply affidavit to the Attorney General's opposing memorandum of law on disqualification/disclosure

uncontested conflict of interest issues and with documentation substantiating the Commission's entitlement to his representation. Likewise, I stated that his response to my line-by-line critiques of his fraudulent submissions should be "with commensurate line-by-line precision", including "a refutation of the accuracy of my analyses of the FIVE fraudulent judicial decisions of which the Commission has been the beneficiary."

63. My July 13, 2002 reply affidavit, thereafter, highlighted the state of the record on this motion. Particularizing Ms. Fischer's continued defense misconduct in opposition to the motion, including the knowledge and consent thereto of Attorney General Spitzer, *personally*, my reply affidavit demonstrated that "my showing of entitlement to the Attorney General's disqualification for violation of Executive Law §63.1 [was] entirely unopposed." (¶20) "Likewise, entirely unopposed [was] my showing of entitlement to the Attorney General's disqualification for conflict of interest rules." (¶21). Further, the accuracy of my two critiques, "the dispositive documents on this motion" was NOT denied or disputed "in any respect" (¶26) (emphases in the original).

64. It is against this record, wherein my entitlement to the granting of my June 17, 2002 motion is, *as a matter of law*, that the Court has denied the motion, *without* reasons (Exhibit "C-1"). Indeed, no reasons can justify the Court's wilful violation of its mandatory disciplinary responsibilities under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct and related obligations under

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(Exhibit "D-2").

DR 1-103(A) of New York's Code of Professional Responsibility to take appropriate action in the face of the evidentiarily-established litigation fraud by New York's highest legal officer – Attorney General Spitzer *personally* -- on behalf of the state agency charged with enforcing judicial standards, where as the Court knows, the consequences are so profoundly damaging to the People of this State.

65. Such "protectionism" of Mr. Spitzer and the Commission, demonstrated as well from the Court's other dispositions herein, is the product of the Court's self-interest in concealing the evidence of systemic judicial corruption that the record herein exposes – including at the Court of Appeals level, where Chief Judge Kaye is "front and center", directly complicitous. That is why the Court has failed to even make the requested "referral of the record herein to the New York State Institute on Professionalism in the Law for study and recommendations for reform", expressly requested by my June 17, 2002 motion (Exhibit "C-3"), as likewise

> "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",

expressly requested by my "Law Day" disqualification/disclosure motion (Exhibit "B-2").

WHEREFORE, the relief requested in the accompanying notice of motion must be granted.

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Sworn to before me this
15th day of October 2002

Notary Public

BETH AVERY
Notary Public - State of New York
NO. 02AVA5056824
Qualified in Westchester County
My Commission Expires 3/11/06