COURT OF APPEALS
STATE OF NEW YORK

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

Petitioner-Appellant,

NOTICE OF MOTION FOR LEAVE TO APPEAL

-against-

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

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

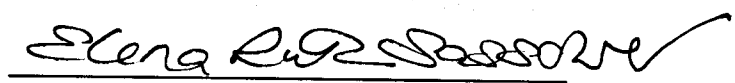
Pursuant to 22 NYCRR §500.11(d)(1)(i)

MOTION BY:	Petitioner-Appellant ELENA RUTH SASSOWER
DATE & PLACE RETURNABLE:	Tuesday, November 12, 2002, Court of Appeals Hall, 20 Eagle Street, Albany, New York 12207
RELIEF REQUESTED:	(1) An order, pursuant to §5602(a)(1)(i), granting leave to appeal from the decision/order herein of the Appellate Division of the Supreme Court of the State of New York, First Department, entered December 18, 2001, in the event the Court denies Petitioner-Appellant's simultaneously-returnable October 15, 2002 motion for reargument, vacatur for fraud and lack of jurisdiction, disclosure & other relief;

(2) Such other & 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 1-103A 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, as well as referral of the record herein to the New York State Institute on Professionalism in the Law for study and recommendations for reform.

Dated: October 24, 2002
White Plains, New York

Yours, etc.



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22 NYCRR §500.11(d)(1)(ii)
Question Presented for Review

Whether this Court recognizes a supervisory responsibility to accept judicial review of an appeal against the New York State Commission on Judicial Conduct, sued for corruption, where the record before it[1] establishes, *prima facie*, that the Commission has been the beneficiary of five fraudulent judicial decisions[2] without which it would not have survived three separate legal challenges -- with four of these decisions, two of them appellate, contravening this Court's own decision in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980), *to wit*:

> "...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subd. 1)..." (emphasis added).

22 NYCRR §500.11(d)(1)(iii)
Procedural History

Timeliness Chain

On January 18, 2002, Petitioner-Appellant was served, by mail, with the Appellate Division, First Department's December 18, 2001 decision/order (Exhibit "A-1").

On February 20, 2002, Petitioner-Appellant served and filed her motion to the Appellate Division, First Department for leave to appeal to the Court of Appeals.

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[1] The record, in full, was filed with the Court on May 1, 2002 "Law Day", in conjunction with Petitioner-Appellant's May 1, 2002 jurisdictional statement in support of her appeal of right and her May 1, 2002 motion for disqualification of the Court's judges and for disclosure.

[2] Excluded from these five decisions are the Court's two September 12, 2002 decision/orders (Exhibits "B-1", "B-2"), the subject of Petitioner-Appellant's separate reargument motion to vacate for fraud and lack of jurisdiction, etc.

On April 24, 2002, Petitioner-Appellant was served, by mail, with the Appellate Division, First Department's March 26, 2002 order, denying, *without* reasons, her February 20, 2002 motion for leave to appeal, as well as her separate January 17, 2002 motion for reargument (Exhibit "A-2").

On May 1, 2002 "Law Day", Petitioner-Appellant served her notice of appeal to the Court of Appeals and filed her jurisdictional statement pursuant to 22 NYCRR §500.2.

On September 19, 2002, Petitioner-Appellant was served, by mail, with the Court of Appeals' September 12, 2002 decision/order dismissing her notice of appeal (Exhibit "B-2").

On October 24, 2002, Petitioner-Appellant served this motion for leave to appeal.

Prior Proceedings Before this Court

On May 1, 2002 "Law Day", simultaneous with Petitioner-Appellant's filing of her jurisdictional statement, she filed a motion to disqualify the Court's judges for interest, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, and for bias, pursuant to §100.3E of the Chief Administrator's Rules, as well as for disclosure, pursuant to §100.3F of the Chief Administrator's Rules (Mo. No. 581).

On June 17, 2002, Petitioner-Appellant filed a motion to strike the Attorney General's memorandum of law in opposition to her disqualification/disclosure motion and his letter-response to the Court's *sua sponte* jurisdictional inquiry as "fraud[s] on the

court", for sanctions against the Attorney General and Commission, their disciplinary and criminal referral, and to disqualify the Attorney General from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules (Mo No. 719).

On September 12, 2002, the Court issued two decision/orders. In one, the Court dismissed and denied Petitioner-Appellant's disqualification/disclosure motion (Exhibit B-1"). In the other, the Court combined its dismissal of Petitioner-Appellant's notice of appeal with its denial of her motion to strike, etc. (Exhibit "B-2").

On October 15, 2002, Petitioner-Appellant served a motion to reargue both September 12, 2002 decision/orders, to vacate them for fraud and lack of jurisdiction, for disclosure by the Court's judges, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, and other relief, returnable on November 12, 2002, simultaneous with this motion.

22 NYCRR §500.11(d)(iv)
Jurisdiction

The Court has jurisdiction, pursuant to CPLR §5602(a)(1)(i), in a proceeding originating in the Supreme Court from an order of the Appellate Division which finally determines the proceeding and which is not appealable as of right.

22 NYCRR §500.11(d)(v)
Why the Question Presented Merits Review

This appeal presents the Court with five judicial decisions arising from three separate Article 78 proceedings against the Commission, all involving its mandatory duty under Judiciary Law §44.1 to investigate *facially-meritorious* judicial misconduct complaints[3]. No provision is more important to a complainant of judicial misconduct than Judiciary Law §44.1.

The direct subject of the appeal is the Appellate Division, First Department's December 18, 2001 decision (Exhibit "A-1"). That decision "affirmed" the January 31, 2000 decision of Acting Supreme Court Justice William Wetzel (Exhibit "C"), whose dismissal of Petitioner-Appellant's verified petition (at pp. 4-5) was exclusively based on the July 13, 1995 decision of Supreme Court Justice Herman Cahn in *Doris L. Sassower v. Commission* (NY Co. #95-109141) (Exhibit "D") and the September 30, 1999 decision of Supreme Court Justice Edward Lehner in *Michael Mantell v. Commission* (NY Co. #99-108655) (Exhibit "E"). In "affirming", the Appellate Division *directly* cited only a single decision: its own November 16, 2000 decision in *Mantell v. Commission* (Exhibit "F"), "affirming" Justice Lehner's decision.

That these five decisions are judicial frauds[4], falsifying both the material facts AND applicable law in each proceeding so as to "protect" a corrupted Commission, is

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[3] Judiciary Law §44.1 is NOT the only issue presented by this Article 78 proceeding, whose verified petition contains six claims for relief addressed to a variety of statutory and rule provisions [A-37-45].

[4] Two of these five decisions are unpublished: Justice Wetzel's January 31, 2000 decision and Justice Cahn's July 13, 1995 decision.

readily verifiable from the record herein. Such record *physically* incorporates a copy of the record in *Doris L. Sassower v. Commission* and in *Michael Mantell v. Commission* and reveals an identical *modus operandi* in all three Article 78 proceedings: the Commission had NO legitimate defense; was defended with litigation misconduct by the State Attorney General; and was rewarded by fraudulent judicial decisions without which it would not have survived.

As particularized in Petitioner-Appellant's May 1, 2002 disqualification/disclosure motion (at ¶¶70-88), more than 2-1/2 years ago, on March 3, 2000, when the Commission was the beneficiary of three fraudulent judicial decisions – none appellate -- Petitioner-Appellant delivered a copy of the 3-in-1 record herein to Chief Judge Kaye's New York office. This, in substantiation of Petitioner-Appellant's March 3, 2000 letter for the "Designation of a Special Inspector General to Investigate the Corruption of the New York State Commission on Judicial Conduct" (Exhibit "G"). The nine-page letter, addressed to Chief Judge Kaye in her capacity as Chief Judge of the State of New York, described the situation as follows:

> "The most salient and frightening fact about the Commission's corruption... is that in three specific Article 78 proceedings over the past five years, the Commission – whose duty it is to uphold judicial standards – has been the beneficiary of fraudulent judicial decisions of Supreme Court/New York County, without which it would not have survived the challenges brought by complainants whose *facially-meritorious* judicial misconduct complaints the Commission had dismissed *without investigation.* Indeed, the Commission had NO legitimate defense to *any* of these three proceedings, relying on litigation fraud by 'the People's lawyer', the State Attorney General, who

represented the Commission in flagrant violation of Executive Law §63.1." (p. 2, emphasis in the original).

The letter stated (pp. 4-5) that the fraudulence of the decisions of Justices Cahn and Lehner had been set forth in the record before Justice Wetzel by "fact-specific, legally-supported analyses" and that notwithstanding neither the Commission nor the Attorney General had denied or disputed the accuracy of these analyses, Justice Wetzel had dismissed the verified petition herein based on the decisions of Justices Cahn and Lehner. The letter further stated (p. 5) that an enclosed February 23, 2000 letter to Governor Pataki presented a "fact-specific, legally-supported analysis of Justice Wetzel's fraudulent judicial decision", as well as of the administrative misconduct of Administrative Judge Stephen Crane, including his "steering" the proceeding to Justice Wetzel in violation of random assignment rules.[5]

The 3-page analysis of Justice Cahn's decision (Exhibit "H") – contained in the record of this proceeding [A-52-54] -- detailed the hoax Justice Cahn had perpetrated in *Doris L. Sassower v. Commission.* To cover-up for the fact that the Commission had subverted its mandatory duty to investigate *facially-meritorious* complaints under Judiciary Law §44.1 by an incompatible self-promulgated rule, 22 NYCRR §7000.3, which therefore had to be stricken, Justice Cahn concocted his own *sua sponte* argument, falsely attributing it to the Commission (Exhibit "D", p. 4; [A-192]). By such argument, he pretended to reconcile the rule and statute by claiming that the term "initial review and inquiry", referred

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[5] Petitioner-Appellant's 35-page letter to the Governor is annexed as Exhibit "F" to her August 17, 2001 motion in the Appellate Division. It is not included herein not so much because of its length, but because its detailed recitation of Justice Wetzel's fraudulent decision, as likewise of Administrative Judge Crane's administrative misconduct, is embodied in Petitioner-Appellant's appellate brief. Such appellate brief provides a full analysis of Justice Wetzel's decision, demonstrating that "in *every* material respect, [it] falsifies, fabricates, and distorts the record of the proceeding" [Br. 4].

to in §7000.3, was really part of "investigation". This deceit was resoundingly exposed by the analysis as follows (Exhibit "H", p. 2; [A-53]):

> "The definitions section of §7000.1..., which [Justice Cahn] [him]self quotes in [his] decision[fn. 3], belies [his] claim that 'initial review and inquiry' is subsumed within 'investigation'. Such definitions section expressly distinguishes 'initial review and inquiry' from 'investigation'[fn. 4].
>
> Even more importantly, [Justice Cahn's] aforesaid sua sponte argument, which [he] pretends to be the Commission's 'correct[] interpret[ation]' of the statute and constitution, does NOTHING to reconcile §7000.3, as written, with Judiciary Law §44.1 []. This is because §7000.3 [] uses the discretionary 'may' language in relation to both 'initial review and inquiry' and 'investigation' – THUS MANDATING NEITHER. Additionally, as written, §7000.3 fixes NO objective standard by which the Commission is required to do anything with a complaint – be it 'review and inquiry' or 'investigation'. This contrasts irreconcilably with Judiciary Law §44.1, which uses the mandatory 'shall' for investigation of complaints not determined by the Commission to facially lack merit."[6] (emphasis in the original).

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fn. 3 "[Justice Cahn's] decision does not quote the entire definition of 'investigation', set forth in §7000.1(j). Omitted from the decision is the specification of what 'investigation' includes. The omitted text reads as follows:

> 'An investigation includes the examination of witnesses under oath or affirmation, requiring the production of books, records, documents or other evidence that the commission or its staff may deem relevant or material to an investigation, and the examination under oath or affirmation of the judge involved before the commission or any of its members."

fn. 4 "Accordingly, the 'initial review and inquiry' is conducted by the 'commission staff' and is

> 'intended to aid the commission in determining whether or not to authorize an investigation.' (emphases added)."

6 By way of supplement to this 3-page analysis: Justice Cahn's decision states (Exhibit "D", p. 5; [A-193]: "The Legislature has given the Commission broad discretion in exercising its powers and carrying out its duties." For this proposition the decision cites, albeit with a prefatory "*see*", *New York State Commission on Judicial Conduct v. Doe* as being at 61 NY2d 557. This is incorrect. The case at that citation is *Washington Post Co. v. NYS Insurance Dept.* While this miscitation may be accidental, its

The 13-page analysis of Justice Lehner's decision (Exhibit "I") – contained in the record of this proceeding [A-321-334] -- detailed the hoax Justice Lehner had perpetrated in *Michael Mantell v. Commission*. To conceal the fact that Judiciary Law §44.1 requires the Commission to investigate *facially-meritorious* complaints, Justice Lehner, much as Justice Cahn before him, advanced his own *sua sponte* argument, not advanced by the Commission (Exhibit "E", pp. 3-4; [A-301-302]). As particularized by the analysis (Exhibit "I", pp. 5-9; [A-326-330]), under the subheading,

> "*The Decision's Claim 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*"

Justice Lehner pretended:

> "...that because the Commission has discretion to investigate complaints filed by its administrator, it also has discretion to investigate complaints received from outside sources, such as Mr. Mantell.

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consequence is to impede comparison between *Doe*, whose correct citation is 61 NY2d 56, and the proposition beside which Justice Cahn places it. Justice Cahn would have reason to thwart comparison since *Doe*'s use of the adjective "broad" is NOT in the context of "discretion". Rather, *Doe* states (at pp. 59-60): "Recognizing the importance of maintaining the quality of our judiciary, the Legislature has provided the commission with "broad investigatory and enforcement powers"; and, further, that the Commission has "broad power" to subpoena documents in furtherance of its investigations. *Doe* cites *Nicholson* and it is from *Nicholson* (at pp. 610-611) that the phrasing "broad investigatory and enforcement powers" and "broad power" would appear to be derived.

A further supplement – reflected by ¶NINTH of the verified petition herein [A-25] -- is that Justice Cahn's decision falsely asserts (Exhibit "D", p. 4; [A-192]) "petitioner contends that the Commission wrongfully determined that her particular complaints lack facial merit". In fact, the complaint in *Doris L. Sassower v. Commission* stated the exact opposite: that the Commission had "summarily dismissed each and every one of Petitioner's...complaints, without making any determination that any given complaint was 'on its face lacking in merit' or any other findings" (¶TWENTY-FOURTH).

To advance this *sua sponte* argument, Justice Lehner conceals that a different 'governing law' applies to administrator's complaints... Justice Lehner's knowledge of these distinct statutory provisions and the different phraseology may be presumed from his excerpting of *New York State Commission on Judicial Conduct v. Doe*, 61 NY2d 56 (1984) twice in his decision (p. 2, 3). His second excerpt, that 'filing of a complaint... triggers the commission's authority to commence an investigation into the alleged proprieties' is in two respects selective. Firstly, it omits the immediately preceding sentence of that Court of Appeals decision, expressly distinguishing Judiciary Law §44.1 as pertaining to a complaint received by the Commission 'from a citizen' and Judiciary Law §44.2 as pertaining to 'a complaint on its own motion', filed by its administrator. Secondly, it omits the words from *Commission v. Doe* immediately preceding 'filing of a complaint', *to wit*, "it is the receipt of" – which relate to a complaint under Judiciary Law §44.1. Having omitted this phraseology for a complaint under Judiciary Law §44.1, Justice Lehner is able to make a statement that is true for Judiciary Law §44.2, but not §44.1 that 'it does not require an investigation to take place.' This would have been obvious had Justice Lehner identified subdivisions (1) and (2) of Judiciary Law §44 – and compared them.

A comparison of Judiciary Law §§44.1 and 44.2 would have readily disclosed that these are two very different 'governing laws': Judiciary Law §44.2 using the discretionary 'may' for investigation of an administrator's complaint, in contrast to Judiciary Law §44.1, using the directive 'shall' for investigation of a complaint from an outside source, absent a determination by the Commission that the complaint on its face lacks merit.

...

That Judiciary Law §44.1 imposes a mandatory investigative duty upon the Commission is clear from *Matter of Nicholson*, 50 NY2d 597 (1980) – reference to which appears in the excerpt from *Commission v. Doe, supra*, appearing at page 2 of the decision. In *Nicholson*, the Court of Appeals stated:

> '... the commission *must* investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subd. 1)... ' at 346-7 (emphasis added)

> Such definitive interpretation of the 'language' of Judiciary Law §44.1 by our state's highest court was based on briefs filed by the Commission. Indeed, instead of pursuing his own *sua sponte* excursion into the Commission's discretion to take no action on an administrator's complaint, Justice Lehner could more profitably have devoted himself to a *sua sponte* exploration of the *Nicholson* briefs so as to verify how the Commission interpreted the 'shall' language of Judiciary Law §44.1, upon which the Court of Appeals based its own 'must' interpretation. In view of the Commission's failure to interpret Judiciary Law §44.1 in the dismissal 'cross-motion' of its attorney, the Commission's interpretation in *Nicholson* was particularly relevant.
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> Not surprisingly, the Commission's brief in *Nicholson* took the position that 'shall' requires an investigation:
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> > 'Unless the Commission determines that the complaint on its face lacks merit, the law requires that the Commission 'shall conduct an investigation of the complaint' (Judiciary Law §44[1])...' (at p. 38, emphasis in the original)."

Obviously, since Justice Wetzel predicated his dismissal of the verified petition herein on the decisions of Justice Cahn and Lehner exclusively (Exhibit "C", pp. 4-5 [A-12-13]), the analyses of these two decisions, uncontested in the record before him, sufficed to expose for Chief Judge Kaye the fraudulence of such dismissal[7].

The Chief Judge responded by a four-sentence March 27, 2000 letter from counsel to the Unified Court System, Michael Colodner (Exhibit "J"). Without denying or disputing the accuracy of Petitioner-Appellant's analyses demonstrating the fraudulence of three judicial decisions of which the Commission was the beneficiary, substantiated by the

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[7] Exposing the fraudulence of the other aspects of Justice Wetzel's decision: his denial of Petitioner-Appellant's December 2, 1999 letter-application for his disqualification for interest and bias and for disclosure and his *sua sponte*, without-notice imposition of a filing injunction against Petitioner-Appellant and the NON-party Center for Judicial Accountability, Inc. (CJA) was the fact-specific recitation in

transmitted 3-in-1 record, Mr. Colodner pretended that Petitioner-Appellant's letter to the Chief Judge was about nothing more than "the court's handling of [her] lawsuit against the State Commission on Judicial Conduct". As to this, Mr. Colodner stated – on behalf of Chief Judge Kaye -- an indicated recipient thereof:

> "The Chief Judge has no jurisdiction to investigate the State Commission on Judicial Conduct, which is an independent statutory body created by the Legislature. Nor does the Chief Judge have the power in her administrative capacity to review judicial determinations of the judges of the court system. Should you object to the handling of your case in the Supreme Court, your proper avenue of redress is by appeal of that decision to an appellate court." (emphasis added).

This false pretense was exposed by Petitioner-Appellant's subsequent April 18, 2000 and June 30, 2000 letters to Chief Judge Kaye[8] – to which neither she, Mr. Colodner, nor anyone on her behalf responded – resulting in the *facially-meritorious* August 3, 2000 complaint that Petitioner-Appellant filed with the Commission against the Chief Judge for

> "her wilful refusal to discharge the official duties imposed upon even the lowliest judge under §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct pertaining to administrative and disciplinary responsibilities, as well as her wilful refusal to discharge her supervisory duties as 'chief judicial officer' of the Unified Court System (NYS Constitution, Article VI, §28(a); Judiciary Law §210.1" (p. 2).[9]

Petitioner-Appellant's February 23, 2000 letter to the Governor – foreshadowing her presentation in her appellant's brief (*see*, *inter alia*, pp. 42-52 and 61-68).

[8] These two letters are annexed to Petitioner-Appellant's August 17, 2001 motion in the Appellate Division as Exhibits "L-2"and "N".

[9] The complaint, which is Exhibit "O-1" to Petitioner-Appellant's August 17, 2001 motion in the Appellate Division, was also based (pp. 6-7) on the Chief Judge's "wilful and deliberate violation of §100.2 of the Chief Administrator's Rules" in "allow[ing] social, political, or other relationships to influence" her "judicial conduct or judgment".

Such refusal of the highest levels of New York's judicial administration to respond to the documentary proof of Supreme Court judges "protecting" a corrupt Commission by fraudulent judicial decisions and tampering with random judicial assignment burdened Petitioner-Appellant with the necessity of undertaking an arduous 2-1/2 year appellate odyssey to vindicate the public's rights, as well as her own – leading to this motion.

Petitioner-Appellant's appellant's brief, filed in the Appellate Division, First Department on December 22, 2000, was drawn from the factual recitation in her February 23, 2000 letter to the Governor. NONE of her recited facts were denied or disputed by the Attorney General's March 22, 2001 respondent's brief, submitted on the Commission's behalf. NOR did the respondent's brief deny or dispute the accuracy of the analyses of Justice Cahn and Lehner's decisions, pivotally presented in the appellant's brief (at pp. 12-13, 24, 33, 54-61). Nonetheless, the Attorney General argued that Justice Wetzel's decision should be affirmed in its entirety. Further, he argued that Petitioner-Appellant had no standing to sue the Commission, citing to the Appellate Division's "affirmance" in *Mantell* (Exhibit "F"). This, with knowledge that the *Mantell* "affirmance" was a fraud – not only because Petitioner-Appellant had placed her 13-page analysis of Justice Lehner's decision before the Appellate Division by formal motion in the *Mantell* appeal[10], with the Attorney General not denying or disputing its accuracy -- but because the Appellate Division's one-sentence devoted to standing, *to wit*,

[10] The express purpose of Petitioner-Appellant's motion -- denied, *without reasons*, by the fourth and final sentence of the Appellate Division's *Mantell* decision (Exhibit "F") -- was "to protect the Court from the fraud being perpetrated on it and the *pro* se Petitioner, Michael Mantell" by the Attorney General and Commission.

> "Petitioner [Mantell] lacks standing to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct" (emphasis added),

was both unsupported by ANY law and factually false. Indeed, Petitioner-Appellant had pointed this out to the Attorney General and Commission, nearly four months before submission of their respondent's brief. This, by a 1-page analysis of the *Mantell* appellate decision, embodied in a notice to them of their duty to take steps to vacate it for fraud (Exhibit "K"). On the standing issue, Petitioner-Appellant's analysis had stated:

> "Tellingly, the Appellate Division not only provides NO law for its holding on lack of standing, but distorts the factual record to obscure that Mr. Mantell is seeking investigation of HIS facially-meritorious complaint pursuant to Judiciary Law §44.1." (emphasis in the original).

Yet, four months later, the respondent's brief cited the *Mantell* appellate decision for the proposition that Petitioner-Appellant lacked standing as to her OWN complaint.

This was not an isolated deceit. Rather, the respondent's brief, "from beginning to end, and in virtually every line, [was] permeated with falsification, misrepresentation, and omission of material facts and law" – and knowingly and deliberately so[11]. This was demonstrated by a 66-page critique that Petitioner-Appellant provided to the Attorney General and Commission on May 3, 2001, so that they could withdraw the respondent's brief, as was their ethical duty. Such critique highlighted (at pp. 3-11) that the respondent's brief had not only wholly omitted any mention of the most pivotal documents on the appeal,

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[11] This is the same respondent's brief that the Attorney General physically put before this Court as part of his May 17, 2002 memorandum of law in opposition to Petitioner-Appellant's disqualification/disclosure motion, purporting that the "facts" of this case "are developed more fully" therein [*See* Petitioner-Appellant's June 7, 2002 reply affidavit: Exhibit "C", pp. 7-8]

to wit, Petitioner-Appellant's analyses of the decisions of Justices Cahn and Lehner, but had been crafted from the judicial deceits in those decisions.

The Attorney General and Commission did not deny or dispute the critique's accuracy in any respect – including as to the accurate and pivotal nature of Petitioner-Appellant's analyses of the decisions of Justices Cahn and Lehner, and, likewise of her analysis of the *Mantell* appellate decision. Yet, the Attorney General refused to withdraw the fraudulent respondent's brief. As a consequence, her 66-page critique became the centerpiece of the second branch of Petitioner-Appellant's August 17, 2001 motion in the Appellate Division to strike the respondent's brief as a "fraud on the court", to impose sanctions, to refer the Attorney General and Commission for disciplinary and criminal investigation and prosecution, and to disqualify the Attorney General from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules.[12]

Notwithstanding the threshold nature of the second branch of the August 17, 2001 motion and, even more so, of the motion's first branch: to disqualify the Appellate Division, First Department for interest and bias, to transfer the appeal to the Appellate Division, Fourth Department, and for disclosure – and the fact that the motion was fully-submitted five weeks before oral argument -- the Appellate Division, *sua sponte and without notice*, adjourned the motion's October 15, 2001 return date to the November 21, 2001 oral argument. It then denied, *without reasons*, Petitioner-Appellant's interim relief applications for the motion to

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[12] The Attorney General continued his litigation misconduct in opposing the motion. This was particularized by a 57-page September 17, 2001 critique which Petitioner-Appellant provided to the Attorney General and Commission so that they would withdraw their fraudulent opposition papers, as was their ethical duty. Although they did not deny or dispute the accuracy of this second critique in any respect, they nonetheless refused to withdraw their opposition. Petitioner-Appellant thereupon made the second critique the centerpiece of her October 15, 2001 reply affidavit in further support of the August 17, 2001 motion and for additional sanctions.

be adjudicated BEFORE oral argument.[13] The Appellate Division's December 18, 2001 "affirmance" (Exhibit "A-1") thereafter concealed this -- not only denying the motion, *without reasons*, in the last of its seven-sentences, but falsely identifying the motion as "seeking leave to adjourn oral argument of this appeal and for other related relief".

The fraudulence of this "affirmance", manifesting the Appellate Division's self-interest and bias, was particularized by Petitioner-Appellant's January 17, 2002 reargument motion. Annexed thereto as Exhibit "B-1" was a line-by-line 19-page analysis of each of the decision's seven sentences. This analysis (Exhibit "L-1") was also Petitioner-Appellant's memorandum-notice to the Attorney General and Commission of their "ethical and professional duty to take steps to vacate for fraud" the "affirmance" decision.[14]

Petitioner-Appellant's January 17, 2002 affidavit on reargument blended the presentation of her 19-page analysis into a powerful indictment:

> "7. As highlighted by my memorandum-notice (Exhibit "B-1", pp. 14-15), the bald pretense in the decision's second sentence (Exhibit "A-2") that the Commission has discretion 'whether to investigate a complaint', for which it cites, *without discussion*, the Court's own appellate decision in *Michael Mantell v. Commission* is contrary to
>
> > 'HIGHER AUTHORITY: the New York Court of Appeals, whose decision in *Matter of Nicholson*, 50 NY2d 597, 610-611 (1980), long ago interpreted that the

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[13] The decisions on these interim relief applications are annexed to Petitioner-Appellant's May 1, 2002 jurisdictional statement as Exhibits "D-1" and "D-2".

[14] As reflected at fn. 2 therein, the memorandum-notice was expressly filed with the Commission, pursuant to Judiciary Law §44.1, as a *facially-meritorious* judicial misconduct complaint against the members of the appellate panel, with a request that the Commission "advise as to what steps it will take to ensure that [the complaint] is fairly and impartially determined". The Commission did not so advise when, by a February 27, 2002 letter, its Clerk informed Petitioner-Appellant, "the Commission concluded that there was insufficient indication of judicial misconduct to justify judicial discipline." (Exhibit "L-2").

Commission has NO discretion but to investigate *facially-meritorious* complaints pursuant to Judiciary Law §44.1:

> '...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subd 1), *Matter of Nicholson*, 50 NY2d 597, 610-611 (emphasis added)."

8. This 'HIGHER AUTHORITY' was prominently in the record before the Court. Likewise, the authoritative assertion of the Commission's *own* Administrator and Counsel, Gerald Stern, that Judiciary Law §44.1 'REQUIRES the Commission to investigate complaints that are valid on their face' – made in his published essay, '*Judicial Independence is Alive and Well*', in the New York Law Journal, 8/20/98, [A-59-60, emphasis added], which was part of my Verified Petition [A-29][fn.3]

9. My memorandum-notice also details (Exhibit "B-1", pp. 10-12, 14-15) that the *Mantell* appellate decision -- the ONLY case upon which this Court's decision *directly* rests -- is a judicial fraud, proven as such by my 1-page analysis of it, the accuracy of which was *undisputed* in the record before the Court.

10. This Court's decision (Exhibit "A") makes NO findings as to the accuracy of my *undisputed* 1-page analysis of the *Mantell* appellate decision[fn.4]. NOR does it make any findings as to the accuracy of my *undisputed* 13-page analysis of Justice Lehner's underlying decision in *Mantell*, encompassed by that 1-page analysis. This *undisputed* 13-page analysis [A-321-334] particularizes the fraudulence of Justice Lehner's decision [A-

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[fn.3] "As pointed out at ¶34 of my October 15, 2001 reply affidavit in support of my August 17th motion, it was Mr. Stern's advocacy on behalf of the Commission that resulted in the Court of Appeals' *Nicholson* decision. Indeed, his Brief in the Court of Appeals and, prior thereto, his Brief in this Court (the *Nicholson* case reaching the Court of Appeals *via* the Appellate Division, First Department) each emphasized:

> 'Unless the Commission determines that the complaint on its face lacks merit, the law requires that the Commission 'shall conduct an investigation of the complaint' (Jud. Law §44 [1]...' (emphasis in Mr. Stern's original Briefs)."

[fn.4] "The 1-page analysis of the *Mantell* appellate decision is Exhibit "R" to my August 17th motion."

299-307], including by discussion of the Court of Appeals' decision in *Nicholson* as to the Commission's mandatory investigative duty under Judiciary Law §44.1 [A-329].

11. Similarly, this Court's decision makes NO findings as to the accuracy of my *undisputed* 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-52-54], particularizing the fraudulence of that decision [A-189-194] on which Justice Wetzel relied in dismissing my Verified Petition [A-12]. Such *undisputed* 3-page analysis, part of my Verified Petition [A-26, 27], cites Point II of Doris Sassower's memorandum of law in her lawsuit[fn.5], with its "legislative history and caselaw" [A-52]. Among that caselaw, the Court of Appeals' *Nicholson* decision as to the Commission's mandatory investigative duty under Judiciary Law §44.1.

12. The existence of these three *undisputed* analyses of the decisions of Justices Cahn, Lehner, and the *Mantell* appellate panel -- each embracing the Court of Appeals' *Nicholson* decision and prominently before this Court as dispositive of my rights -- are completely concealed by the Court's decision (Exhibit "A").

13. Likewise, the Court's decision makes NO findings as to the accuracy of my three 'highlights' resting on my three analyses of the decisions of Justices Cahn, Lehner, and the *Mantell* appellate panel. These three 'highlights' are pages 3-5, 5-8, 40-47 of my 66-page Critique of Respondent's Brief[fn.6]. The record shows that the accuracy of these 'highlights' was also *undisputed* in the record before the Court and that I repeatedly referred to them as dispositive of my rights, with the third 'highlight' (pp. 40-47) being a refutation of the pretense in Point I of Respondent's Brief that I lack standing to sue the Commission. The Court adopts this very pretense in the third sentence of its decision (Exhibit "A-2") -- with NO findings as to the accuracy of my *undisputed* third 'highlight', whose

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fn.5 "A copy of that June 8, 1995 memorandum of law – and the whole case file of *Doris L. Sassower v. Commission* – was physically before this Court, having been furnished to the lower court in support of my July 28, 1999 omnibus motion [A-346]."

fn.6 "My 66-page Critique of Respondent's Brief is Exhibit "U" to my August 17th motion."

existence, like the existence of my *undisputed* first and second 'highlights', is wholly concealed.

14. As chronicled by my memorandum-notice (Exhibit "B-1"), findings by the Court as to the accuracy of my three *undisputed* 'highlights' and of my three *undisputed* analyses on which they are based would have revealed my entitlement to ALL the relief sought by my Appellant's Brief – as well as ALL the relief sought by my threshold August 17th motion." (emphases in the original).

Neither on Petitioner-Appellant's January 17, 2002 reargument motion nor on her February 20, 2002 motion for leave to appeal did the Attorney General or Commission deny or dispute the accuracy of her line-by-line 19-page analysis, demonstrating the fraud committed by the Appellate Division by its December 18, 2001 "affirmance" decision. Nonetheless, on March 26, 2002, the Appellate Division denied reargument and leave to appeal – *without reasons* (Exhibit "A-2").

Thus, before this Court on this motion are FIVE demonstrably fraudulent judicial decisions, without which the Commission would not have survived: the decisions of Justices Cahn, Lehner, and Wetzel, which Chief Judge Kaye refused to confront administratively over 2-1/2 years ago because the "proper avenue of redress is by appeal...to an appellate court" (Exhibit "J") as well as the "redress" subsequently afforded by the Appellate Division, First Department: its "affirmances" of Justices Lehner[15] and Wetzel, which, unsupported by discussion of law or fact, each added lack of standing as a ground for dismissal. This, to further insulate the Commission from legal challenge by complainants.

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[15] Following the Appellate Division's "affirmance" of Justice Lehner's decision, Mr. Mantell appealed to this Court. His motion for leave to appeal, dated January 5, 2001, which this Court denied, presented, as its "Question Presented for Review": "Should the Courts of New York overrule the New York State Commissioner (sic) on Judicial Conduct when it declines to investigate a complaint about a sitting judge when the complaint is incontestably facially meritorious".

Petitioner-Appellant's analyses of the decisions of Justices Cahn and Lehner (Exhibits "H", "I") – the same two analyses as she provided to Chief Judge Kaye in March 2000 (Exhibit "G", fn. 8) – suffice to expose the fraud of all five decisions, *readily*. The Court must not countenance opposition from the Attorney General and Commission unless they confront these two dispositive analyses. Indeed, the record shows that throughout the 3-1/2 years of this litigation, including during its foray into the *Mantell* appeal, the Attorney General, acting for the Commission, not only completely REFUSED to address these analyses, but has never even mentioned the word "analysis", either singular or plural. Peruse his papers and it is as if such pivotal documents do not exist.

Chief Judge Kaye's public position, expressed in "*I rise in defense of state's courts*" (Daily News, 1/17/02) (Exhibit "M-1"), and reflected in "*State judicial system is accountable to the public*" (Albany Times Union, 2/10/02) (Exhibit "M-2"), is that "as a public institution the courts must recognize their accountability to the public – and we do." This appeal represents a decisive moment for this Court – and a powerful opportunity to demonstrate that judges don't just cover-up for judges, but are capable of holding their judicial brethren accountable for their fraudulent decisions, which have here destroyed the public's right to be safeguarded against judicial misconduct by a properly-functioning Commission.

Finally, as to the related transcending issues encompassed by this appeal – all of which can only enhance public trust and confidence in the judiciary and in the judicial process— Petitioner-Appellant refers the Court to her February 20, 2002 affidavit in support of her motion in the Appellate Division for leave to appeal. Suffice to repeat this Court's words quoted therein, first from *Nicholson* (at 607):

> "There can be no doubt that the State has an overriding interest in the integrity and impartiality of the judiciary. There is 'hardly *** a higher governmental interest than a State's interest in the quality of its judiciary' (*Landmark Communications v. Virginia*, 425 US 829, 848 [Stewart, J., concurring]",

and then from *Commission v. Doe* (at 61), where the Court recognized the Commission as "the instrument through which the State seeks to insure the integrity of its judiciary".