SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

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

Petitioner,

-against-

Index # 99-108551

NOTICE OF RIGHT TO SEEK INTERVENTION

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.

----------x

S I R S:

PLEASE TAKE NOTICE that upon the annexed Notice of Petition and Verified Petition of ELENA RUTH SASSOWER, sworn to on the 22nd day of April 1999, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had, you are entitled, as a person or agency charged with the duty to protect the public interest, which will or may be affected by the outcome of the above-entitled proceeding, raising constitutional issues of gravity and magnitude, to seek intervention therein, pursuant to CPLR §§1012 and 1013.

Dated: April 22, 1999
White Plains, New York

Yours, etc.

Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner *Pro Se*
Box 69, Gedney Station
White Plains, New York 10605-0069
(914) 421-1200

TO: NEW YORK STATE ATTORNEY GENERAL
120 Broadway
New York, New York 10271

DISTRICT ATTORNEY OF NEW YORK COUNTY
1 Hogan Place
New York, New York 10013

NEW YORK STATE ETHICS COMMISSION
39 Columbia Street
Albany, New York 12207-2717

UNITED STATES ATTORNEY
Southern District of New York
100 Church Street
New York, New York 10007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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

Petitioner,

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.

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Index # 99-108551

NOTICE OF ARTICLE 78 PETITION

S I R S:

PLEASE TAKE NOTICE that upon the annexed Verified Petition of ELENA RUTH SASSOWER, duly sworn to on the 22nd day of April 1999, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had, an Article 78 proceeding will be brought on by the aforesaid Verified Petition in the Submissions Part of the Courthouse, Room 130, located at 60 Centre Street, New York, New York, on May 14, 1999 at 9:30 a.m., or as soon thereafter as the parties can be heard for an order and judgment:

(1) declaring 22 NYCRR §7000.3, *as written and as applied*, unconstitutional and unlawful, as contravening the letter and spirit of Article VI, §22a of the New York Constitution and Judiciary Law §44.1, and commanding that Respondent cease and be prohibited from making any further dismissals thereunder;

(2) vacating, annulling, and setting aside Respondent's summary dismissal, without investigation, of Petitioner's facially-meritorious October 6, 1998 judicial misconduct complaint;

(3) declaring Judiciary Law §45, *as applied* by Respondent, unconstitutional, and, in the event such relief is denied, that Judiciary Law §45, *as written*, is unconstitutional;

(4) declaring 22 NYCRR §7000.11 unconstitutional, ***as written and as applied***, and, in the event such relief is denied, that Judiciary Law §§41.6 and 43.1 are unconstitutional, ***as written and as applied***;

(5) declaring Respondent in violation of Judiciary Law §41.2 by the continued chairmanship of Henry T. Berger and mandating his removal;

(6) commanding Respondent to formally "receive" and "determine" Petitioner's February 3, 1999 judicial misconduct complaint against Appellate Division, Second Department Justice Daniel W. Joy;

(7) requesting the Governor to appoint a Special Prosecutor to investigate Respondent's complicity in judicial corruption by powerful, politically-connected judges by, *inter alia*, its pattern and practice of dismissing facially-meritorious judicial misconduct complaints against them, without investigation or reasons;

(8) referring Respondent, its Commissioners, Administrator, and Clerk, to the Attorney General of the State of New York, the United States Attorney, the District Attorney in New York, and the New York State Ethics Commission for appropriate criminal and disciplinary investigation;

(9) imposing on Respondent the statutory fine of $250 payable to the State Treasurer, pursuant to Public Officers Law §79; and

(10) granting such other and further relief as to the Court may seem just and proper, including, with respect to those branches of relief as seek a declaration of the unconstitutionality of statutory provisions, conversion of this proceeding to the extent required by law into a declaratory judgment action.

PLEASE TAKE FURTHER NOTICE that:

(A) pursuant to CPLR §7804(e), Respondent is required to file with its answer a transcript of the record, certified as true and correct, relating to Petitioner's October 6, 1998 judicial misconduct complaint, as well as a certified copy of the transcript of the record of all the judicial misconduct complaints annexed as exhibits to the prior Article 78 proceeding, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York*, (NY Co. #95-109141), and that, pursuant to CPLR §§409 and 2214, Respondent furnish all other papers in its possession, not already in the possession of the Court, necessary for consideration of the Verified Petition herein, at the hearing on notice served with said Petition.

(B) pursuant to CPLR §7804(h), to the extent factual issues are in dispute, Petitioner requests the opportunity to conduct discovery and put forth evidence at trial.

Dated: April 22, 1999
White Plains, New York

Yours, etc.

Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner *Pro Se*
Box 69, Gedney Station
White Plains, New York 10605-0069
(914) 421-1200

TO: NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT
801 Second Avenue
New York, New York 10017

NEW YORK STATE ATTORNEY GENERAL
120 Broadway
New York, New York 10271

DISTRICT ATTORNEY OF NEW YORK COUNTY
1 Hogan Place
New York, New York 10013

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39 Columbia Street
Albany, New York 12207-2717

UNITED STATES ATTORNEY
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100 Church Street
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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ELENA RUTH SASSOWER, Coordinator
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COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.

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Index # 99-108551

VERIFIED
ARTICLE 78 PETITION

Oral Argument Requested

TO: SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF NEW YORK:

Petitioner respectfully shows this Court and alleges:

FIRST: At all times hereinafter mentioned, Petitioner was, and is, a citizen of the United States of America and the State of New York and a resident, elector, and taxpayer thereof, residing in the City of White Plains, County of Westchester.

SECOND: Petitioner is coordinator and co-founder of the Center of Judicial Accountability, Inc. [hereinafter "CJA"], a national, non-profit, non-partisan, citizens' organization, incorporated in 1994 under the laws of the State of New York, whose purpose is to safeguard the public interest in the integrity of judicial selection and discipline processes.

THIRD: At all times hereinafter mentioned, Respondent was, and is, the public body created, organized, and existing under and by virtue of the laws of the State of New York, charged with the duty to "receive, initiate, investigate and hear complaints" against "any

judge or justice of the unified court system" for "conduct, on and off the bench, prejudicial to the administration of justice" (New York State Constitution, Article VI, §22a).

FOURTH: Pursuant to the venue provisions of CPLR §§506(b) and 7804(b), this proceeding is brought in New York County, where Respondent's principal office is located.

FIFTH: Pursuant to CPLR §7801 *et seq.*, this verified petition seeks a judgment in the nature of certiorari, mandamus, prohibition, declaratory and other relief as this Court may deem just and proper for the following specific relief:

(1) declaring 22 NYCRR §7000.3, *as written and as applied*, unconstitutional and unlawful, as contravening the letter and spirit of Article VI, §22a of the New York Constitution and Judiciary Law §44.1, and commanding that Respondent cease and be prohibited from making any further dismissals thereunder;

(2) vacating, annulling, and setting aside Respondent's summary dismissal, without investigation, of Petitioner's facially-meritorious October 6, 1998 judicial misconduct complaint;

(3) declaring Judiciary Law §45, *as applied* by Respondent, unconstitutional, and, in the event such relief is denied, that Judiciary Law §45, *as written*, is unconstitutional;

(4) declaring 22 NYCRR §7000.11 unconstitutional, *as written and as applied*, and, in the event such relief is denied, that Judiciary Law §§41.6 and 43.1 are unconstitutional, *as written and as applied*;

(5) declaring Respondent in violation of Judiciary Law §41.2 by the

continued chairmanship of Henry T. Berger and mandating his removal;

(6) commanding Respondent to formally "receive" and "determine" Petitioner's February 3, 1999 judicial misconduct complaint against Appellate Division, Second Department Justice Daniel W. Joy;

(7) requesting the Governor to appoint a Special Prosecutor to investigate Respondent's complicity in judicial corruption by powerful, politically-connected judges, *inter alia*, through its pattern and practice of dismissing facially-meritorious judicial misconduct complaints against them, without investigation or reasons;

(8) referring Respondent, its Commissioners, Administrator, and Clerk, to the Attorney General of the State of New York, the United States Attorney, the District Attorney in New York, and the New York State Ethics Commission for appropriate criminal and disciplinary investigation;

(9) imposing on Respondent the statutory fine of $250 payable to the State Treasurer, pursuant to Public Officers Law §79 for, without cause, refusing or neglecting to perform duties enjoined by law.

SIXTH: Judiciary Law §44.1 imposes on Respondent a mandatory duty to investigate each judicial misconduct complaints it receives, unless "it determines that the complaint on its face lacks merit".

SEVENTH: Respondent has, nevertheless, promulgated a rule, 22 NYCRR §7000.3, which, *as written*, gives itself complete discretion, unbounded by any standard as to whether or not to investigate judicial misconduct complaints. Under such rule, Respondent may freely dismiss even a facially-meritorious complaint and do so without any prior

determination of its lack of facial merit.

EIGHTH: In April 1995, CJA spearheaded an Article 78 proceeding, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141) [hereinafter "the prior Article 78 proceeding"], challenging the constitutionality of 22 NYCRR §7000.3, *as written* and *as applied* to Respondent's dismissals, without investigation, of eight facially-meritorious judicial misconduct complaints against powerful, politically-connected judges -- including five complaints against Respondent's then highest-ranking judicial member, Appellate Division, Second Department Justice William C. Thompson. None of the aforesaid eight judicial misconduct complaints had been determined to be facially lacking in merit by Respondent, which also never identified the legal authority for dismissing the complaints, then or thereafter. Based on the evidence presented by those summary dismissals that Respondent was complicitously covering up high-level judicial corruption, the prior Article 78 proceeding sought a judicial request to the Governor for appointment of a special prosecutor and referral of Respondent, both its members and staff, to the State Attorney General, the United States Attorney, the District Attorney in New York County, and the State Ethics Commission for disciplinary and criminal investigation.

NINTH: In July 1995, the prior Article 78 proceeding was dismissed by a Supreme Court decision (per Herman Cahn, J.) which upheld the constitutionality of §7000.3, *as written*, by falsely attributing to Respondent the Court's own *sua sponte* argument which did not reconcile the facial discrepancy between §7000.3 and Judiciary Law §44.1. As to the constitutionality of §7000.3, *as applied* to Respondent's dismissals of the aforesaid eight facially-meritorious judicial misconduct complaints, the decision falsely stated that the

Petitioner therein had contended that Respondent had "wrongfully determined" that her complaints lacked facial merit -- which she had not -- and then falsely held that the "issue is not before the court". All other relief was dismissed.

TENTH: Since shortly after the July 1995 decision, Petitioner, as CJA coordinator, has repeatedly called upon Respondent to take corrective steps to vacate it for fraud.

ELEVENTH: On the same subject, Petitioner has also directed extensive correspondence to public leaders, in and out of government, calling upon them to take corrective steps on the public's behalf, based on the record of the prior Article 78 proceeding showing that Respondent is the beneficiary of a fraudulent decision, without which it could not have survived. Among these are the public agencies and officers served with the within Notice of Right to Seek Intervention on behalf of the public, all of whom were served with Notice of Right to Seek Intervention in the prior Article 78 proceeding on behalf of the public.

TWELFTH: Reflecting Petitioner's extensive communications with Respondent, the public agencies and officers served with the Intervention Notice, and others is her May 5, 1997 memorandum to them (Exhibit "A"). Annexed thereto, in addition to Petitioner's published Letter to the Editor, "*Commission Abandons Investigative Mandate*" (New York Law Journal, 8/14/95, p. 2), and CJA's $1,650 public interest ad, "*A Call for Concerted Action*" (New York Law Journal, 11/20/96, p. 3), was an analysis of the factually and legally unfounded and insupportable Supreme Court decision in the prior Article 78 proceeding.

THIRTEENTH: Neither Respondent nor the other recipients of the May

5, 1997 memorandum ever controverted said analysis, presented then or previously to them. This non-response was highlighted in CJA's public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (New York Law Journal, 8/27/97, pp. 3-4) (Exhibit "B")[1].

FOURTEENTH: The facts and legal argument set forth in that analysis as to the false and fraudulent nature of the decision in the prior Article 78 proceeding were, and are, accurate and correct.

FIFTEENTH: Due to Respondent's continuing failure and refusal to meet its ethical and professional responsibilities, and the inaction of those in leadership positions to whom Petitioner turned, the public has been wholly unprotected from Respondent's pattern and practice of disregarding its aforesaid mandatory statutory and constitutional duties to cover up for law-breaking, but powerful, politically-connected judges.

SIXTEENTH: As to the powerful, politically-connected judges who were the subject of the eight facially-meritorious complaints presented, but not adjudicated, in the prior Article 78 proceeding, they have continued their corrupt and lawless conduct, unrestrained by Respondent -- to the profound detriment of Petitioner therein, Petitioner herein, and the People of the State of New York. This corrupt conduct includes, most particularly, that of justices of the Appellate Division, Second Department, among them Justice Albert Rosenblatt, who was also emboldened to seek appointment as an associate judge on the New York Court of Appeals -- a position he was able to obtain in December 1998 by virtue of Respondent's unabated protectionism of politically-connected judges, as hereinafter set forth.

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[1] Petitioner paid the $3,077.22 cost of that ad personally.

SEVENTEENTH: On October 6, 1998, Petitioner, as CJA coordinator, filed with Respondent CJA's first judicial misconduct complaint since dismissal of the prior Article 78 proceeding. The complaint (Exhibit "C-1") explicitly stated it was "yet a further facially-meritorious judicial complaint against Justice Rosenblatt", and was filed against him, as well as against other Appellate Division, Second Department justices. As to previous facially-meritorious judicial misconduct complaints against Justice Rosenblatt, the October 6, 1998 complaint identified three, filed by CJA, dated September 19, 1994, October 26, 1994, and December 5, 1994, which were also against other Appellate Division, Second Department justices -- including Justice Thompson. The October 6, 1998 complaint further identified that Respondent had dismissed each of these three judicial misconduct complaints, without investigation or reasons, and that its refusal to explain the basis for those dismissals was the precipitant for the prior Article 78 proceeding in which Respondent was protected by the fraudulent Supreme Court decision.

EIGHTEENTH: Respondent's purported dismissal, without investigation, of Petitioner's October 6, 1998 facially-meritorious complaint (Exhibit "C-1") -- as to which Respondent has refused to provide any substantiating information and proof -- is the precipitant for this Article 78 proceeding, which, additionally, is brought to protect the public from the ongoing catastrophic consequences of Justice Rosenblatt's elevation to the Court of Appeals, enabling him to corrupt the rule of law on a more exalted level than he was able to do while sitting in the Appellate Division, Second Department.

NINETEENTH: By reason of Respondent's purported dismissal, without investigation, of Petitioner's October 6, 1998 facially-meritorious complaint, Petitioner is a

party personally aggrieved -- and with her the public, whose interests that complaint sought to safeguard. Each is, likewise, aggrieved by Respondent's aforesaid pattern and practice of official misconduct, whereby Respondent has wilfully and deliberately subverted the constitutional and statutory intent in creating an independent monitoring agency, outside the judiciary, to ensure judicial integrity and accountability.

TWENTIETH: Petitioner and the general public are also personally aggrieved by Respondent's various rules and procedures, severely, seriously, and substantially prejudicial to them, whereby Respondent, as a pattern and practice, has failed and refused to provide information substantiating its purported dismissals of judicial misconduct complaints, including the legal authority for same.

FACTUAL BACKGROUND: PETITIONER'S OCTOBER 6, 1998 JUDICIAL MISCONDUCT COMPLAINT

TWENTY-FIRST: Respondent itself has publicly recognized the controlling significance of Judiciary Law §44.1 in requiring investigation of facially-meritorious judicial misconduct complaints. This was demonstrated by Petitioner's October 6, 1998 judicial misconduct complaint (Exhibit "C-1"), wherein Petitioner cited and annexed an essay by Respondent's Administrator in the New York Law Journal, "*Judicial Independence is Alive and Well*" (8/20/98, p. 2).

TWENTY-SECOND: The facially-meritorious allegations of judicial misconduct by Justice Rosenblatt, presented by Petitioner's October 6, 1998 judicial misconduct complaint, were two-fold: (1) his possible perjury in his publicly-inaccessible written answers to the State of New York Commission on Judicial Nomination's questionnaire

by his believed failure to identify, in response to its written inquiries as to his knowledge of judicial misconduct complaints against him and as to his litigation history as "a public officer", any of CJA's aforesaid prior judicial misconduct complaints against him and by his believed failure to identify and provide the complaint and decisions in a federal action under 42 U.S.C. §§1983 and 1985(3), wherein he was a defendant sued for corruption and violation of civil rights, together with other Appellate Division, Second Department justices, including Justice Thompson; and (2) his collusion and complicity in the defense misconduct in that federal case, which included perjury and fraud.

TWENTY-THIRD: The particulars of Justice Rosenblatt's possible perjury, alleged by Petitioner's October 6, 1998 complaint (Exhibit "C-1"), were set forth in her accompanying October 5, 1998 letter to the Commission on Judicial Nomination (Exhibit "C-2", p. 4), simultaneously transmitted to Respondent. As to the defense misconduct in the federal action, Petitioner transmitted the relevant court papers containing the uncontroverted fact-specific, record-based particulars.

TWENTY-FOURTH: By reason of the Commission on Judicial Nomination's then pending consideration of Justice Rosenblatt's candidacy for a New York Court of Appeals judgeship, Petitioner's October 6, 1998 complaint required Respondent's expeditious attention. Nonetheless, in contrast to Respondent's customary practice of acknowledging judicial misconduct complaints within two weeks of receipt, Respondent failed to acknowledge receipt of the October 6, 1998 complaint until after Petitioner faxed a November 3, 1998 letter (Exhibit "D-1") inquiring as to the absence of acknowledgment. Only then did Respondent acknowledge the complaint, by letter dated November 3, 1998 (Exhibit

"D-2"), with no explanation for the delay.

TWENTY-FIFTH: By Respondent's November 3, 1998 acknowledgment letter, Petitioner was advised that the complaint would "be presented to the Commission, which will decide whether or not to inquire into it" (Exhibit "D-2").

TWENTY-SIXTH: On November 12, 1998, the Commission on Judicial Nomination approved Justice Rosenblatt as "well qualified" to be an associate judge of the New York Court of Appeals.

TWENTY-SEVENTH: In a November 18, 1998 letter (Exhibit "E") -- a copy of which was sent to Respondent -- Petitioner objected to the Commission on Judicial Nomination's "well qualified" rating as a shameless abandonment of "'merit selection' principles" and asserted that "were the New York State Commission on Judicial Conduct not corrupt -- and state officials and bar leaders not complicitous in that corruption -- Justice Rosenblatt would have long ago been removed from the bench for retaliatory use of his judicial powers for ulterior, political purposes."

TWENTY-EIGHTH: The retaliatory, politically-motivated misconduct of Justice Rosenblatt, referred to in Petitioner's November 18, 1998 letter (Exhibit "E"), had been set forth in her October 5, 1998 letter (Exhibit "C-2"), with the particulars recited in CJA's prior judicial misconduct complaints against Justice Rosenblatt, dated September 19, 1994, October 26, 1994, and December 5, 1994, copies of which had been transmitted to the Commission on Judicial Nomination and which, additionally, were exhibits "G", "I" and "J" to the verified petition in the prior Article 78 proceeding.

TWENTY-NINTH: By letter dated December 2, 1998 (Exhibit "F-1"),

Respondent acknowledged receipt of Petitioner's November 18, 1998 letter (Exhibit "E"), stating that it "would be added to [the] complaint for review by the Commission."

THIRTIETH: By letter dated December 10, 1998 (Exhibit "F-2"), Petitioner inquired as to the status of the October 6, 1998 judicial misconduct complaint against Justice Rosenblatt, who, the previous day, had been nominated by the Governor to the Court of Appeals. She also reiterated her prior inquiry as to the reason for Respondent's month-long delay in acknowledging the hand-delivered October 6, 1998 complaint.

THIRTY-FIRST: Respondent did not respond until December 23, 1998, by which time the New York State Senate had already confirmed Justice Rosenblatt's appointment as an associate judge of the New York Court of Appeals.

THIRTY-SECOND: Respondent's December 23, 1998 letter, by its Clerk, informed Petitioner that "the Commission...has dismissed the complaint" (Exhibit "F-3"). No particulars were provided, no reasons, and no legal authority was given for the purported dismissal. Nor did the December 23, 1998 letter, which noted receipt of Petitioner's December 10, 1998 letter, explain Respondent's delay in acknowledging the October 6, 1998 complaint.

THIRTY-THIRD: By letter to Respondent's Clerk, dated December 29, 1998 (Exhibit "F-4"), Petitioner specifically noted that he had not claimed that Respondent had determined the complaint "on its face lacks merit" and she requested information substantiating Respondent's purported dismissal, to wit: (1) the date on which Respondent purported to review and dismiss the complaint; (2) the number of Respondent's Commissioners present and voting; (3) the identities of the Commissioners present and voting; (4) the basis for the purported dismissal; and (5) the legal authority for the purported dismissal. Petitioner also

requested information as to "any and all procedures for review" of Respondent's purported dismissal of the complaint. Petitioner further noted that, in contrast to past dismissal letters which identified if a Commissioner had not participated in the consideration of a complaint, the December 23, 1998 dismissal letter did not identify that Commissioner Daniel Joy had not participated. This, albeit, as an Appellate Division, Second Department justice, he was a defendant in the federal civil rights action encompassed by the October 6, 1998 complaint. Petitioner's letter pointed out that Appellate Division, Second Department Justice Thompson, who Justice Joy had replaced as Respondent's highest-ranking Commissioner, was also a defendant therein.

THIRTY-FOURTH: All Petitioner's aforesaid information requests were denied by Respondent's Clerk in a January 25, 1999 letter (Exhibit "F-5"), which stated that his December 23, 1998 letter "constitutes the full extent of the notice and disclosure allowed by law."

THIRTY-FIFTH: By letter dated February 3, 1998 (Exhibit "F-6"), Petitioner wrote to Respondent's Administrator, providing him with an analysis showing that if the unidentified "law" were Judiciary Law §45, it did not prevent Respondent from supplying such reasonably-requested information to a complainant, including information that Respondent was duly constituted and untainted by bias or self-interest and that, pursuant to Judiciary Law §43 and 22 NYCRR §7000.11, it appeared that as few as two of Respondent's eleven Commissioners, forming a majority of a three-Commissioner panel, could dismiss a complaint, without investigation.

THIRTY-SIXTH: Petitioner's February 3, 1998 letter (Exhibit "F-6", p. 2)

reiterated the absolute disqualification of Commissioner Joy from consideration of the October 6, 1998 complaint, requesting that "absent express notice" that Justice Joy did not participate in its consideration, the letter be deemed a judicial misconduct complaint against him for participating in a complaint in which he had a "direct, personal interest in the outcome", proscribed by law and ethical rules.

THIRTY-SEVENTH: Petitioner's February 3, 1998 letter (Exhibit "F-6", p. 3) further identified the animosity that could be presumed to exist against Petitioner among the Commissioners by reason of her public advocacy against Respondent, based, *inter alia*, on what had occurred in the prior Article 78 proceeding, and, particularly, the animosity of two specific members, one of whom was its Chairman, Henry T. Berger.

THIRTY-EIGHTH: As to Chairman Berger, Petitioner requested confirmation that he had been Respondent's Chairman since 1990 or 1991 and inquired as to the legal authority for same in view of the limitation imposed by Judiciary Law §41.2 that expressly restricts the chairmanship to a member's "term in office or for a period of two years, whichever is shorter" (Exhibit "F-6", p. 3, fn. 4).

THIRTY-NINTH: By letter dated February 5, 1999 (Exhibit "F-7"), Respondent's Administrator refused to address Petitioner's analysis of Judiciary Law §45 and ignored her inquiries and argument as to a complainant's right to have a judicial misconduct complaint reviewed by a duly constituted Commission, untainted by bias and self interest.

FORTIETH: Without identifying Judiciary Law §44.1 as the legal authority controlling Respondent's dismissal of judicial misconduct complaints, but echoing its language, Respondent's Administrator stated:

"The Commission dismisses complaints that are not valid on their face. Every complaint dismissed by the Commission without an investigation was based on the Commission's judgment that the complaint was not valid on its face. The Commission determined that your October 1998 complaint against a judge who is being considered for the Court of Appeals was not valid on its face. No further explanation is warranted or expedient." (Exhibit "F-7")

FORTY-FIRST: By letter dated March 11, 1999 (Exhibit "G", p. 4), Petitioner requested Respondent's Administrator to provide a definition of "not valid on its face", assumed to be "equivalent to...'on its face lacks merit' -- the only basis upon which the Commission can dismiss a complaint under Judiciary Law §44.1", and to clarify that such alleged determination as to the October 6, 1998 complaint was made by the Commissioners themselves and not by him or other staff.

FORTY-SECOND: Petitioner's March 11, 1999 letter (Exhibit "G") identified a pattern of dishonesty, falsehood, and concealment by Respondent's Administrator and appended substantiating correspondence. Included was an exchange of letters relating to Petitioner's request for Respondent's reconsideration of its purported dismissal of CJA's September 19, 1994 judicial misconduct complaint based on the principles of disciplinary review set forth in its Administrator's own 1986 Pace Law Review article as to "...*When Error is Misconduct*" [Vol. 7, No. 1 (Winter 1987), pp. 291-388, at 304-5].

FORTY-THIRD: CJA's September 19, 1994 judicial misconduct complaint was the first of its judicial misconduct complaints against Justice Rosenblatt and, like its subsequent judicial misconduct complaints against him, dated October 26, 1994 and December 5, 1994, was also against Justice Thompson, then Respondent's highest-ranking judicial

member.

FORTY-FOURTH: As to Respondent's purported dismissal of CJA's prior judicial misconduct complaints against Justices Rosenblatt and Thompson, as well as its purported dismissals of CJA's other judicial misconduct complaints against powerful, politically-connected judges, all annexed to the verified petition in the prior Article 78 proceeding, Petitioner's March 11, 1999 letter (Exhibit "G", pp. 3-4) asserted that Respondent's Administrator never claimed they were not "not valid on [their] face" or that they had been so determined by Respondent. Petitioner's March 11, 1999 letter additionally asserted that Respondent had ignored -- without even invoking Judiciary Law §45 -- CJA's repeated requests for information substantiating Respondent's purported dismissals of those eight complaints and reiterated CJA's right to that information.

FORTY-FIFTH: Petitioner's March 11, 1999 letter (Exhibit "G", pp. 4-5) also objected that despite the specific request in her February 3, 1999 letter that it be deemed a judicial misconduct complaint against Justice Joy, absent express notice that he had not participated in consideration of the October 6, 1998 complaint, Respondent's Administrator, who had given no such notice, was failing to acknowledge it as such. Petitioner further pointed out (at p. 5) that among the questions he had not answered was the legal authority for Chairman Berger's long tenure as Respondent's chairman, whether Respondent's purported dismissal of the October 6, 1998 complaint was after the State Senate's December 17, 1998 confirmation of Justice Rosenblatt to the Court of Appeals, and "any and all procedures for review" of Respondent's purported dismissal thereof.

FORTY-SIXTH: Neither Respondent nor its Administrator have responded

to Petitioner's March 11, 1999 letter -- including acknowledging Petitioner's prior February 3, 1999 letter as a judicial misconduct complaint against Justice Joy.

AS AND FOR A FIRST CLAIM FOR RELIEF

Petitioner repeats, reiterates, and realleges paragraphs FIRST through FORTY-SIXTH, with the same force and effect as if more fully set forth herein.

FORTY-SEVENTH: Respondent has violated its constitutional and statutory authority and acted without and in excess of its jurisdiction in promulgating a rule, 22 NYCRR §7000.3, which, *as written*, is facially inconsistent and irreconcilable with the letter and spirit of Judiciary Law §44.1

FORTY-EIGHTH: In so doing, Respondent has subverted the public interest and frustrated and thwarted the intent of the People and their elected representatives by transforming its mandatory investigatory duty under Article VI, §22a of the New York State Constitution to "investigate and hear" into an optional one, with *no* requirement, as prescribed by Judiciary Law §44.1, that Respondent "shall conduct an investigation of the complaint", in the absence of a determination that the "complaint on its face lacks merit".

FORTY-NINTH: *As written*, 22 NYCRR §7000.3 is unconstitutionally and statutorily violative since, contrary to the explicit requirements of Judiciary Law, §44.1, it permits Respondent to act without and in excess of its jurisdiction by summarily dismissing, without investigation and without any findings, complaints of judicial misconduct arbitrarily, capriciously, and without a fixed, objective standard by which any exercise of discretion can be measured.

FIFTIETH: A self-promulgated administrative rule that gives a public agency

carte blanche to do or not do its official duty as it chooses is, on its face, untenable and must be stricken so that the statute not be rendered nugatory -- as it has been and so remains until this Court renders a proper adjudication, nullifying the rule.

AS AND FOR A SECOND CLAIM FOR RELIEF

Petitioner repeats, reiterates, and realleges paragraphs FIRST through FIFTIETH, with the same force and effect as if more fully set forth herein.

FIFTY-FIRST: *As applied*, 22 NYCRR §7000.3 is constitutionally and statutorily violative in that its lack of any mandatory investigative requirement has enabled Respondent to dismiss facially-meritorious complaints, even where their facially-meritorious judicial misconduct allegations are documented.

FIFTY-SECOND: The October 6, 1998 judicial misconduct complaint against Justice Rosenblatt and his fellow Justices of the Appellate Division, Second Department was facially-meritorious, as were all eight judicial misconduct complaints, annexed to the verified petition in the prior Article 78 proceeding.

FIFTY-THIRD: There has been no judicial determination of the lawfulness and validity of Respondent's purported dismissals, without investigation, of those eight facially-meritorious complaints inasmuch as the Supreme Court decision in the prior Article 78 proceeding expressly held that "the issue is not before the court".

FIFTY-FOURTH: Respondent's purported dismissals of those eight facially-meritorious complaints establish that its purported dismissal of the October 6, 1998 judicial misconduct complaint is more than an isolated "fail[ure] to perform a duty enjoined on it by law", more than a "violation of lawful procedure", and more than "arbitrary and capricious",

but, rather, part of a pattern and practice of Respondent's wilful and deliberate protectionism of powerful, politically-connected judges from the disciplinary and criminal consequences of their corrupt judicial conduct.

FIFTY-FIFTH: *As applied*, §7000.3 has enabled Respondent to violate its constitutional and statutory mandate to protect the People of this State from incompetent, corrupt, and otherwise unfit judges and, instead, to initiate and perpetuate a pattern and practice of protecting powerful, politically-favored judges by summarily dismissing facially-meritorious judicial misconduct complaints against them, without investigation or findings.

FIFTY-SIXTH: Respondent's purported dismissals of the aforesaid facially-meritorious complaints, without investigation, and without any determination as to their facial merit, establish the need to reinforce Respondent's investigative duty under Judiciary Law §44.1, which cannot be done unless §7000.3 is stricken.

FIFTY-SEVENTH: Based on Respondent's own 1998 Annual Report -- the latest Report available -- in 1997, members of the public filed 1403 complaints with Respondent. Upon information and belief, of that number, Respondent dismissed 1231 complaints, without investigation and without any determination that the complaints on their face lacked merit -- representing 88% of all complaints filed with it.

FIFTY-EIGHTH: All such summary dismissals without investigation and without findings represent a massive "consumer fraud" upon the taxpayers of this State, whose hard-earned dollars -- now over $1.8 million annually -- fund Respondent. Such tax burden is borne by the public in the belief that Respondent's rules, procedures, and practices comport, not contravene, the explicitly-mandated constitutional and statutory requirements so as to carry

out their intended purposes of effectuating and ensuring a quality judiciary

AS AND FOR A THIRD CLAIM FOR RELIEF

Petitioner repeats, reiterates, and realleges paragraphs FIRST through FIFTY-EIGHTH, with the same force and effect as if more fully set forth herein.

FIFTY-NINTH: *As applied* by Respondent, the confidentiality provision of Judiciary Law §45 is, and as part of a long-standing pattern and practice has been, used to conceal its misfeasance and corruption in dismissing, without investigation, legitimate judicial misconduct complaints that are facially meritorious and to insulate itself from accountability for its official misconduct.

SIXTY: Respondent's position, as asserted to Petitioner and others, is that Judiciary Law §45 precludes its disclosure of any information substantiating the legitimacy, or even actuality, of its purported dismissal of a judicial misconduct complaint, without investigation. This includes the most basic information, such as identifying the legal authority for its summary dismissals, and whether, why, and by whom such purported dismissals were made.

SIXTY-FIRST: *As written*, Judiciary Law §45 does not prevent Respondent's disclosure of information to a complainant substantiating the legality and propriety of its dismissal of his complaint. -- because it expressly excepts disclosure pursuant to Judiciary Law §44.

SIXTY-SECOND: *As written*, Judiciary Law §44 requires that Respondent "shall" notify a complainant whose complaint has been dismissed, with no limitation as to its form or content.

SIXTY-THIRD: Where Respondent purports to dismiss a complaint, without investigation, the fact most relevant is whether it first determined the complaint "on its face lacks merit" -- the only ground for it to predicate dismissal, without investigation, under Judiciary Law §44.1.

SIXTY-FOURTH: Respondent cannot constitutionally and legally dispose of a judicial misconduct complaint unless it is duly constituted, with Commissioners untainted by bias and unconflicted by self-interest.

SIXTY-FIFTH: Withholding from complainants information substantiating the lawfulness and propriety of Respondent's purported dismissals of their complaints, without investigation, and whether Respondent is duly-constituted and free from bias and self-interest, deprives complainants of information vital to determining the basis for review -- be it administrative or judicial.

SIXTY-SIXTH: As to any review rights complainants might have of Respondent's purported dismissals of their complaints, Respondent takes the position that such information is also confidential -- even upon a complainant's specific written request.

SIXTY-SEVENTH: Upon information and belief, Respondent has an invidious, discriminatory, and selective standard for its application of Judiciary Law §45, based, *inter alia*, on who the complainant is and who the complained-of judge is. For example, at a public hearing about Respondent before the New York State Assembly Judiciary Committee on September 22, 1987, a complainant testified that in response to his written inquiry for details concerning Respondent's dismissal of his judicial misconduct complaint against an upstate town justice, Respondent provided him with the date of its meeting at which the

complaint was considered, the place of the meeting, and the identify of three commissioners who did not participate (Exhibit "H": 9/22/87 transcript, pp. 368-372). This contrasts sharply with Respondent's refusal to provide Petitioner with similarly-requested information

SIXTY-EIGHTH: Denying complainants access to the substantiating particulars of Respondent's dismissals, without investigation, of their complaints serves no legitimate public interest and is contrary thereto.

SIXTY-NINTH: Withholding from complainants information substantiating the lawfulness and propriety of Respondent's dismissals, without investigations, of their complaints makes a mockery of the judicial complaint process and fosters cynicism and contempt of Respondent among the very constituency Respondent was created to serve.

SEVENTY: Were Judiciary Law §45 to be interpreted as precluding disclosure to complainants of information substantiating the legality and propriety of Respondent's dismissals of their complaints, the statute would, for that reason, be unconstitutional *as written* -- as it is unconstitutional for other reasons as well.

AS AND FOR A FOURTH CLAIM FOR RELIEF

Petitioner repeats, reiterates, and realleges paragraphs FIRST through SEVENTY, with the same force and effect as if more fully set forth herein.

SEVENTY-FIRST: *As written*, Judiciary Law §§43.1 and 41.6 are constitutionally unauthorized, there being no provision in the New York State Constitution for formation of, and dispositions of judicial misconduct complaints by, panels, rather than the full eleven-member Commission.

SEVENTY-SECOND: *As written*, Judiciary Law §43.1 is unlawful in that:

(A) It prescribes no standard as to when three-member panels are to be assigned, thereby allowing Respondent to invidiously, discriminatorily, and selectively choose which judicial misconduct complaints will not go to the full eleven-member Commission for disposition pursuant to Judiciary Law §44.1;

(B) It articulates no guidelines as to the three-member panel's composition, other than that one member be "a member of the bar". Consequently, a three-member panel may be all lawyers, all judges, or a mix of lawyers and judges, without a single lay member, defeating the intent of diversity expressed in Article VI, §22b(1) of the State Constitution, as well as Judiciary Law §41.1. Likewise, there is no requirement that the panel members reflect the diversity of appointing authorities: the executive, legislative, and judicial branches, similarly expressed in Article VI, §22b(1), as well as Judiciary Law §41.1.

(C) It provides no method of selection, whether random, by rotation, by seniority, or by the hand-picked choice of Respondent's Chairman, Henry Berger, its Administrator, Clerk, or some other party.

SEVENTY-THIRD: Judiciary Law §41.6 and Respondent's related rule, 22 NYCRR §7000.11, are unconstitutional in that they permit two members of a three-member panel to dismiss a judicial misconduct complaint, without investigation, pursuant to Judiciary Law §44.1, thereby diluting a complainant's right to a disposition by an eleven-member Commission.

SEVENTY-FOURTH: *As applied*, Judiciary Law §§43.1 and 41.6 and 22 NYCRR §7000.11 are unconstitutional and unlawful because Respondent's refusal to provide basic information to an aggrieved complainant as to whether the dismissal of his

complaint was by a three-member panel -- and the membership thereof -- permits judicial misconduct complaints to be dismissed, without investigation, by commissioners, whose bias and self-interest is concealed by their complete anonymity.

SEVENTY-FIFTH: *As written and as applied*, the lack of any provision for administrative review by the full eleven-member Commission of the dismissal of a complaint, without investigation, by a three-member panel further renders Judiciary Law §§43.1 and 41.6, and 22 NYCRR §7000.11 unconstitutional.

AS AND FOR A FIFTH CLAIM FOR RELIEF

Petitioner repeats, reiterates, and realleges paragraphs FIRST through SEVENTY-FIFTH, with the same force and effect as if more fully set forth herein.

SEVENTY-SIXTH: Judiciary Law §41.2 expressly restricts the chairmanship to a member's "term in office or for a period of two years, whichever is shorter".

SEVENTY-SEVENTH: The purpose of the term limitation of Judiciary Law §41.2 is to increase public confidence that no one commissioner will exercise undue influence and power by virtue of a prolonged tenure.

SEVENTY-EIGHTH: Respondent has nonetheless flouted the express term limitation of Judiciary Law §41.2 by permitting Henry T. Berger to serve as its chairman for a term exceeding the prescribed statutory limit.

SEVENTY-NINTH: Respondent's Administrator has refused to respond to Petitioner's written requests for confirmation that Chairman Berger has been chairman since 1990 or 1991 and to provide legal authority for his continuation in that office.

EIGHTIETH: In addition to his serving as chairman in the period in which

Petitioner's October 6, 1998 judicial misconduct complaint was filed and purportedly dismissed by Respondent, Chairman Berger occupied such office throughout the years in which seven of the judicial misconduct complaints, annexed to the verified petition in the prior Article 78 proceeding, were filed and purportedly dismissed by it.

AS AND FOR A SIXTH CLAIM FOR RELIEF

Petitioner repeats, reiterates, and realleges paragraphs FIRST through SEVENTY-NINTH, with the same force and effect as if more fully set forth herein.

EIGHTY: Both Article VI, §22a of the Constitution and Judiciary Law §44.1 impose upon Respondent a mandatory duty to "receive" judicial misconduct complaints, as well as to "investigate" and "hear" them.

EIGHTY-FIRST: Respondent's failure and refusal to "receive", by formal acknowledgment, Petitioner's February 3, 1999 judicial misconduct complaint against Justice Daniel W. Joy, Respondent's highest-ranking judicial member, constitutes a violation of its legally-mandated duty, as, likewise its failure to make any disposition thereof.

* * *

EIGHTY-SECOND: By reason of the aforesaid, Respondent has failed and continues to fail to perform duties enjoined on it by law; has proceeded and is proceeding without or in excess of jurisdiction; has made and continues to make determinations in violation of lawful procedure, which were and are affected by error of law and which were and are arbitrary and capricious or an abuse of discretion.

EIGHTY-THIRD: The aforesaid official misconduct on the part of Respondent, its officers, agents, and employees, has deprived and continues to deprive

Petitioner, and the public interest she serves, their due process and equal protection rights under the Constitutions of the United States and the State of New York, and has caused and continues to cause severe economic consequences to Petitioner, all similarly-situated judicial misconduct complainants, as well as society at large, whose rights Petitioner here seeks to vindicate.

WHEREFORE, Petitioner respectfully prays for a judgment granting the relief requested in the accompanying Notice of Article 78 Petition to which she is entitled by the law, the facts, and the interests of justice.

Dated: April 22, 1999
White Plains, New York

ELENA RUTH SASSOWER
Petitioner *Pro Se*
Box 69, Gedney Station
White Plains, New York 10605-0069
(914) 421-1200

VERIFICATION

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

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

I am the Petitioner in the within proceeding. I have read the annexed Verified Petition and attest to the fact that same is true and correct of my own knowledge, information, and belief, and as to matters based on information and belief, I believe them to be true.

Elena Ruth Sassower
ELENA RUTH SASSOWER

Sworn to before me this
22nd day of April 1999

Sharon Abarno
Notary Public

SHARON ABARNO
Notary Public, State of New York
No. 4832383
Qualified in Westchester County
Term Expires: 11-30-99