SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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

NOTICE OF MOTION

Petitioner-Appellant,

S.Ct/NY Co. #108551/99

-against-

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 *Pro Se* ELENA RUTH SASSOWER, sworn to on August 17, 2001, the exhibits annexed thereto, and upon all the papers and proceedings heretofor had, ELENA RUTH SASSOWER will move this Court at 27 Madison Avenue, New York, New York 10010 on Monday, September 10, 2001 at 10:00 a.m., or as soon thereafter as Respondent-Respondent and its counsel can be heard for an order:

1. Specially assigning this appeal to a panel of "retired or retiring judge[s], willing to disavow future political and/or judicial appointment" in light of the disqualification of this Court's justices, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, for self-interest and bias, both actual and apparent, and, if that is denied, for transfer of this appeal to the Appellate Division, Fourth Department. In either event, or if neither is granted, for the justices assigned to this appeal to make disclosure, pursuant to §100.3F of the

Chief Administrator's Rules, of the facts pertaining to their personal and professional relationships with, and dependencies on, the persons and entities whose misconduct is the subject of this lawsuit or exposed thereby, as well as permission for a record to be made of the oral argument of this appeal, either by a court stenographer, and/or by audio or video recording.

2. Striking Respondent's Brief, filed by the New York State Attorney General, on behalf of Respondent-Respondent, New York State Commission on Judicial Conduct, based on a finding that it is a "fraud on the court", violative of 22 NYCRR §130-1.1 and 22 NYCRR §1200 *et seq.*, specifically, §§1200.3(a)(4), (5); and §1200.33(a)(5), with a further finding that the Attorney General and Commission are "guilty" of "deceit or collusion" "with intent to deceive the court or any party" under Judiciary Law §487, and, based thereon, for an order: (a) imposing maximum monetary sanctions and costs on the Attorney General's office and Commission, pursuant to 22 NYCRR §130-1.1, including against Attorney General Eliot Spitzer and Solicitor General Preeta D. Bansal, *personally*; (b) referring the Attorney General and Commission for disciplinary and criminal investigation and prosecution, along with culpable staff members, consistent with this Court's mandatory "Disciplinary Responsibilities" under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct; and (c) disqualifying the Attorney General from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules.

3. Granting such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, are to be served on or before August 27, 2001.

August 17, 2001

Yours, etc.

ELENA RUTH SASSOWER
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TO: ATTORNEY GENERAL OF THE STATE OF NEW YORK
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Respondent-Respondent
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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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

Petitioner-Appellant,

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

AFFIDAVIT

S.Ct/NY Co. # 99-108551

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 the already perfected appeal of this public interest Article 78 proceeding against Respondent-Respondent New York State Commission on Judicial Conduct [hereinafter "Commission"], scheduled for this Court's October 2001 Term*.

2. Pursuant to this Court's rule 600.2(a)(3) for motions, a copy of my March 23, 2000 Notice of Appeal is annexed hereto (Exhibit "A"), together with my March 23, 2000 Pre-Argument Statement and the appealed-from January 31, 2000 Decision, Order & Judgment of Acting Supreme Court Justice William A. Wetzel. All these documents are already in my Appellant's Appendix [A-1-14].

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* This appeal was formerly calendared for the September 2001 Term. However, due to the large number of appeals before this Court following the summer recess --with preference given to criminal matters – it was "randomly" kicked over to the October Term. *See* Exhibit "Z-4".

3. I am also fully familiar with all the facts, papers, and proceedings in the appeal to this Court of the Article 78 proceeding, *Michael Mantell v. New York State Commission on Judicial Conduct* (S. Ct/NY Co. #108655/99) – identified by my Pre-Argument Statement (at p. 5; A-7) as "related" to my own because Justice Wetzel *expressly* relied on Supreme Court Justice Edward Lehner's decision in *Mantell* as an additional ground for dismissing my proceeding, describing it as "a carefully reasoned and sound analysis of the very issue raised" by my Verified Petition and specifically "adopt[ing] Justice Lehner's finding that mandamus is unavailable to require the respondent to investigate a particular complaint." [A-12-13]

4. The *Mantell* appeal was decided on November 16, 2000 by a five-judge panel consisting of Milton L. Williams as Presiding Justice and Justices Angela M. Mazzarelli, Alfred D. Lerner, John T. Buckley, and David Friedman (Exhibit "B-1")[1]. Its few sentence affirmance denied, *without* reasons, a "[m]otion seeking leave to intervene and for other related relief". I am the *unidentified* movant on that motion, who, at the October 24, 2000 oral argument of the *Mantell* appeal, was threatened with removal from the courtroom by Justice Williams when I rose to bring to the panel's attention my October 23, 2000 letter-application seeking permission to argue my motion and to have a court stenographer record the appellate argument (Exhibit "B-2").

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[1] This Court appellate decision in *Mantell* has been published at 715 NYS2d 316. Justice Lehner's decision in *Mantell* has also been published and appears at 181 Misc.2d 1027.

5. This affidavit is submitted in support of a motion for the relief requested in the accompanying Notice of Motion. As an aid to the Court, a Table of Contents follows:

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AS TO THE FIRST BRANCH OF THIS MOTION: SPECIAL ASSIGNMENT/TRANSFER/DISCLOSURE AND A RECORD OF ORAL ARGUMENT

6. As highlighted by my Pre-Argument Statement (Exhibit "A", at p. 3; [A-5]) and particularized by my Brief (at 16-19, 22-23, 26-28), my position in Supreme Court/New York County was that this case needed to be "specially assigned to a retired or retiring judge, willing to disavow future political and/or judicial appointment". This, because virtually all of this State's judges are under the Commission's disciplinary jurisdiction and because Governor Pataki, on whom so many judges depend for judicial appointment or reappointment, is criminally implicated in the Commission's corruption which is the subject of this proceeding.

7. As hereinafter detailed, the necessity for special assignment of "retired or retiring judge[s], willing to disavow future political and/or judicial appointment" is even more exigent on appeal. If, however, that request is denied, the appeal should be transferred to the Appellate Division, Fourth Department – the furthest geographically from the Appellate Division, Second Department, from this Court, and from the Commission's "principal office"[2] in Manhattan.

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[2] 22 NYCRR §7000.12.

A. This Court's Justices have a Self-Interest in the Appeal by Reason of the Commission's Disciplinary Jurisdiction Over Them

8. Among the *many* issues raised by my Verified Petition's Six Claims for Relief (Exhibit "A", A-4) is the mandatory duty that Judiciary Law §44.1 imposes upon the Commission to investigate *facially-meritorious* judicial misconduct complaints [A-24, A-37-40]. This was the sole issue presented by Mr. Mantell's Verified Petition. However, for this Court to acknowledge the plain language of Judiciary Law §44.1 and to acknowledge a complainant's standing to seek judicial review of the Commission's dismissal, *without* investigation, of his OWN *facially-meritorious* complaint -- which this Court's *Mantell* decision, *without* legal authority, deceptively infers does not exist (Exhibit "B-1")[3] – would reinforce the Commission's duty to investigate *facially-meritorious* complaints, including against the justices of this Court.

9. The Commission's Annual Reports reflect that Appellate Division justices are the subjects of judicial misconduct complaints. These Reports group complaints received against Appellate Division justices with those received against Court of Appeals judges to give cumulative totals for the 59 justices and judges[4]. The

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[3] As detailed at pages 40-47 of my Critique of the Attorney General's Respondent's Brief – annexed hereto as Exhibit "U" -- this Court's invocation of "lack of standing" in *Mantell*, for which it supplies no legal authority, is not only misleading, but inapplicable to the *different* facts presented by my Verified Petition.

[4] This practice of grouping Appellate Division Justices with Court of Appeals Judges was criticized by former Bronx Surrogate Bertram R. Gelfand in an incisive written statement presented to the Association of the Bar of the City of New York at its May 14, 1997 public hearing on judicial conduct and discipline. His "Recommendations" section to his statement contained the following:

figures for the last five years are as follows: the 2001 Annual Report records 27 complaints received by the Commission, with only two investigated (Exhibit "C-1"); the 2000 Annual Report records 57 complaints, with only two investigated (Exhibit "C-2"); the 1999 Annual Report records 15 complaints received, with none investigated (Exhibit "C-3"); the 1998 Annual Report records 20 complaints received, with none investigated (Exhibit "C-4"); and the 1997 Annual Report records 38 complaints, with none investigated. (Exhibit "C-5").

10. Because Judiciary Law §45 denies public access to judicial misconduct complaints filed with the Commission, I have virtually no knowledge as to which of this Court's justices are currently or were previously the subjects of complaints, the *facial merit* of these complaints, and their disposition by the Commission. I do know, however, that years ago judicial misconduct complaints were filed against this Court. I know this because I have a September 18, 1986 letter of acknowledgment from the Commission to my father, George Sassower, reflecting his filing of such a complaint (Exhibit "D-1"). I also have a copy of a February 10, 1994 letter from the Commission's Administrator, Gerald Stern (Exhibit "D-5"), responding to my father's request for information as to judicial misconduct complaints he had filed

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"In its annual reports the Commission should no longer bunch in a single category dismissed complaints as to Appellate Division Justices and Judges of Court of Appeals. This practice of the Commission precludes insight into the extent that it is dismissing matters involving the only Judges who can criticize its performance, decisions, and methods. Upon information and belief past and present members of the Court of Appeals may have had significant conflicts of interest in reviewing the conduct of the State Commission on Judicial Conduct." (at p. 8)

(Exhibits "D-2", "D-4"). Mr. Stern conceded that the list of complaints he was supplying was not necessarily complete for complaints filed prior to 1989. Among the judges included on Mr. Stern's list are Francis T. Murphy, then this Court's Presiding Justice, and David B. Saxe, then a Supreme Court Justice, now sitting as a member of this Court.

11. I have copies of some of my father's judicial misconduct complaints against Justices Murphy and Saxe. Likewise, I have copies of some of my father's subsequent judicial misconduct complaints, including against Joseph P. Sullivan, then an Associate Justice on this Court and now its Presiding Justice. An illustrative sampling is annexed (Exhibits "E-1" – "E-6")[5]. As may be seen from this sampling, the complained-against justices are indicated as recipients of the complaints.

12. From this sampling may also be seen that these judicial misconduct complaints are *facially-meritorious*. Nonetheless, in violation of Judiciary Law §44.1, the Commission dismissed these complaints *without* investigation. Although I do not have copies of most of the Commission's dismissal letters, I have been able to locate some letters, including two, dated September 18, 1986 and November 18, 1988

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[5] Listed chronologically, the illustrative sampling of my father's complaints are as follows: Exhibits "E-1a" and "E-1b": July 7, 1986 complaint – with the Commission's September 18, 1986 dismissal thereof; Exhibits "E-2a", "E-2b", and "E-2c": September 30, 1988 and October 10, 1988 complaints – and the Commission's November 18, 1988 dismissal thereof ; Exhibits "E-3a" and "E-3b": February 10, 1989 complaint and Commission's February 22, 1989 acknowledgment letter; Exhibit "E-4": February 27, 1989 complaint; Exhibit "E-5": March 22, 1994 complaint; Exhibits "E-6a" and "E-6b": April 13, 1994 complaint and May 23, 1994 complaint. The issues giving rise to these judicial misconduct complaints and generating a mountain of lawsuits and motions by my father are reflected in a June 6, 1989 *Village Voice* article, "*The Man Who Sued Too Much -- To the Gulag: Courthouse Leper George Sassower Takes On Every Judge in Town*": Exhibit "E-7".

(Exhibits "E-1b" and "E-2c"), dismissing complaints from the annexed sampling. Such letters nowhere state that the Commission's dismissals were based on its determination that the complaints facially lacked merit. They are thus comparable to the Commission's December 23, 1998 letter [A-93] dismissing my *facially-meritorious* October 6, 1998 judicial misconduct complaint against Appellate Division, Second Department justices [A-57-83], which underlies this proceeding. Consequently, this Court's adjudication of my right to the Commission's investigation of that complaint, pursuant to Judiciary Law §44.1 – as, likewise, of my right to the Commission's investigation of my *facially-meritorious* February 3, 1999 complaint against then Appellate Division, Second Department Justice Daniel Joy [A-97-101] – also underlying this proceeding by reason of the Commission's refusal to acknowledge and determine it [A-36-37, 45] -- would, in essence, be an adjudication of my father's right to investigation of his *facially-meritorious* complaints against Appellate Division, First Department justices pursuant to Judiciary Law §44.1.

13. Obviously, this Court has an interest in having the Commission NOT investigate my father's past *facially-meritorious* complaints – quite apart from its interest that the Commission continue to violate Judiciary Law §44.1 by dismissing, *without* investigation, present and future *facially-meritorious* judicial misconduct complaints against its justices. Indeed, included in the relief sought by my Verified Petition – for which the record establishes my entitlement *as a matter of law* -- is:

> "[a] request[] [to] 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". [A-19, A-24]

Plainly, my father's *facially-meritorious* complaints against this Court's justices which the Commission dismissed, *without* investigation and *without* reasons, reinforce the "pattern and practice" alleged in my Verified Petition's Second Claim for Relief [A-38-40].

14. This Court's interest in preventing investigation of past *facially-meritorious* judicial misconduct complaints against its justices should, in and of itself, disqualify it from adjudicating this appeal – apart from its interest in preventing investigation of present and future *facially-meritorious* complaints.

B. <u>This Court's Justices Have a Self-Interest in the Appeal to the Extent they are Dependent on Governor Pataki for Reappointment to this Court and for Elevation to the New York Court of Appeals</u>

15. ALL this Court's justices have been either designated or redesignated to this Court by Governor Pataki. Excepting those planning to retire, ALL are dependent on him for redesignation to this Court upon expiration of their five-year appointive terms – assuming his re-election next year as Governor. ALL, too, are dependent on him for elevation to the only higher state court, the New York Court of Appeals[6]. This dependency on the Governor is even more extreme -- given what the

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[6] Two of this Court's current justices have sought appointment to the Court of Appeals *and* been nominated by the New York State Commission on Judicial Nomination as "well-qualified": (1) Joseph P. Sullivan (1983, 1984 (2x), 1985, 1986, 1992, 1993 (3x), 1996, 1998); and (2) Richard T. Andrias (2000 and 1998). Upon information and belief, other justices of this Court have sought appointment, but have not been nominated by the Commission on Judicial Nomination.

record shows as to his manipulation of judicial selection to the lower state courts, as well as to the Court of Appeals[7]. Indeed, subsequent events, only briefly recited, reinforce this manipulation by the Governor and those operating at his behest.

16. As reflected in my Appellant's Brief (at p. 6), the Governor has long had information and proof that the Commission was not fulfilling its constitutional and statutory function as a monitor of judicial misconduct. Back in May 1996, he was provided with a copy of the record in an Article 78 proceeding, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (S.Ct/NY Co. #109141/95), along with petition signatures of 1,500 New Yorkers calling upon him to appoint an investigative commission. Evidentiarily established by that record was that the Commission: (1) had subverted Judiciary Law §44.1 and was dismissing, *without* investigation and *without* reason, *facially-meritorious* judicial misconduct complaints, particularly against powerful, politically-connected judges [A-177-187]; (2) had, by its attorney, the New York State Attorney General, engaged in litigation misconduct to thwart the Article 78 challenge because it had NO legitimate defense; and (3) had been rewarded by a factually fabricated and legally insupportable decision of Supreme Court Justice Herman Cahn [A-189-194], without which it could *not* have survived. Detailing the fraudulence of Justice Cahn's decision was a 3-page analysis [A-52-54]. The Governor's nonfeasance in the face of such transmittal is reflected by

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[7] This is detailed at pages 14-22 of my March 26, 1999 ethics complaint against the Governor, filed with the New York State Ethics Commission (Exhibit "E" to my July 28, 1999 omnibus motion).

my Verified Petition [A-26-27, ¶¶ELEVENTH-FIFTEENTH] and further detailed in exhibits thereto [A-48-56]. Among these exhibits, two public interest ads, "*A Call for Concerted Action*" [A-51-52] and "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" [A-55-56], both of which I wrote and the latter of which I paid for [A- 26].

17. Two and a half years later, in December 1998, when the Governor appointed Appellate Division, Second Department Justice Albert Rosenblatt to the Court of Appeals, it was with knowledge [A-87, A-90, A-99] that Justice Rosenblatt had been the subject of three of the *facially-meritorious* complaints whose unlawful dismissals by the Commission, *without* investigation and *without* reasons, had generated *Doris L. Sassower v. Commission* [A-28, A-57, A-66, A-87] – covered up by Justice Cahn's fraudulent decision. It was also with knowledge [A-87, A-90, A-99] that a *facially-meritorious* October 6, 1998 complaint against Justice Rosenblatt [A-57-83] was then pending before the Commission, based, *inter alia*, on his believed perjury on his publicly-inaccessible application to the New York State Commission on Judicial Nomination (Br. 6) [A-57-58, A-64].

18. As highlighted by my Appellant's Brief (at 6), the Governor's appointment of Justice Rosenblatt was sped through the Senate by an unprecedented no-notice, by-invitation-only confirmation "hearing" at which no opposition testimony was permitted [A-101]. Thereafter, *without* investigation and *without* reasons, the Commission dismissed my *facially-meritorious* October 6, 1998 complaint [A-93].

19. The Commission's unlawful dismissal of my *facially-meritorious* October 6, 1998 complaint [A-93, A-57-83] and its failure to receive and determine my *facially-meritorious* February 3, 1999 complaint based thereon [A-97-101, A-36-7, A-45] were the predicates for this proceeding against the Commission [A-16-121]. The initial allegations of my Verified Petition highlight Justice Cahn's fraudulent decision in *Doris L. Sassower v. Commission* [A-25-28]– annexing a copy of the same 3-page analysis [A-52-54] as had been given to the Governor three years earlier [A-49].

20. As my Brief details (at 3, 15, 22, 40), Justice Wetzel was not randomly-assigned to the proceeding. Administrative Judge Stephen C. Crane, who had long sought gubernatorial designation to the Appellate Division[8], "steered" it to him [A-122, A-127]. By then, the record of my proceeding showed my detailed argument that the Governor was criminally implicated in the proceeding, both by reason of his long-standing knowledge of the Commission's corruption and his immediate knowledge of the *facially-meritorious* October 6, 1998 judicial misconduct complaint against Justice Rosenblatt (Br. 17-18, 47). Indeed, the record included copies of my ethics and criminal complaints against the Governor based on the facts giving rise to this proceeding, as well as for his manipulation of judicial selection to the lower courts by "rigged" ratings of his state judicial screening committees[9].

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[8] *See* footnote 1 to my Appellant's Brief (at p. 3), referencing Administrative Judge Crane's ambitions for higher judicial office, etc.

[9] *See* pages 1, 2, 14-22 of my March 26, 1999 ethics complaint (Exhibit "E" to my July 28, 1999 omnibus motion); pages 2-3 of my September 15, 1999 supplement thereto (annexed as Exhibit "G" to my September 24, 1999 reply affidavit in further support of my omnibus motion).

21. As detailed by my Appellant's Brief (Br. 27-29, 46-49), Justice Wetzel was not only Governor Pataki's former law partner, who the Governor had appointed to the Court of Claims. He was wholly dependent on the Governor – his appointive term having expired five months earlier [A-264]. Additionally, Justice Wetzel had recently been the beneficiary of the Commission's unlawful dismissal, without investigation [A-278] of a *facially-meritorious* complaint that had been filed against him [A-266-277] – one based, *inter alia*, on his having held a 1994 fundraiser in his home for then gubernatorial candidate Pataki, notwithstanding he was a village town justice. All this and more were objected to in my application for Justice Wetzel's recusal [A-250-290], which requested that if Justice Wetzel denied recusal he make pertinent disclosure, pursuant to §100.3F of the Chief Administrator's Rules, particularly as to his relationship with Governor Pataki and his knowledge of judicial misconduct complaints filed against him[10] [A-258-259].

22. Without making any disclosure, Justice Wetzel denied my recusal application in the same decision as is the subject of this appeal [A-9-14][11]. He then dismissed my Verified Petition based on Justice Cahn's decision in *Doris L. Sassower*

Also, my September 7, 1999 criminal complaint (Exhibit "H" to my September 24, 1999 reply affidavit).

[10] As reflected by my Appellant's Brief (fn. 29), Justice Wetzel had also been the recent beneficiary of the Commission's dismissal of a series of three other *facially-meritorious* judicial misconduct complaints. *See* Exhibit "F" herein, pp. 29-30.

[11] My second "Question Presented" (Br. 1) and my Point II (Br. 42-52) relate to the sufficiency of my recusal application [A-250-293; A-308-334; A-336-342]. Plainly, this second "Question" is one in which this Court has a particular self-interest, as the grounds of that recusal application are echoed on this motion as to the justices' dependency on the Governor and Commission, and their obligations to make disclosure.

v. Commission -- *without* findings as to the accuracy of my 3-page analysis of that decision [A-52-54]. Such analysis was not only *uncontroverted* in the record before him, but was fully substantiated by the record of *Doris L. Sassower v. Commission*, a copy of which I had provided the Court [A-346] and *physically* incorporated in the record of my proceeding.

23. Nor did Justice Wetzel make *any* findings as to the accuracy of my 13-page analysis of Justice Lehner's decision in *Mantell v. Commission* [A-321–334], on which he secondarily relied in dismissing my Verified Petition [A-13]. Such analysis, like my analysis of Justice Cahn's decision, demonstrated that Justice Lehner's decision was also factually-fabricated and legally insupportable. It, too, was *uncontroverted* in the record before Justice Wetzel and fully substantiated by the record of *Mantell v. Commission*, a copy of which I had provided the Court [A-350] and *physically* incorporated in the record of my proceeding.

24. Verifying that Justice Wetzel knowingly predicated his dismissal of Verified Petition on two decisions whose fraudulence was established by *uncontroverted, fully-documented analyses in the record before him* [A-52-54; A-321-334, A-346, A-350]– and that his decision, in *every* material respect, falsifies and distorts the record to deny me, and the public interest I represent, the relief to which I am entitled, will, *in and of itself,* criminally implicate Governor Pataki. This, because, by letter, dated February 23, 2000 (Exhibit "F"), I provided the Governor with a copy of the record of my proceeding, as well as a 14-page analysis of Justice

Wetzel's decision[12], demonstrating it to be "*readily-verifiable* as a wilful and deliberate subversion of the judicial process, constituting a criminal act"[13].

25. The purpose of the 14-page analysis in my February 23, 2000 letter – a precursor to the presentation that now appears in my Appellant's Brief (at 42-68) – was to avert the possibility that the Governor would reappoint Justice Wetzel, by then a seven-and-a-half month "holdover" on the Court of Claims, to that or any other court. It was also to prevent the Governor from designating Administrative Judge Crane to the Appellate Division. The letter presented the facts as to Administrative Judge Crane's complicity in Justice Wetzel's decision in a detailed 8-page recitation[14] -- foreshadowing the presentation in my Appellant's Brief, including my first "Question Presented" (Br. 1, 15, 22, 30, 34, 39-42).

26. In view of the demonstrably self-motivated and corrupt nature of the misconduct of Justice Wetzel and Administrative Judge Crane, my letter further asked the Governor to meet his "duty to secure their removal and criminal prosecution" (Exhibit "F", pp. 2, 32-35). As Justice Wetzel was a "hold-over", his removal could easily be accomplished, requiring no more than the Governor's appointing a successor to his seat. As for Administrative Judge Crane, the situation was more complicated, and the letter stated (at p. 32) that a request would be made to Chief Judge Kaye that

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[12] This 14-page analysis of Justice Wetzel's decision appears at pages 15-29 of the February 23, 2000 letter (Exhibit "F").

[13] *See* page 32 of the February 23, 2000 letter (Exhibit "F").

[14] This 8-page recitation of Administrative Judge Crane's misconduct appears at pages 6-14 of the February 23, 2000 letter (Exhibit "F").

she join in the necessary steps and, as an immediate matter, that she take steps to secure Administrative Judge Crane's demotion from his administrative position.

27. The February 23, 2000 letter additionally requested (at pp. 33-35) that the Governor appoint a special prosecutor or investigative commission – the need for which was exigent. As detailed, the record of my proceeding, with its physically-incorporated copies of the record of *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission*, not only showed the Commission had been the beneficiary of three fraudulent judicial decisions without which it could *not* have survived, but that, in each of these three proceedings, the Attorney General had polluted the judicial process with litigation misconduct – because he had NO legitimate defense. Meantime, the public agencies and officers to whom I had turned with formal ethics and criminal complaints against the Commission, the Attorney General, and the judges involved were paralyzed by conflicts of interest[15]. The Governor, too, suffered from "monumental conflicts of interest", however, the February 23, 2000 letter asked that he put these aside for purposes of appointing a special prosecutor or investigative commission, concluding that

> "[his] failure to do so would not only constitute official misconduct but further evidence of his complicity in the systemic governmental corruption that CJA long ago made the subject of its ethics and criminal complaints against him." (Exhibit "F", at pp. 34-35)

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[15] The ethics and criminal complaints themselves detailed these conflicts of interest -- a fact identified – with pertinent pages references – in a February 25, 2000 memo to the public officers and agencies (Exhibit "H"). A copy of this letter was transmitted to the Governor under a March 7, 2000 transmittal letter (Exhibit "G-2").

28. It was in face of this evidence-supported February 23, 2000 letter (Exhibit "F"), as well as massive subsequent correspondence I transmitted to the Governor relating thereto (Exhibits "G-1" – "G-5"), including in connection with Administrative Judge Crane's October 2000 nomination to the Court of Appeals by the New York State Commission on Judicial Nomination (Exhibit "G-5"), that the Governor made his two "pay-back" judicial appointments: In March 2001, he elevated Administrative Judge Crane to the Appellate Division, Second Department and, in June 2001, reappointed Justice Wetzel to the Court of Claims. The Governor thereby knowingly and deliberately rewarded their demonstrably corrupt and criminal conduct in obliterating my Article 78 proceeding – the subject of this appeal.

29. That this appeal seeks more than reversal of Justice Wetzel's fraudulent decision is explicitly stated in my Appellant's Brief (at 4, 70). It seeks judicial action consistent with the mandatory "disciplinary responsibilities" that §100.3D(1) and (2) of the Chief Administrator's Rules Governing Judicial Conduct impose on every judge. On this appeal, the "appropriate action" mandated by those rules would be referral of Justice Wetzel and of now Appellate Division, Second Department Justice Crane to disciplinary and law enforcement agencies – a disposition with severe criminal ramifications on Governor Pataki *personally*, as well as on those involved in his judicial selection operations.

30. That Governor Pataki's State Judicial Screening Committee purportedly found Administrative Judge Crane "highly qualified" for elevation to the Appellate Division and Justice Wetzel "highly qualified" for reappointment to the Court of

Claims raises serious questions as to whether my evidence-supported February 23, 2000 letter (Exhibit "F") was withheld from the members of the State Judicial Screening Committee to "rig" its ratings. These questions are reflected by my March 30, 2001 letter to Nan Weiner, Executive Director of the Governor's Judicial Screening Committees (Exhibit "I") and, in particular, by my June 17, 2001 letter to the New York State Senate Judiciary Committee (Exhibit "J-2", pp. 6-8), transmitted to Ms. Weiner under a June 18, 2001 coverletter (Exhibit "J-1"), with the pivotal questions reflected therein reiterated by a June 21, 2001 letter (Exhibit "J-3"). Tellingly, there has been no response from Ms. Weiner to these letters, nor from Paul Shechtman, Chairman of the State Judicial Screening Committee, to whom the June 17, 2001 letter was also sent (Exhibit "J-4").

31. Inasmuch as my long ago filed ethics and criminal complaints against the Governor involved not only his complicity in the Commission's corruption, but his manipulation of judicial selection through "rigged" ratings of his judicial screening committees, the "highly qualified" ratings for Justice Wetzel and Administrative Judge Crane in face of my February 23, 2000 letter provide further substantial substantiation of that aspect of those complaints.

C. **This Court's Justices Have a Self-Interest in this Appeal to the Extent They are Dependent on Other Public Officers, such as Chief Judge Kaye, Implicated in the Systemic Corruption Exposed by this Appeal**

32. In addition to Governor Pataki, there are a host of public officers and agencies whose misfeasance criminally implicates them in the Commission's corruption and the subversion of the judicial process in the three Article 78

proceedings "thrown" by Justices Cahn, Lehner, and Wetzel. The dependency of this Court's justices on some of these public officers furnishes an added basis for their self-interest in this proceeding. Among these, Chief Judge Judith Kaye and her retinue at the Unified Court System, with whom, certainly, this Court's justices may be presumed to have particularly close personal and professional relationships.

33. Quite apart from Chief Judge Kaye's power in presiding over the only state court higher than this one, reviewing, at its discretion, appeals sought to be taken from the Appellate Divisions – such as the appeal Mr. Mantell unsuccessfully sought to take from this Court's decision[16] – is her enormous power as head of the Unified Court System. In both capacities, she has the opportunity to bestow incalculable benefits, privileges, and honors on those she favors[17]. Indeed, pursuant to Article VI, §22(b)(1) of the New York State Constitution and Judiciary Law §41.1, she is mandated to include an Appellate Division justice among her three appointees to the Commission[18].

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[16] The Court of Appeals denied Mr. Mantell's motion for leave to appeal on March 22, 2001.

[17] One of the most august honors and privileges is actually sitting on the Court of Appeal "in case of the temporary absence or inability to act" of any of its justices. NYS Constitution, Article VI, §2(a).

[18] The Chief Judge's current Appellate Division appointee is Appellate Division, Third Department Justice Karen Peters, who succeeded to the position previously held by Appellate Division, Second Department Justice Joy. Justice Peters' presence on the Commission is one of the reasons I am not requesting that this appeal be transferred to the Appellate Division, Third Department.

34. Chief Judge Kaye has already demonstrated her unabashed favoritism and protectism of those with whom she has professional and personal relationships – and done so in the context of this proceeding.

35. On March 3, 2000, I hand-delivered to Chief Judge Kaye's New York office a copy of the "three-in-one" record of my proceeding, along with a nine-page letter of that date (Exhibit "K"). By that letter – enclosing a copy of the February 23, 2000 letter to the Governor to which the Chief Judge was an indicated recipient (Exhibit "F", p. 35) -- I requested the Chief Judge to take steps to demote Administrative Justice Crane, pursuant to her administrative and disciplinary responsibilities under §§100.3C and D of the Chief Administrator's Rules, and, additionally, that she take steps to secure his removal from the bench and criminal prosecution – as likewise that of Justice Wetzel. Additionally, I requested (at p. 2) that the Chief Judge appoint a "Special Inspector General" to investigate the Commission's corruption – encompassing its corrupting of the judicial process in the three separate Article 78 proceedings – such being "essential because public agencies and officers having criminal and disciplinary jurisdiction over the Commission are compromised by disabling conflicts of interest" (at p. 2)[19].

36. Noting that the Chief Judge had her own "substantial conflicts of interest, born of [her] personal and professional relationships with innumerable persons implicated in the corruption of the Commission..., or the beneficiaries of it" (at p.

[19] *See* Exhibit "H" hereto for my substantiating February 25, 2000 memo, transmitted to the Chief Judge with the March 3, 2000 letter.

7)[20], my March 3, 2000 letter further observed (at p. 8) that she herself was subject to the Commission's disciplinary jurisdiction. Indeed, the letter expressly identified that, based on the transmitted record, a *facially-meritorious* judicial misconduct complaint could be filed against her were she to fail to discharge her mandatory administrative and disciplinary responsibilities under §§100.3C and D of the Chief Administrator's Rules.

37. The Chief Judge's response was a four-sentence March 27, 2000 letter by Michael Colodner, Counsel to the Unified Court System (Exhibit "L-1"), omitting any reference to §§100.3C and D of the Chief Administrator's Rules and my requests for the Chief Judge to discharge her administrative and disciplinary responsibilities pursuant thereto, and omitting any reference to "corruption" and my request by reason thereof for a "Special Inspector General". Without denying or disputing Chief Judge Kaye's conflicts of interest, Mr. Colodner advised that the Chief Judge has "no jurisdiction to investigate" the Commission and that the "proper redress" for my objections to the handling of my proceeding "is by appeal of that decision to an appellate court".

38. My response was a 13-page April 18, 2000 letter to the Chief Judge (Exhibit "L-2"), whose first-page "RE: clause" identified that it was both a "Formal Misconduct Complaint" against Mr. Colodner and a "Request for Clarification of

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[20] Three illustrative relationships were provided: the Chief Judge's relationships with Court of Appeals Judges Carmen Ciparick and Deputy Chief Administrative Judge for Justice Incentives Juanita Bing Newton – each formerly members of the Commission and complicitous in its corruption – and Court of Appeals Judge Rosenblatt, a repeated beneficiary of the Commission's corruption.

[her] Supervisory Power as Chief Judge and [her] Administrative and Disciplinary Responsibilities under §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct". In pertinent part, my April 18, 2000 letter stated (at pp. 5-7):

> "Even a successful appeal will *not* result in Justice Crane's demotion as Administrative Judge of the Civil Term of the Manhattan Supreme Court. His demotion, like his promotion, is the product of an administrative process that you control.
>
> Conspicuously, **Mr. Colodner does not identify the applicable procedure for securing Justice Crane's demotion as Administrative Judge. By this letter, CJA requests that you identify such procedure**. Plainly, *if* administrative review and disciplinary demotion are contingent on burdening an aggrieved party with the expense and effort of appealing a case he might otherwise not appeal, applicable procedure should at least require the Unified Court System to notify the appellate court -- in this case, the Appellate Division, First Department. Without such notification, the appellate panel assigned to *Elena Ruth Sassower v. Commission* might not know that you and Chief Administrative Judge Lippman are relying on it to make factual findings as to the specific administrative misconduct, summarized at page 5 of CJA's March 3rd letter to you and particularized at pages 6-14 of CJA's February 23, 2000 letter to Governor Pataki, referred to therein. Presumably, applicable procedure would also require the Unified Court System to forward copies of both these documents to the Appellate Division, First Department.
>
> CJA submits that absent legal authority to justify Administrative Judge Crane's complained-of administrative misconduct – which legal authority Mr. Colodner does *not* provide – his duty was to advise you of the existence of 'good cause' for Judge Crane's demotion so that you could meet your 'Administrative Responsibilities' under §100.3C(2) of the Chief Administrator's Rules. More than that, his duty was to advise you that the seriousness of Administrative Judge

> Crane's administrative misconduct, whose purpose and effect was to prevent fair and impartial adjudication of *Elena Ruth Sassower v. Commission* so as to 'protect' a corrupted Commission to the detriment of the People of this State, activated your 'Disciplinary Responsibilities' under §100.3D(1) of the Chief Administrator's Rules to 'take appropriate action'. This included referring Administrative Judge Crane and co-conspiring Acting Supreme Court Justice Wetzel to authorities empowered to effect their removal from the bench and criminal prosecution. Here, too, an appellate panel could *not* remove, criminally punish, or otherwise discipline Justices Crane and Wetzel. At best, it might make referrals to 'appropriate' authorities -- that is, if it recognized its own 'Disciplinary Responsibilities' under §100.3D(1) of the Chief Administrator's Rules."

In addition to the above informational request, in bold-faced type, as to applicable procedure for demoting Administrative Judge Crane, were two other informational requests, also in bold-faced type, but placed in footnotes (Exhibit "L-2", p. 6):

> **"CJA also requests copies of documents or other information pertaining to the yearly redesignation procedures – as Administrative Judge Crane has been four times redesignated (1/1/97, 1/1/98, 1/1/99, and 1/1/00) – and must be redesignated during this year if he is to continue in that position beyond January 1, 2001."**

> **"CJA hereby requests that *if* legal authority exists to justify Administrative Judge Crane's complained-of administrative misconduct, Mr. Colodner provide it. This includes whether, pursuant to §202.3(a) or §202.3(c) of the Uniform Civil Rules for the Supreme Court, Chief Administrative Judge Lippman authorized, without notice or opportunity to be heard, that *Elena Ruth Sassower v. Commission* be exempted from "the method of random selection authorized by the Chief Administrator" (§202.3(b)) or whether some other rule or delegation to Administrative Judge Crane governed assignment of the case."**

39. The April 18, 2000 letter (Exhibit "L-2") further pointed out that Mr. Colodner's claim that the Chief Judge lacked "jurisdiction" to investigate the Commission does "not relieve [her] of the obligation to ensure that an investigation was initiated by a jurisdictionally-proper body" (at p. 7) and, further stated (at p. 9), in bold-faced type:

> **"Judiciary Law §212 would also seem to confer upon you jurisdiction to investigate publicly-available evidence of the Commission's corruption. In view of the ambiguity of Mr. Colodner's seemingly contrary statement that you have 'no jurisdiction', CJA requests that you clarify your position."**

Additionally, in bald-faced type, the letter stated (at p. 11):

> **"In the unlikely event that you have any doubt as to your duty, as New York's Chief Judge, to either investigate or to refer for investigation *readily-verifiable proof* of the corruption of the New York State Commission on Judicial Conduct, covered up state judges whose fraudulent decisions have thwarted legitimate citizen challenge to that corruption, CJA requests that you obtain an advisory opinion from the Advisory Committee on Judicial Ethics, pursuant to Part 101 of the Chief Administrator's Rules. Such advisory opinion should include the propriety of your continuing to direct victims of judicial misconduct, who turn to you for help, to the Commission, while, simultaneously, taking no action on the *proof* of its corruption."**

40. So that Chief Judge Kaye would have no doubt but that the Commission's corruption was continuing unabated, my April 18, 2000 letter (Exhibit "L-2", p. 10) annexed evidentiary proof: an April 6, 2000 letter from the Commission (Exhibit "M-2"), dismissing, *without* investigation, *without* reasons, and without the slightest acknowledgment of its own patent self-interest, my *facially-meritorious* March 3, 2000 complaint against Administrative Judge Crane and Justice Wetzel for their

judicial misconduct in my proceeding against the Commission (Exhibit "M-1"). My April 18, 2000 letter then concluded as follows:

> "In view of the ongoing, irreparable injury to the People of this State caused by a corrupted Commission – and by the continued service of state judges such as Administrative Judge Crane and Acting Supreme Court Justice Wetzel who, for illegitimate personal and political gain, have perpetuated its corruption by corrupting the judicial process — your expeditious attention is required. Considering the speed with which you publicly announced creation of a Special Prosecutor for Fiduciary Appointments in the wake of media-publicized *allegations* of impropriety in Brooklyn, 'Law Day', May 1, 2000, is not too soon to expect some public announcement responding to the irrefutable *proof* of the Commission's corruption, long in your possession. Certainly, 'Law Day' would be a most appropriate occasion." (Exhibit "L-2", p. 13, emphasis in the original).

41. Law Day 2000 came and went with no response from the Chief Judge. Three weeks later, on May 23, 2000, I encountered Chief Judge Kaye and Chief Administrative Judge Jonathan Lippman at the Association of the Bar of the City of New York and asked the Chief Judge when her response would be forthcoming to my April 18, 2000 letter. I recounted our conversation at the outset of my June 30, 2000 letter to the Chief Judge (Exhibit "N") – hand-delivered to her office on that date, with an additional copy hand-delivered to the office of Chief Judge Lippman:

> "In the presence of Chief Administrative Judge Lippman, you breezily told me that you didn't know when you would be responding to the letter. To this, I voiced my expectation that your response be forthcoming and, specifically, that it identify the legal authority by which Administrative Judge Stephen Crane interfered with the random assignment of my Article 78 proceeding against the New York State Commission on Judicial Conduct to 'steer' it to Acting Supreme Court Justice William

Wetzel. CJA's request for such legal authority appears at page 6 of the April 18th letter (*see* fn. 10 therein)." (Exhibit "N", at p. 2)

42. The June 30, 2000 letter (at p. 8) additionally itemized a series of questions regarding the involvement of the Chief Judge's Deputy Counsel, Susan Knipps, in reviewing the March 3, 2000 and April 18, 2000 letters. Ms. Knipps had then just been appointed by Mayor Rudolph Giuliani to a Civil Court vacancy, and was to face a July 6, 2000 confirmation hearing before the Mayor's Advisory Committee on the Judiciary.

43. The Chief Judge's wilful failure to respond to my hand-delivered June 30, 2000 letter (Exhibit "N"), like her wilful failure to respond to my hand-delivered April 18, 2000 letter (Exhibit "L-2"), reflects her readiness to exempt from accountability those within her direct supervisory control, be it Administrative Judge Crane, Unified Court System counsel Colodner, or Deputy Counsel Knipps – and to abdicate her duty to this State's citizens to ensure the adequacy of mechanisms to protect them from judicial misconduct.

44. For this reason, I filed a *facially-meritorious* complaint "against Chief Judge Kaye, in her capacity as Chief Judge of the State of New York" (Exhibit "O-1"). It was based on the Chief Judge's

> "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)",

and, additionally, on her "wilful and deliberate violation of §100.2 of the Chief Administrator's Rules Governing Judicial Conduct" pertaining to conflicts of interest. The complaint, dated August 3, 2000, also detailed the standard for imposing discipline – and asserted that discipline against Chief Judge Kaye was not only warranted, but "that discipline must include her removal from the bench" (Exhibit "O-1", p. 4).

45. A copy of my August 3, 2000 complaint was sent to Chief Judge Kaye, as well as to Chief Judge Lippman and Mr. Colodner (Exhibit "Q-1") – without response from them. Nor did they respond to my unresponded-to April 18, 2000 and June 30, 2000 letters (Exhibits "L-2" and "N").

46. Shortly thereafter, by reason of the Chief Judge's official misconduct in connection with these important letters, including possible affirmative misrepresentation and concealment on her part and/or on the part of Chief Judge Lippman to the Commission on Judicial Nomination, Administrative Judge Crane was nominated by it to the Court of Appeals. Likewise Deputy Chief Administrative Judge for Justice Incentives Juanita Bing Newton, a former member of the Commission on Judicial Conduct, was nominated. This was detailed at pp. 14-15 of an extensive October 16, 2000 report (Exhibit "P-1"), a copy of which I hand-delivered to Chief Judge Kaye's office (Exhibit "P-2"), and then supplemented by a further November 13, 2000 report, a copy of which I gave Chief Judge Kaye *in hand* on December 9, 2000 (Exhibit "P-3), for presentment to her "Committee to Promote Public Trust and Confidence in the Legal System". By then, the Commission had

further demonstrated its "on-going unabated corruption" by a September 19, 2000 letter (Exhibit "O-2"), dismissing, *without* investigation, my *facially-meritorious* August 3, 2000 complaint against Chief Judge Kaye (Exhibit "O-1") on the pretense that it presented "no indication of judicial misconduct to justify judicial discipline."

47. While I can only speculate as to the useful role that Chief Judge Kaye and Chief Administrative Judge Lippman played in facilitating Administrative Judge Crane's nomination by the Commission on Judicial Nomination, as well as that of Judge Newton, their responsibility for the subsequent redesignation of Administrative Judge Crane to his administrative position is beyond dispute. It is clear from Chief Administrative Judge Lippman's December 29, 2000 Administrative Order (Exhibit "Q-2"):

> "Pursuant to the authority vested in me, and with the approval of the Chief Judge and in consultation with the Presiding Justice of the Appellate Division, First Judicial Department, on behalf of his court, I hereby designate Honorable Stephen G. Crane as Administrative Judge of Supreme Court, Civil Term, New York County."

48. The only question is whether, in light of my dispositive April 18, 2000 letter to the Chief Judge (Exhibit "L-2"), expressly inquiring as to the procedures applicable for Administrative Judge Crane's redesignation, the referred-to "consultation with the Presiding Justice of the Appellate Division, First Department" included discussion of Administrative Judge Crane's misconduct in my proceeding – as evidentiarily established by the record herein and presented by the first "Question Presented" and Point I of my Appellant's Brief (at 1, 39-42).

D. This Court's Appellate Decision in *Mantell* Manifests this Court's Disqualifying Self-Interest and Actual Bias

49. This Court's appellate decision in *Mantell* provides the most graphic manifestation of the Court's self-interest and actual bias, necessitating its disqualification from my appeal.

50. No fair and impartial tribunal could deny – as this Court did – the relief sought by my September 21, 2000 motion in the *Mantell* appeal. The salutary purpose of such motion – which I incorporate herein by reference -- was *expressly* stated in my Notice of Motion: (1) "to protect the Court against the fraud being perpetrated on it and the *pro se* Petitioner, Michael Mantell" by the Attorney General's Respondent's Brief; and (2) "to further justice and judicial economy" by postponing oral argument on Mr. Mantell's appeal so that it could be heard together with my own and/or consolidated with it in light of "the common issues" between them.

51. To protect the Court from the fraud being perpetrated by the Attorney General's Respondent's Brief, my Notice of Motion sought to have the Court receive, for consideration on Mr. Mantell's appeal, my supporting affidavit "setting forth essential facts, based on direct, personal knowledge" relating to that fraud. This, by granting me intervention, whether by right pursuant to CPLR §1012(a)(2), or by leave pursuant to CPLR §§1013 and 7802(d), or by recognizing me as an *amicus curiae*.

52. My 31-page supporting affidavit detailed the necessity for such relief. It showed that the Attorney General's Respondent's Brief argued for affirmance of Justice Lehner's decision, *without* disclosing that the fraudulence of that decision had

been demonstrated by my *uncontroverted* 13-page analysis of it [A-321-334]. Indeed, my supporting affidavit highlighted (at pp. 9-11) that the 13-page analysis [A-321-334]:

> "establishes the deceit in virtually ALL[21] of the Attorney General's Brief and, in particular, the first of the 'Questions Presented' in his 'Counterstatement', his 'Statutory Framework', and his 'Point I'. These mostly regurgitate and reformat, in a dizzying mishmash, Justice Lehner's legally-insupportable and specious arguments, exposed as such by my 13-page analysis []. Among these:
>
> (a) that the issue before the Court is the availability of a writ of mandamus to compel, i.e. CPLR §7803(1) (at pp. 2, 5, 8, 11)[22], omitting the relevance of CPLR §7803(3) to Mr. Mantell's claim that the Commission's dismissal of his judicial misconduct complaint was "affected by an error of law", was "arbitrary and capricious", and "an abuse of discretion" – exposed by the analysis (at pp. 3-5);
>
> (b) that the Commission's 'governing law' gives it discretion to dismiss a complaint (at pp. 1, 8) – exposed by the analysis (at pp. 5-9);
>
> (c) that this 'governing law' includes 22 NYCRR §7000.3, which 'follow(s) the language of Judiciary Law §44(1)' (at p. 3) – exposed by the analysis (at p. 7);
>
> (d) that the Commission is analogous to a public prosecutor and, therefore, not subject to judicial review (at pp. 10-11) – exposed by the analysis (at pp. 9-11);
>
> (e) that challenges to attorney disciplinary committees are 'comparable' and demonstrate that the Commission 'is not vulnerable to a writ of mandamus' and is 'exempt

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[21] Emphasis in the original.

[22] These page references are to the Attorney General's Respondent's Brief on the *Mantell* appeal.

from judicial review' (at pp. 11) – exposed by the analysis (at pp. 11-12)."

53. My supporting affidavit also showed (at pp. 4, 7-8) that Respondent's Brief had deceitfully presented, as usable authority, the decisions of Justices Cahn and Wetzel [A-189-194, A-9-14], which, being they are *unpublished*, the Attorney General had separately transmitted to the Court, 10 copies of each decision. This, *without* disclosing that their fraudulence was established by my *uncontroverted* 3-page analysis of Justice Cahn's decision [A-52-54] and my *uncontroverted* 14-page analysis of Justice Wetzel's decision (Exhibit "F").

54. My supporting affidavit annexed copies of these three *uncontroverted* analyses, together with voluminous documentary proof establishing that the Attorney General and Commission were fully aware of these analyses, *inter alia*, by their receipt of voluminous correspondence from me throughout the previous nine months – such as my February 23, 2000 letter to the Governor (Exhibit "F") and my March 3, 2000 letter to the Chief Judge (Exhibit "K"), copies of which were hand-delivered to them (Exhibits "H", "K").

55. My supporting affidavit further exposed (at pp. 9, 27-28) the deceit and bad-faith of the argument in Respondent's Brief that Mr. Mantell lacked standing to sue the Commission for its dismissal, *without* investigation, of his *facially-meritorious* judicial misconduct complaint – an argument even Justice Lehner's decision had *not* adopted. In support, my affidavit annexed an excerpt from the lower court record in my proceeding, setting forth, without controversion, commentary by

Siegel in New York Practice, sec. 136 (1999 ed, pp. 223-5), discussing and quoting *Dairylea Cooperative v. Walkley*, 38 NY2d 6 (1975) – a case cited by the Respondent's Brief, *without* interpretive discussion.

56. As to the second branch of my motion requesting that oral argument of Mr. Mantell's appeal be postponed so that it could be heard together with oral argument on my appeal and/or consolidated therewith, my supporting affidavit highlighted (at pp. 26-29) key "common issues" shared by the appeals, asserting that not only was there "absolutely no prejudice" by having the two appeals heard together and/or consolidated, but that same would "would further safeguard the integrity of the appellate process herein."

57. The *only* response to my 31-page, fact-specific, document-supported supporting affidavit was a 12-paragraph opposing affirmation by the Assistant Attorney General who had signed Respondent's Brief. This opposing affirmation did *not* mention any of my three analyses and did not deny that they established that the decisions of Justices Cahn, Lehner, and Wetzel were fraudulent, as, likewise, Respondent's Brief based thereon. Nor did the opposing affirmation deny that the highest echelons of the Attorney General's Office, including Attorney General Spitzer himself, and the Commission, knew of the analyses before Respondent's Brief was written and filed – or that the Assistant Attorney General had himself known of them before signing Respondent's Brief.

58. Nevertheless, by *concealing* the actual CPLR sections under which I had moved for permissive intervention and by misrepresenting the law for CPLR

intervention as of right, the Assistant Attorney General purported, not by any memorandum of law, but in his 12-paragraph opposing affirmation, that I had not met the standards for intervention. He also misrepresented that I had not met the criterion for *amicus curiae* and, as a non-lawyer, I was ineligible. Further, without denying that the two appeals presented "common issues" and that there was no prejudice by having them heard together or consolidated, he opposed such relief.

59. My October 5, 2000 reply papers, consisting of a 26-page reply affidavit, supplemented by my 19-page memorandum of law, demonstrated: (1) that "each and every paragraph of [this] Opposing Affirmation falsifie[d], distort[ed], and conceal[ed] the applicable law and/or the materials facts pertinent to my motion"; (2) that, as *a matter of law*, my fraud claims were established -- there being *neither* specific denials *nor* any probative evidence in opposition to my motion; and (3) that I met the standards for intervention and *amicus curiae*, quite apart from the fact, identified in my supporting affidavit, that this Court has "the inherent power to protect itself from fraud" and did not require "statutory warrant" in order to receive my supporting affidavit on Mr. Mantell's appeal. Indeed, my reply affidavit stated (at p. 10, ¶21):

> "As these essential facts relating to the fraud perpetrated by... Respondent's Brief have *not* been denied or disputed..., it is all the more essential for the Court to have my Affidavit before it 'for consideration on the [*Mantell*] appeal'. It makes no difference to me in what fashion the Court receives the Affidavit. As set forth in my Notice of Motion, it can be by granting me intervention as of right, pursuant to §1012(a)(2), intervention by leave, pursuant to §§1013 and 7802(d), by according me *amicus curiae* status, or *via* this Court's inherent power to protect itself

from fraud – a power referenced by my [supporting] Affidavit (page 30, fn. 25)."

60. My reply papers also detailed and documented the direct culpability of Attorney General Spitzer, his high-echelon supervisory staff, as well as the Commission in failing to withdraw the fraudulent Respondent's Brief and Opposing Affirmation in face of written notice of their obligation to do so under court-adopted ethical rules of professional responsibility[23]. I stated that such conduct reinforced the necessity that the Court grant the "other and further relief" requested by my Notice of Motion, *to wit*, an order:

> "disqualifying the Attorney General from representing Respondent, based on his demonstrable violation of Executive Law §63.1 by reason of his litigation misconduct; striking the Attorney General's Brief for Respondent as a fraud upon this Court and upon the *pro se* Petitioner; imposing costs and financial sanctions upon the Attorney General and Respondent, pursuant to 22 NYCRR §130-1.1; and referring them for disciplinary and criminal investigation and prosecution, consistent with this Court's mandatory 'Disciplinary responsibilities' under §100.3D(1) of the Chief Administrator's Rules Governing Judicial Conduct."

I asserted:

> "Only such action will demonstrate this Court's commitment to protecting the integrity of the appellate process from an Attorney General and Commission who act as if fundamental standards of ethical and professional responsibility do not apply to them." (my October 5, 2000 reply affidavit, ¶3)

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[23] *See* my September 27, 2000 and October 4, 2000 letters to the Attorney General, to which the Commission was an indicated recipient, annexed as Exhibits "B" and "C" to my October 5, 2000 reply affidavit.

61. Although my motion was fully submitted on October 6, 2000, this Court, without notice to me, adjourned my motion to October 24, 2000 – the very date of the oral argument of Mr. Mantell's appeal that my motion sought to postpone.

62. I did not learn of such fact until late in the day, Friday, October 20, 2000, when I telephoned the Clerk's Office to find out the status of my motion. This is set forth in my October 23, 2000 letter to this Court's Clerk (Exhibit "B-2"), which further stated:

> "I do not know whether, in so adjourning my motion to the date of oral argument of Mr. Mantell's appeal, the Court intended to simultaneously entertain oral argument of the motion."

Such letter reiterated requests I had made in a lengthy telephone conversation with the Court's Deputy Clerk on the morning of October 23, 2000, in which I asked to be heard at the oral argument in support of my motion and, additionally, for a court stenographer to be permitted to record the argument.

63. Upon information and belief, my October 23, 2000 letter, which I express mailed to the Court for the next day's morning delivery, was not seen by the five judges on the appellate panel until they were seated in the courtroom and Presiding Justice Williams was going through a preliminary call of the calendar, browbeating attorneys into reducing their requested time allotments. Upon calling the *Mantell* appeal, I rose with the words "application" and identified myself as the movant in the motion pending before the Court to postpone argument on Mr. Mantell's appeal so that it could be heard together with my own or consolidated with

it. It was then that the Court's Clerk, to whom a short while before, I had given five copies of my October 23, 2000 letter for the panel members, distributed them to each of the judges.

64. Justice Williams did not even pause to review my letter (Exhibit "B-2"), which I identified as setting forth the relevant facts as to my request to argue in support of my motion. Instead, while members of the panel were reading their copies of my letter, he peremptorily denied my request to argue the motion, as well as my letter's further request, which I brought to his attention, for permission to have a court stenographer record the argument. Inasmuch as the stenographic reporter I had engaged for such purpose was present in the courtroom – a fact I identified to Justice Williams -- I asked the reason he was denying such request. I believe it was then that he threatened me with removal from the courtroom unless I sat down. None of the panel members saw fit to object to Justice Williams' harsh treatment of me – treatment all the more abusive and inappropriate in light of my extraordinary motion pending before them – with which they, as likewise, Justice Williams should, by then, have been familiar.

65. It is my recollection that when the *Mantell* appeal was subsequently called for argument, the panel did not ask any questions of Mr. Mantell – who had not interposed any opposition to my motion. Nor did it question the Assistant Attorney General whose fraudulent appellate advocacy my motion had documentarily established – and whose oral presentation lasted no more than a minute or two.

66. Less than a month later, the panel denied my fact-specific, fully-documented motion, *without* reasons (Exhibit "B-1"). Notwithstanding my *uncontroverted* 13-page analysis of Justice Lehner's decision, annexed to the motion, established the decision to be a fraud, the panel summarily affirmed it. Prefacing this affirmance was a single sentence, *unsupported* by any law, that "Petitioner lacks standing to assert that, under Judiciary Law §44.1, respondent is required to investigate ALL facially meritorious complaints of judicial misconduct" (emphasis added). In so stating, the panel concealed that Mr. Mantell's Verified Petition had NOT sought to require the Commission to investigate ALL *facially-meritorious* complaints, but, rather, HIS *facially-meritorious* complaint, ignoring, as well, the commentary in Siegel from New York Practice as to the state of the law regarding standing, whose significance I had highlighted by my motion.

67. By memorandum dated December 1, 2000, I put the Attorney General and Commission on notice of their duty to take steps to vacate this Court's *Mantell* decision for fraud – providing a brief analysis thereof (Exhibit "R"). Just as they never denied nor disputed the accuracy of my analyses of the decisions of Justices' Cahn, Lehner, and Wetzel, showing those decisions to be fraudulent, so they have never denied nor disputed the accuracy of this further analysis.

E. The Appearance of this Court's Bias Warrants Disqualification and Special Assignment, Absent which Appellant is Entitled to Disclosure of Relevant Facts as to the Justices' Pertinent Relationships and Dependencies

68. In view of the demonstrated interest and actual bias of this Court's justices, it seems almost anti-climactic to identify the "appearance" of their bias – which, pursuant to §100.3(E) of the Chief Administrator's Rules, is also disqualifying. However, inasmuch as this "appearance" is strongest as to this Court's justices, rather than, for example the justices of the Appellate Division Fourth Department, it is a relevant factor in assessing whether, "for appearance sake", it might not be more appropriate to transfer this appeal to that Department[24].

69. Obviously, the bases hereinabove set forth as to the disqualification of this Court's justices for interest *also* present an appearance that they could not be fair and impartial – as to which I am entitled to disclosure by them of the pertinent facts pertaining to their personal and professional relationships with, and dependencies on, the persons and entities whose misconduct is the subject of this lawsuit or exposed thereby.

70. The record herein of recusals by justices in Supreme Court/New York County reflects their keen awareness of the importance of preserving the appearance of impartiality. Acting Supreme Court Justice Ronald Zweibel recused himself expressly "in order to avoid even the appearance of any impropriety" [A-242] in

[24] In view of the fact that the Commission's highest-ranking judicial member is Appellate Division, Third Department Justice Karen Peters, it would not be appropriate to transfer this appeal to the Appellate Division, Third Department.

response to my oral application that he was disqualified for interest under Judiciary Law §14 because of his dependency on Governor Pataki for reappointment to the Court of Claims. Justice Diane Justice Lebedeff recused herself, *sua sponte*, after disclosing her personal and professional relationship with then Justice Joy, the Commission's highest ranking judicial member – against whom my February 3, 1999 judicial misconduct complaint was directed [A-132-137]; Acting Supreme Court Justice Walter Tolub recused himself, *sua sponte*, with the disclosure, in his recusal order, that "petitioner's father, on a prior occasion, attempted to initiate a proceeding before the commission" [A-124]; and Acting Supreme Court Justice Franklin Weissberg recused himself, *sua sponte*, with the disclosure, in his recusal order, that his "law secretary who was formerly a New York State Assistant Attorney General, supervised an appeal handled by that office in a related case involving the Sassower family" [A-126].

71. Plainly, my father's publicly adversarial relationship with this Court, reflected by the mountain of judicial misconduct complaints he has filed against its justices (Exhibits "D" and "E"), as well as his many lawsuits against them[25], and other attempts to expose what he has perceived as their corruption, including

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[25] Two of these lawsuits are identified in my father's April 13, 1994 judicial misconduct complaint against Justice Sullivan (Exhibit "E-6a")–which identifies (at p. 2) two federal lawsuits from 1985 in which Justice Sullivan was a named defendant: *Puccini Clothes, Ltd. v. Francis T. Murphy, et al.*, SDNY 85Civ.3712 [WCC], and *Hyman Raffe, George Sassower, Sam Polur, et al. v. Xavier C. Riccobono, et al.*, SDNY 85Civ.3927 [WCC]. The litany of lawsuits filed by my father against this Court's justices and relating to the involuntarily-dissolved corporation of Puccini Clothes, Ltd. is reflected by the June 6, 1989 Village Voice article, "*The Man Who Sued Too Much: To the Gulag: Courthouse Leper George Sassower Takes on Every Judge in Town*": Exhibit "E-7".

broadsides to the media – of which justices of this Court have ample knowledge – would lead an objective observer to reasonably conclude that this Court could not be fair and impartial – and, all the more so because my success on this appeal would plainly redound to benefit my father – this Court's nemesis. By contrast, my father's contact with the Appellate Division, Fourth Department has, upon information and belief, been minimal.

72. An objective observer would also reasonably believe that the geographic proximity of this Court and the Appellate Division, Second Department, whose past and present justices are the subject of the two misconduct complaints underlying this proceeding – and of several of the misconduct complaints underlying *Doris L. Sassower v. Commission* -- would impinge upon this Court's ability to be fair and impartial. Obviously, close personal and professional relationships exist among the relatively small group of 52 justices of the four Appellate Divisions. However, the strongest relationships between Appellate Divisions and their justices are reasonably between this Court and the Appellate Division, Second Department as less than ten miles separate the Appellate Division, Second Department from this Court. By contrast, 35 times that distance or approximately 350 miles, separate the Appellate Division, Second Department from the Appellate Division, Fourth Department.

73. Additionally, this Court's justices may be presumed to have close personal and professional relationships with now Appellate Division, Second Department Justice Crane. Those relationships may be presumed to go back many years – beyond

the period in which Justice Crane was Administrative Judge of the Civil Branch of the Manhattan Supreme Court and predating the years of his other judicial positions in proximate New York City Courts. This, because Justice Crane worked 13 years for this Court as Chief Law Assistant and Senior Law Assistant. Albeit those 13 years were from 1966-1979, Justice Crane's subsequent relationships with the Court presumably had an added dimension of familiarity and warmth on that account[26]. Moreover, to the extent that – pursuant to my April 18, 2000 letter (Exhibit "L-2", pp. 5-7) -- Chief Judge Kaye and Chief Administrative Judge Crane provided Presiding Justice Sullivan with a copy of my February 23, 2000 letter to the Governor, containing my 8-page recitation of Administrative Judge Crane's administrative misconduct in my proceeding (Exhibit "F", pp. 6-14) and Presiding Justice gave his consent to the redesignation notwithstanding, there is an appearance that this would affect the independent judgment of his colleagues on the Court.

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[26] This Court's blatant favoritism of Justice Crane was long ago demonstrated when, in June 1995, it affirmed, "for the reasons stated by Crane" his lawless decision in *Doris L. Sassower v. Kelly, Rode & Kelly, et al.* (NY Co. #93-120917). By that decision – the same as is referred to in my February 23, 2000 letter to Governor Pataki (Exhibit "F", p. 8) -- Justice Crane not only wrongfully dismissed a fully meritorious lawsuit brought by Doris Sassower, but imposed, without *any* hearing, over $18,000 in sanctions and costs under 22 NYCRR §130-1.1 against her and her former counsel, Marc Gottlieb, Esq. – an amount nearly TWICE the then limit of 22 NYCRR §130-1.1. After denying Mr. Gottlieb's appeal, which was UNOPPOSED, this Court then denied Mr. Gottlieb's motion for leave to appeal to the Court of Appeals.

Although Doris Sassower was not a party to Mr. Gottlieb's appeal, which was brought on his own behalf and contained none of her relevant submissions, Justice Crane immediately used this Court's affirmance of Mr. Gottlieb's appeal as the basis for denying Doris Sassower's fully-documented motion to vacate his dismissal/sanctions decision, long pending before him. Said vacatur motion was based on the demonstrated "fraud on the court" committed by adverse counsel, on which Justice Crane's dismissal/sanctions decision had relied.

74. Finally, there is a clear appearance that the Attorney General himself perceives this Court as not being a fair and impartial tribunal. The dispositive proof of this is his Respondent's Brief on this appeal – rampant with wilful falsification, distortion, and omission of the material facts and controlling law pertaining to this proceeding. That notwithstanding Attorney General Spitzer and his Solicitor General, Preeta D. Bansal, are each *personally* knowledgeable that Respondent's Brief is a "fraud on the Court", but nonetheless have refused to withdraw it, bespeaks their confidence that this Court, by reason of its interest and bias, as previously manifested on the *Mantell* appeal, will allow them to get away with anything[27].

F. <u>This Court's Conduct at the Oral Argument of the Appeal May Furnish Additional Evidence of the Court's Disqualifying Self-Interest and Bias – as to which Appellant is Entitled to a Stenographic/Audio/ or Visual Record for Purposes of Appeal to the Court of Appeals</u>

75. Like adjudication of the first branch of my motion for special assignment/transfer of this proceeding, adjudication of the second branch, *inter alia*, to strike Respondent's Brief as a "fraud on the court" and, based thereon, to disqualify the Attorney General for violation of Executive Law §63.1 and conflict of interest rules necessarily precedes oral argument of the appeal. For it to be otherwise would mean that I would argue my appeal before a self-interested, biased Court, with the Attorney General orally arguing against the appeal based on his fraudulent Respondent's Brief. In other words, it would be as if I had never made this motion.

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[27] As to their direct, personal knowledge and involvement, *see* Exhibit "T-3", referencing my face-to-face conversation with Attorney General Spitzer on April 18, 2001 and Exhibits "W", referencing the voice mail message Solicitor General Bansal herself left on my phone answering system on June 12, 2001.

76. Were the Court to ignore the threshold nature of this motion would be further confirmatory of its disqualifying actual and apparent self-interest and bias. Surely, it would raise suspicion that the Court was planning to dispose of the motion in the same way as it disposed of my threshold motion in the *Mantell* appeal, *to wit*, by deferring the motion and then denying it, *without* reasons, in one sentence tacked on to a summary affirmance of the appealed-from decision.

77. Unlike in the *Mantell* appeal, where I was not a party, I would have the right to argue my threshold motion on my own appeal. Indeed, the issues of special assignment/transfer and the Attorney General's fraudulent Respondent's Brief replicate and reinforce the issues presented by my Appellant's Brief herein.

78. The Court's hostility or non-response to my oral argument – and its willingness to allow the Attorney General to argue, based on Respondent's Brief – without demanding that he confront the demonstrated fraud permeating virtually every line thereof, as documented by the second branch of this motion, will foreshadow the kind of cover-up appellate decision that will follow.

79. As stated in my October 23, 2000 letter in regard to my motion in *Mantell* (Exhibit "B-2"), "I intend to appeal an adverse determination of my appeal to the Court of Appeals" – and to include, as an essential part of the 'lower court record' the transcripts of the oral argument of Mr. Mantell's appeal and of my own."

80. Because this Court denied my request to permit a stenographic record to be made of Mr. Mantell's appeal, the Court of Appeals will have to rely on the sketchy recitation provided by this sworn affidavit as to what took place at the oral

argument on Mr. Mantell's appeal. Needless to say, even a contemporaneous affidavit -- such as I would make following oral argument of this appeal in the event the Court denies my request for an audio/video/or stenographic record – does not have the irrefutable evidentiary value of such evidentiary record. There is no reason why I should be deprived of this "best evidence" in demonstrating this Court's actual bias and, instead, have to provide the Court of Appeals with the "lesser evidence" of an affidavit presentation.

81. The record herein shows that at every court appearance in Supreme Court/New York County I requested the presence of a court stenographer – and that the three transcripts of these appearances – all in my Appellant's Appendix [A-128-143; A-144-171; A-240-243] -- constitute important proof of the two threshold issues presented by my Appellant's Brief: (1) judicial disqualification and the need for special assignment; and (2) the Attorney General's disqualification by reason of his fraudulent defense tactics, as documented by my omnibus motion and subsequent submissions. Indeed, extracts from these transcripts are reprinted in my Appellant's Brief (at 13-15, 16-19, 21).

82. The record of my proceeding before this Court should be no less documented when I seek review by the Court of Appeals on the threshold issues of my entitlement to this Court's disqualification and to the Attorney General's disqualification on the appeal by reason of his fraudulent Respondent's Brief.

G. The Impact of this Appeal on the Public's Right to a Properly-Functioning Commission, including as to its Standing to Sue the Commission for Violative Conduct, Entitles the Public to a Record of the Oral Argument

83. The public has a transcending interest in whether the only state agency charged with the affirmative duty of protecting it against miscreant judges is discharging that duty – for which, additionally, it funds that agency with its tax dollars.

84. Over and again, this proceeding recognizes the public interest importance and impact, beginning with its caption which expressly identifies the lawsuit as having been brought "*pro bono publico*".

85. Even where, as in Mr. Mantell's case, the proceeding is brought to vindicate the rights of no more than the individual petitioner, the repercussions of its judicial decisions extend to the public. Illustrative is Justice Wetzel's reliance [A-13] on Justice Lehner's decision as precedential authority for the dismissal of my Verified Petition. Illustrative, too, is this Court's appellate decision in *Mantell*, which Respondent's Brief herein urges as precedent not only for the proposition that I lack standing to challenge the Commission in connection with MY facially-meritorious judicial misconduct complaints, but that I altogether lack "standing" to sue the Commission.

86. Because of the importance of my appeal,

> "People from throughout the state have expressed interest in being present at the oral argument. Some are too far away to make that feasible. Others cannot take time off from work or leave family responsibilities and other commitments. The solution

> is to record the appellate argument so that those unable to attend will have it available to them at a more convenient time and place."

Reflecting this are the annexed signed petitions from nearly 400 New Yorkers (Exhibit "S"), stating:

> "We, citizens of the State of New York, hereby petition the justices of New York's Appellate Division, First Department in support of the application to allow a recording to be made of the appellate argument of the public interest lawsuit, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* (NY Co. #108551/99), scheduled for the September 2001 Term."

87. Even were these nearly 400 New Yorkers to travel the distance and take the time to be physically present for the oral argument, the courtroom could not accommodate this number of spectators.

AS TO THE SECOND BRANCH OF THIS MOTION: to Strike Respondent's Brief, for Sanctions, Disciplinary and Criminal Referrals of the Attorney General and Commission, and to Disqualify the Attorney General from Violation of Executive Law §63.1 and Conflict of Interest Rules

88. As set forth in my succinct Reply Brief,

> The *only* reply appropriate to...Respondent's Brief...is a motion to strike it, to sanction the Commission and the Attorney General, refer them for disciplinary and criminal investigation and prosecution, and to disqualify the Attorney General for violation of Executive Law §63.1 and conflict of interest rules. This, because Respondent's Brief, from beginning to end, is based on *knowing and deliberate* falsification, distortion, and concealment of the material facts and law – and because the Commission and Attorney General, *directly and incontrovertibly*, know this to be so, but have failed and refused to withdraw it." (emphases in the original)

89. The dispositive document establishing, *prima facie*, my entitlement to ALL such relief is my 66-page Critique of Respondent's Brief (Exhibit "U"). Just as my omnibus motion in Supreme Court/New York County provided a virtual line-by-line analysis establishing the fraudulence of the Attorney General's motion to dismiss my Verified Petition, so, too, my Critique provides a virtual line-by-line analysis establishing the fraudulence of Respondent's Brief. Among the Critique's highlights:

(a) Point I of the Critique (at pp. 3-5) showing that Respondent's Brief conceals that Justice Wetzel's dismissal of my Verified Petition is based exclusively on decisions whose fraudulence was evidentiarily established by the record before him: my *uncontroverted* 3-page analysis Justice Cahn's decision [A-52-54] and my *uncontroverted* 13-page analysis of Justice Lehner's decision [A-321-334] the accuracy of which *uncontroverted* analyses Respondent's Brief does not deny or dispute;

(b) Point II of the Critique (at pp. 5-11) showing that Respondent's Brief is fashioned on knowingly false propositions about the Commission, derived from the decisions of Justices Cahn and Lehner, without identifying these decisions as its source – and that the propositions are rebutted by my *uncontroverted* analyses of these decisions and the *uncontroverted* evidence in the record of my proceeding;

(c) Point III(D)(1) of the Critique (at pp. 40-47) showing that Respondent's Brief relies on this Court's appellate decision in *Mantell* to support inflated claims that I lack "standing" to sue the Commission – concealing not only the different facts of my case, making the *Mantell* appellate decision inapplicable, but the fraudulence of the *Mantell* appellate decision, as highlighted by my *uncontroverted* 1-page analysis – the accuracy of which Respondent's Brief does not deny or dispute.

90. Further substantiating my right to ALL the relief requested by this second branch of my motion is my correspondence with the Attorney General's office. Such correspondence "fills in" the history before and after the Critique. It proves that there are NO extenuating circumstances to excuse Respondent's Brief and that the Attorney

General's wilful refusal to withdraw it, in violation of fundamental rules of professional responsibility, has been with the knowledge and consent of top supervisory personnel, *to wit*, Attorney General Spitzer and Solicitor General Bansal *personally* and, likewise, with the knowledge and consent of the Commission. In this respect it is identical to the voluminous correspondence that supported my omnibus motion, which also demonstrated the knowledge and consent of the highest echelons of the Attorney General's office, as well as the Commission, in Respondent's fraudulent dismissal motion and other submissions – all of which they refused too withdraw, in wilful violation of fundamental rules of professional responsibility.

91. The substantiating correspondence herein annexed is as follows:

* my three letters to Attorney General Spitzer, dated January 10, 2001[28], April 18, 2001, and May 3, 2001[29], copies of which were provided to the Commission (Exhibits "T-1", "T-2", and "T-3");

* Assistant Solicitor General Carol Fischer's June 4, 2001 letter to me (Exhibit "V");

* my June 7, 2001 letter to Solicitor General Bansal (Exhibit "W") – a copy of which was sent certified mail/rrr to Attorney General Spitzer[30];

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[28] My January 10, 2001 letter put the Attorney General on notice that he had "a profound self-interest in the outcome of the appeal" inasmuch as the lower court record established my entitlement to his disqualification and for sanctions and disciplinary and criminal referral of him, *personally*. It, therefore, suggested that he appoint "independent counsel to review the Brief, Appendix, and underlying case file" to advise him of his obligations under Executive Law §63.1. (Exhibit "T-1", pp. 2-3).

[29] Included, as well, is my May 3, 2001 letter to Deputy Solicitor General Belohlavek (Exhibit "T-4"), to which Attorney General Spitzer was an indicated recipient

[30] Among the exhibits to that letter, included herewith, is my correspondence with Deputy Solicitor General Belohlavek and Assistant Solicitor General Fischer relating to my preparation of the Critique: Exhibits "B-1" – "B-11" thereto.

* Deputy Solicitor General Michael Belohlavek's June 14, 2001 letter to me (Exhibit "X-1");

* my June 18, 2001 letter to Attorney General Spitzer – a copy of which was sent to Attorney General Spitzer (Exhibit "Y")[31]

* my June 22, 2001 letter to Deputy Solicitor General Belohlavek (Exhibit "X-2")– copies of which were sent certified mail/rrr to both Deputy Attorney General Spitzer and Solicitor General Bansal;

* Assistant Solicitor General Fischer's July 12, 2001 letter to me (Exhibit "X-3");

* my August 13, 2001 memo to Attorney General Spitzer, Solicitor General Bansal, and Deputy Solicitor General Belohlavek (Exhibit "Z-1")

* my August 16, 2001 (2:30 p.m.) memo to Attorney General Spitzer, Solicitor General Bansal, and Deputy Solicitor General Belohlavek (Exhibit "Z-2")

* Deputy Solicitor General Belohlavek's August 16, 2001 letter to Elena Sassower (Exhibit "Z-3"); and

* my August 16, 2001 (5:20 p.m.) memo to Attorney General Spitzer, Solicitor General Bansal, and Deputy Solicitor General Belohlavek (Exhibit "Z-4").

92. As this correspondence reflects, I hand-delivered copies of my Critique to the Attorney General and Commission on May 3, 2001 (Exhibits "T-3", "T-4"). Although neither the Attorney General nor Commission have denied or disputed the Critique's accuracy in any respect (Exhibit "Z-1"), they have refused to withdraw Respondent's Brief (Exhibits "V", "X-1"). Consequently, it is their burden to now

substantiate their refusal to withdraw Respondent's Brief. They can only do this by coming forth with specific and substantiated denials to the Critique – first and foremost, of the above three "highlights".

WHEREFORE, it is respectfully prayed that the Court grant the relief sought in my Notice of Motion in all respects.

Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Sworn to before me this
17th day of August 2001

S/

Notary Public

William A. White, JR
Notary Public, NY
No. 01WH5083435
Qualified in Bronx Co.
Commission expires
August 11, 2005

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[31] *See* Exhibit "J-2" herein: my June 17, 2001 letter to the NYS Senate Judiciary Committee.

TABLE OF EXHIBITS

Exhibit "A":	Notice of Appeal and Pre-Argument Statement, dated March 23, 2000; Decision, Order & Judgment of Justice William A. Wetzel, dated January 31, 2000
Exhibit "B-1":	Appellate Division, First Department's decision in *Mantell v. Commission*, dated November 16, 2000
"B-2":	Elena Sassower's October 23, 2000 letter to Appellate Division, First Department
Exhibit "C":	Statistics from the Commission's Annual Reports of judicial misconduct complaints against Appellate Division justices and Court of Appeals judges
"C-1":	Statistics from 2001 Annual Report
"C-2":	Statistics from 2000 Annual Report
"C-3":	Statistics from 1999 Annual Report
"C-4":	Statistics from 1998 Annual Report
"C-5":	Statistics from 1997 Annual Report
Exhibit "D-1":	Commission's September 18, 1986 letter to George Sassower
"D-2":	George Sassower's January 24, 1994 letter to Commission
"D-3":	January 26, 1994 letter of Gerald Stern, Administrator of the Commission, to George Sassower
"D-4":	George Sassower's January 31, 1994 letter to Mr. Stern
"D-5":	Mr. Stern's February 10, 1994 letter to George Sassower

Exhibit "E-1a":	George Sassower's July 7, 1986 complaint
"E-1b":	Commission's September 18, 1986 dismissal letter
"E-2a":	George Sassower's September 30, 1988 complaint
"E-2b":	George Sassower's October 10, 1988 complaint
"E-2c":	Commission's November 18, 1988 dismissal letter
"E-3a":	George Sassower's February 10, 1989 complaint
"E-3b:	Commission's February 22, 1989 acknowledgment letter
"E-4":	George Sassower's February 27, 1989 complaint
"E-5":	George Sassower's March 22, 1994 complaint
"E-6a":	George Sassower's April 13, 1994 complaint
"E-6b:	George Sassower's May 23, 1994 complaint
"E-7":	"*To the Gulag: Courthouse Leper George Sassower Takes On Every Judge in Town*", Village Voice, June 6, 1989
Exhibit "F":	CJA's February 23, 2000 letter to Governor Pataki
Exhibit "G-1":	CJA's February 24, 2000 letter to Governor Pataki
"G-2":	CJA's March 7, 2000 letter to Governor Pataki
"G-3":	CJA's March 17 2000 transmittal memo
"G-4":	CJA's April 24, 2000 transmittal memo
"G-5":	CJA's October 24, 2000 letter to Governor Pataki
Exhibit "H":	CJA's February 25, 2000 memo to Proposed Intervenors

Exhibit "I":	March 30, 2001 letter to Nan Weiner, Executive Director, Governor Pataki's Judicial Screening Committees
Exhibit "J-1":	CJA's June 18, 2001 letter to Ms. Weiner
"J-2":	CJA's June 17, 2001 letter to the New York State Senate Judiciary Committee
"J-3":	CJA's June 21, 2001 letter to Ms. Weiner
"J-4":	CJA's June 18, 2001 letter to Paul Shechtman, Chairman, Governor Pataki's State Judicial Screening Committee
Exhibit "K":	CJA's March 3, 2000 letter to Chief Judge Kaye
Exhibit "L-1":	March 27, 2000 letter of Michael Colodner, Counsel to the Unified Court System
"L-2":	CJA's April 18, 2000 letter to Chief Judge Kaye
Exhibit "M-1":	CJA's March 3, 2000 complaint letter to Commission
"M-2":	Commission's April 6, 2000 dismissal letter
Exhibit "N":	CJA's June 30, 2000 letter to Chief Judge Kaye
Exhibit "O-1":	CJA's August 3, 2000 complaint letter to Commission
"O-2":	Commission's September 19, 2000 dismissal letter
Exhibit "P-1":	Coverpage and pages 14-15 of CJA's October 16, 2000 Report
"P-2":	CJA's October 23, 2000 letter to Chief Judge Kaye
"P-3":	CJA's December 9, 2000 letter to Chief Judge Kaye

Exhibit "Q-1":	CJA's August 17, 2000 letter to Chief Administrative Judge Jonathan Lippman, etc.
"Q-2":	Chief Administrative Judge Lippman's December 29, 2000 Administrative Order
Exhibit "R":	CJA's December 1, 2000 memorandum-notice to the Attorney General and Commission
Exhibit "S":	Petition signatures in support of Elena Sassower's application for a record of the oral argument of her appeal
Exhibit "T-1":	Elena Sassower's January 10, 2001 letter to Attorney General Eliot Spitzer
"T-2":	Elena Sassower's April 18, 2001 letter to Attorney General Spitzer
"T-3":	Elena Sassower's May 3, 2001 letter to Attorney General Spitzer
"T-4":	Elena Sassower's May 3, 2001 letter to Deputy Solicitor General Michael Belohlavek
Exhibit "U":	Elena Sassower's May 3, 2001 Critique of Respondent's Brief
Exhibit "V":	Assistant Solicitor General Carol Fischer's June 4, 2001 letter to Elena Sassower
Exhibit "W":	Elena Sassower's June 7, 2001 letter to Solicitor General Preeta D. Bansal

Exhibit "X-1":	Deputy Solicitor General Belohlavek's June 14, 2001 letter to Elena Sassower
"X-2":	Elena Sassower's June 22, 2001 letter to Deputy Solicitor General Belohlavek
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