TABLE OF EXHIBITS

Exhibit "A-1":	Appellate Division, First Department's December 18, 2001 decision/order, with Attorney General's notice of entry, dated January 18, 2002
"A-2":	Appellate Division, First Department's March 26, 2002 order, with Attorney General's notice of entry, dated April 24, 2002
Exhibit "B-1":	Court of Appeals' September 12, 2002 decision/order on Petitioner-Appellant's disqualification motion (Mo. No. 581), with Attorney General's notice of entry dated September 19, 2002
"B-2":	Court of Appeals' September 12, 2002 decision/order on Petitioner-Appellant's notice of appeal and motion to strike, etc. (Mo. No. 719), with Attorney General's notice of entry dated September 19, 2002
Exhibit "C":	Justice William Wetzel's January 31, 2000 decision/order herein
Exhibit "D":	Justice Herman Cahn's July 13, 1995 decision/order in *Doris L. Sassower v. Commission* (NY Co. #109141/95)
Exhibit "E":	Justice Edward Lehner's September 30, 1999 decision/order in *Michael Mantell v. Commission* (NY Co. #108655/99)
Exhibit "F":	Appellate Division, First Department's November 16, 2000 decision/order in *Michael Mantell v. Commission* (#2291)

Exhibit "G":	Petitioner-Appellant's March 3, 2000 letter to Chief Judge Kaye, with inventory of transmitted record
Exhibit "H:	3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* (first 3 pages of December 15, 1995 letter to Assembly Judiciary Committee)
Exhibit "I":	13-page analysis of Justice Lehner's decision in *Mantell v. Commission*
Exhibit "J":	March 27, 2000 letter of Michael Colodner, Counsel, Unified Court System
Exhibit "K":	1-page analysis of the Appellate Division, First Department's 4-sentence decision in *Mantell v. Commission* (December 1, 2000 memorandum-notice to Attorney General and Commission)
Exhibit "L-1":	19-page analysis of the Appellate Division, First Department's 7-sentence decision herein (January 7, 2002 memorandum-notice to Attorney General and Commission)
"L-2":	NYS Commission on Judicial Conduct's February 27, 2002 letter
Exhibit "M-1":	"*I rise in defense of state's courts*", by Chief Judge Kaye, Daily News, 1/17/02
"M-2":	"*State judicial system is accountable to public*", by Chief Judge Kaye, Albany Times Union, 2/10/02

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

----------x

ELENA RUTH SASSOWER,

Petitioner-Appellant,

New York County
Clerk's Index
No. 108551/99

COMMISSION ON JUDICIAL CONDUCT,
OF THE STATE OF NEW YORK,

Respondent-Respondent.

----------x

PLEASE TAKE NOTICE that annexed hereto is a true copy of the Notice Of Entry duly entered in the office of the Supreme Court of the State of New York, Appellate Division, First Department on December 18, 2001.

Dated: New York, New York
January 18, 2002

ELIOT SPITZER
Attorney General of the
State of New York
Attorney for Respondent
By:

Carol Fischer
Assistant Solicitor General
120 Broadway
New York, New York 10271
(212) 416-8014

To: Elena Ruth Sassower
Petitioner-Appellant *Pro Se*
Box 69, Gedney Station
White Plains, New York, 10605-0069
(914) 421-1200

Ex "A-1"

Nardelli, J.P., Mazzarelli, Andrias, Ellerin, Rubin, JJ.

5638 Elena Ruth Sassower, etc.,
Petitioner-Appellant,

Pro Se

-against-

Commission on Judicial Conduct
of the State of New York,
Respondent-Respondent.

Carol Fischer

Order and judgment (one paper), Supreme Court, New York County (William Wetzel, J.), entered February 18, 2000, which, in a proceeding pursuant to CPLR article 78, inter alia, denied petitioner's recusal motion and her application to compel respondent Commission to investigate her complaint of judicial misconduct and granted the motion by respondent Commission to dismiss the petition, unanimously affirmed, without costs.

The petition to compel respondent's investigation of a complaint was properly dismissed since respondent's determination whether to investigate a complaint involves an exercise of discretion and accordingly is not amenable to mandamus (Mantell v New York State Commn. on Judicial Conduct, 277 AD2d 96, lv denied 96 NY2d 706). Moreover, inasmuch as petitioner has failed to demonstrate that she personally suffered some actual or threatened injury as a result of the putatively illegal conduct,

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she lacks standing to sue the Commission (see, Valley Forge Christian Coll. v Am. United for Separation of Church and State, 454 US 464, 472; Socy. of the Plastics Indus. v County of Suffolk, 77 NY2d 761, 772; Matter of Dairylea Coop. v Walkley, 38 NY2d 6, 9).

The fact that the court ultimately ruled against petitioner has no relevance to the merits of petitioner's application for his recusal (see, Ocasio v Fashion Inst. of Technology, 86 F Supp 2d 371, 374, affd __ F3d __, 2001 US App LEXIS 9418), and the court's denial of the recusal application constituted a proper exercise of its discretion (see, People v Moreno, 70 NY2d 403, 405).

The imposition of a filing injunction against both petitioner and the Center for Judicial Accountability was justified given petitioner's vitrolic ad hominem attacks on the participants in this case, her voluminous correspondence, motion papers and recusal motions in this litigation and her frivolous requests for criminal sanctions (see, Miller v Lanzisera, 273 AD2d 866, 869, appeal dismissed 95 NY2d 887).

We have considered petitioner's remaining contentions and find them unavailing.

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M-4755 - Sassower, etc. v Commission on Judicial Conduct

Motion seeking leave to adjourn oral argument of this appeal and for other related relief denied.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: DECEMBER 18, 2001

Catherine O'Hagan Wolfe
CLERK

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

----------x

ELENA RUTH SASSOWER, coordinator of
the Center for Judicial Accountability, Inc.,
Acting pro bono publico,

Petitioner-Appellant,

App. Div. No. 5638
New York County Clerk's
No. 108551/99

COMMISSION ON JUDICIAL CONDUCT OF THE
STATE OF NEW YORK,

Respondent-Respondent.

----------x

PLEASE TAKE NOTICE that annexed hereto is a true copy of the Order duly entered in the office of the Clerk of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, on December 18, 2001.

Dated: New York, New York
April 24, 2002

ELIOT SPITZER
Attorney General of the
State of New York
Attorney for Respondent-Respondent
By:

Carol Fisher
Assistant Solicitor General
120 Broadway
New York, New York 10271
(212) 416-8014

To: Ms. Elena Ruth Sassower
P.O. Box 69
Gedney Station
White Plains, New York 10605-0069

Ex "A-2"

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At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on March 26, 2002.

PRESENT - Hon. Eugene Nardelli, Justice Presiding,
Angela M. Mazzarelli
Richard T. Andrias
Betty Weinberg Ellerin
Israel Rubin, Justices.

Elena Ruth Sassower, etc.,
Petitioner-Appellant,

-against-

Commission on Judicial Conduct of the State of New York,
Respondent-Respondent.

M-323 & M-938
Index No. 108551/99

Petitioner-appellant having moved by separate motions for reargument of or, in the alternative, leave to appeal to the Court of Appeals from the decision and order of this Court entered on December 18, 2001 (Appeal No. 5638),

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

It is ordered that the motions are denied.

ENTER:

Catherine O'Hagan Wolfe

Clerk.

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STATE OF NEW YORK
COURT OF APPEALS

----------x

ELENA RUTH SASSOWER, Coordinator of 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.

----------x

Motion No. 581

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true copy of a Decision entered in the office of the office of the Clerk of the Court of Appeals of the State of New York, Albany, New York, 12207-1095, on September 12, 2002.

Dated: New York, New York
September 19, 2002

ELIOT SPITZER
Attorney General of the
State of New York
Attorney for Respondent-Respondent
120 Broadway
New York, New York 10271
By:

Carol Fischer
Assistant Solicitor General

To:

ELENA RUTH SASSOWER
P.O. Box 69, Gedney Station
White Plains, New York
Petitioner-Appellant pro bono

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Ex "B-1"

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twelfth *day of* September 2002

Present, HON. JUDITH S. KAYE, *Chief Judge, presiding.*

Mo. No. 581

Elena Ruth Sassower, &c.,
Appellant,

v.

Commission on Judicial Conduct of the State of New York,
Respondent.

A motion seeking disqualification of Chief Judge Kaye and Judges Smith, Levine, Ciparick, Rosenblatt and Graffeo, and an application seeking recusal in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion, insofar as it seeks disqualification of Judge Rosenblatt, be and the same hereby is dismissed as academic; and it is

ORDERED, that the said motion, insofar as it seeks disqualification of Chief Judge Kaye and Judges Smith, Levine, Ciparick and Graffeo, be and the same hereby is dismissed upon the ground that the Court has no authority to entertain the motion made on nonstatutory grounds. The application seeking recusal is referred to the Judges for individual consideration and determination by each Judge.

Chief Judge Kaye and Judges Smith, Levine, Ciparick, Wesley and Graffeo concur.

Judge Rosenblatt took no part.

Chief Judge Kaye and Judges Smith, Levine, Ciparick, Wesley and Graffeo each respectively denies the referred motion for recusal.

Stuart M. Cohen

Stuart M. Cohen
Clerk of the Court

STATE OF NEW YORK
COURT OF APPEALS

----------x

ELENA RUTH SASSOWER, Coordinator of 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.

----------x

Motion No. 719

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true copy of a Decision entered in the office of the office of the Clerk of the Court of Appeals of the State of New York, Albany, New York, 12207-1095, on September 12, 2002.

Dated: New York, New York
September 19, 2002

ELIOT SPITZER
Attorney General of the
State of New York
Attorney for Respondent-Respondent
120 Broadway
New York, New York 10271
By:

Carol Fischer
Assistant Solicitor General

To:

ELENA RUTH SASSOWER
P.O. Box 69, Gedney Station
White Plains, New York
Petitioner-Appellant pro bono

Ex "B-2"

10

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twelfth *day of* September 2002

Present, HON. JUDITH S. KAYE, *Chief Judge, presiding.*

Mo. No. 719

Elena Ruth Sassower, &c.,
Appellant,

v.

Commission on Judicial Conduct of the State of New York,
Respondent.

The appellant having filed notice of appeal to the Court of Appeals and a motion to strike respondent's memorandum of law &c. in the above cause, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, on the Court's own motion, that the appeal be and the same hereby is dismissed, without costs, upon the ground that no substantial constitutional question is directly involved; and it is

ORDERED, that the said motion to strike respondent's memorandum of law &c. be and the same hereby is denied.

Judge Rosenblatt took no part.

Stuart M. Cohen

Stuart M. Cohen
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 50E

ELENA RUTH SASSOWER, Coordinator of The Center for Judicial Accountability, Inc., Acting Pro Bono Publico,	:	
Petitioner,	:	DECISION AND ORDER
-against-	:	INDEX NO. 108551/99
COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF NEW YORK,	:	
Respondent.	:	

WILLIAM A. WETZEL, J.:

In this CPLR Article 78 proceeding, petitioner Elena Ruth Sassower, ("Petitioner") suing as the "coordinator" of the Center for Judicial Accountability, Inc. ("CJA"), seeks mandamus, prohibition, and a declaratory judgment, that:

(1) declares 22 NYCRR §§7000.3 and 7000.11, and Judiciary Law §§ 45, 41.6 and 43.1 to be unconstitutional;

(2) vacates the Commission's December 23, 1998 dismissal of petitioner's October 6, 1998 complaint against a judicial candidate for the Court of Appeals;

(3) compels removal of Commission member Harold Berger;

(4) compels the Commission to "receive" and "determine" petitioner's February 3, 1999 complaint against a Justice of the Appellate

Ex "C" 9

Division, Pet. Exh. F-6;

(5) directs the Governor to appoint a special prosecutor to investigate judicial corruption;

(6) refers the Commission to authorities for "appropriate criminal and disciplinary investigation," and

(7) imposes a $250 fine against the Commission pursuant to POL § 79. See Petition ("Pet."), Para. Fifth.

The respondent, appearing by the Attorney General of the State of New York, has filed a Motion to Dismiss dated May 24, 1999.

The petitioner filed a "Motion for Omnibus Relief "dated July 28, 1999, seeking inter alia, (1) to disqualify the Attorney General; (2) to impose a default judgment by nullifying an Order of Justice Lebedeff granting respondent an extension of time; (3) sanctions against the Attorney General and his staff, and; (4) referral for criminal action against staff members of the Attorney General.

The proceeding has been marked by petitioner's deluge of applications seeking recusal of each of the various assigned judges. For the most part, these applications have been based upon the petitioner's categorical allegation that this action somehow implicates the Governor, and therefore all judges who are subject to reappointment by the Governor are ipso facto disqualified. Petitioner further asserts a potpourri of grounds for recusal, and then particularizes its application as to this court in

a letter and attachments dated December 2, 1999, which contain specific allegations of impropriety.

It is noteworthy that this court finds itself in wide company as a target of allegations by this petitioner. These papers are replete with accusations against virtually the entire judiciary, the Attorney General, the Governor, and the respondent. Petitioner cannot however bootstrap a conflict where none exists merely by making accusations against a court. This court must and indeed has seriously considered the application for recusal and is acutely aware that it is not only actual conflicts which compel recusal, but also the appearance of conflicts. However, this court is also aware that the determination of the existence of an appearance of conflicts requires an objective basis, not simply a litigant's bald assertion. This court has no conflict, in fact or in "appearance."

Equally important as the obligation to recuse when appropriate is the obligation to decide the case when there is no legal basis for recusal. This matter has now been assigned to at least seven different judges of this court. The submitted papers exceed fourteen inches in height and required two court officers to deliver to chambers. There are individual "letters" from the petitioner which include upwards of ten exhibits and measure in excess of two inches, as well as a so-called "Omnibus motion" an inch thick. Although the original return date was May 14, 1999, heretofore this matter has not been considered on its merits.

When a court recuses itself without a proper basis, it undermines respect for

the judiciary, encourages forum-shopping, unnecessarily prolongs litigation, and unfairly "passes the buck" to other judges. Obviously, all of these ramifications are highly undesirable. This squandering of judicial resources must come to a halt. Since petitioner's assertions as to this court are devoid of merit, in law or in fact, the application for recusal is denied.

By refusing to recuse myself, I will undoubtedly join the long list of public officials and judges who are the objects of petitioner's relentless vilification. Nonetheless, my oath of office does not permit me to unnecessarily grant a baseless recusal motion merely to avoid this unwanted and unwarranted ridicule. The Second Circuit in U.S. v. Bayless, 1/21/00 N.Y.L.J. 25, (col. 4), at 29, (col. 6), cautioned that recusal is not intended to be "used by judges to avoid sitting on difficult or controversial cases."

The issue raised in this Article 78 proceeding is a matter which was previously resolved by Justice Cahn of this Court in his decision of July 13, 1995, in Sassower v. Commmission on Judicial Conduct, Index No. 109141/95. In that case, the same petitioner sought virtually the same relief requested herein, and the decision addressed the same issues. That petition was dismissed. Justice Cahn's decision is, in the first instance, res judicata as to the within petition. Further, it is sound authority in its own right for the dismissal of the petition. Finally, the doctrine of collateral estoppel applies.

On September 30, 1999 -- after this petition was filed-- Justice Lehner

decided Mantell v. Commission on Judicial Conduct, 181 Misc. 2d 1027 (Sup. Ct. N.Y. Co. 1999). Judge Lehner's decision is a carefully reasoned and sound analysis of the very issue raised in the within petition. This Court adopts Justice Lehner's finding that mandamus is unavailable to require the respondent to investigate a particular complaint. This Court notes that petitioner seeks to distinguish or disregard these two cases on the basis that they were "corrupt" decisions and both cases were "thrown," a contention which speaks volumes about the frivolousness of this petition.

Our finite judicial resources are in great demand. The need to improve access to the courts for those with justiciable issues has been acknowledged by the recent creation of the Office of Deputy Chief Administrative Judge for Justice Initiatives directed by the Hon. Juanita Bing Newton. This important objective is seriously impeded by protracted, frivolous litigation.

Given the history of this litigation and its progeny, this court is compelled to put an end to the petitioner's badgering of the respondent and the court system. Therefore, the petitioner Elena Sassower and The Center for Judicial Accountability, Inc. are enjoined from instituting any further actions or proceedings relating to the issues decided herein. In order to assure compliance, it is hereby ordered that any future actions by petitioner which raise any possible question as to a violation of this injunction should be referred to this court and are to be deemed "related matters" in order that a preliminary determination can be made as to whether they fall within the parameters of this injunction.

Authority for injunctive relief is found in Sassower v. Signorelli, 99 AD2d 358 (2nd Dept. 1984). In Sassower, the court was faced with the "use of the legal system as a tool of harassment." The court noted that while normally the doctrine of former adjudication serves as a remedy against repetitious litigation, frivolous claims can still be extremely costly to the defendant and "waste an inordinate amount of court time, time that this court and the trial court can ill-afford to lose." The Appellate Division concluded that where there is such an abuse of the judicial process, a court of equity may enjoin vexatious litigation. This court concludes that the petitioner is indeed engaged in vexatious litigation and therefore injunctive relief is necessary to best serve the interests of justice and the conservation of judicial resources.

For all of the above reasons, the respondent's motion to dismiss is in all respects granted. All of petitioner's other requests for relief are denied.

The foregoing constitutes the decision, order, and judgment of this court. The clerk is directed to enter judgment dismissing the petition.

Dated: New York, New York
January 31, 2000

JUSTICE OF THE SUPREME COURT
WILLIAM A. WETZEL

Decision, Order & Judgment, dated July 13, 1995, of Supreme Court Justice Herman Cahn in Doris L. Sassower v. Commission on Judicial Conduct of the State of New York (NY Co. #95-109141) [189-194]
[Exhibit "B" to AG's Affidavit in Support of Respondent's 5/24/99 Dismissal Motion]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 49

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DORIS L. SASSOWER,

Plaintiff(s),

-against-

INDEX NO. 109141/95

COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF NEW YORK, et al.

Defendant(s).

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CAHN, J.

Petitioner brings this Article 78 proceeding seeking a declaration that a certain rule (22 NYCRR §7000.3) promulgated by Respondent-Commission on Judicial Conduct, ("Commission") is unconstitutional. In essence, Petitioner asserts that the Commission has, via this rule, wrongfully transformed its mandatory duty to "investigate and hear" complaints of misconduct (NY Const. art. VI, §22[a]) into an optional one, with no requirement, that it first make a determination that the "complaint on its face lacks merit..." (Jud. Law §44.1), prior to summary dismissal of a complaint.

Respondent moves to dismiss the petition for failure to state a cause of action, CPLR §3211(a)(7) and §7804(f).

Art. 6, sect. 22 of the State Constitution established the Commission, and sets forth its mission. It reads, in part, as follows:

> § 22. [Commission on judicial conduct]
> a. There shall be a commission on judicial conduct. The commission on judicial conduct shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge...
>
> * * *

> c. The organization and procedure of the commission on judicial conduct shall be as provided by law. The commission on judicial conduct may establish its own rules and procedures not inconsistent with law.... [Emphasis added]

Tracking the language of the Constitution, Article 2-A of the Judiciary Law provides in pertinent part:

> § 44. Complaint; investigation; hearing and disposition.
> 1. The commission shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge,...
>
> Upon receipt of a complaint (a) the Commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit....
>
> * * *
>
> § 42. Functions; powers and duties.
>
> * * *
>
> 5. To adopt, promulgate, amend and rescind rules and procedures, not otherwise inconsistent with law, necessary to carry out the provisions and purposes of this article....

The Commissions' Operating Procedures and Rules (22 NYCRR part 7000), in relevant part, provide:

> 7000.2 Complaints. The commission shall receive, initiate, investigate and hear complaints against any judge with respect to his qualifications, conduct, fitness to perform or the performance of his official duties....
>
> 7000.3 Investigations and dispositions.
> (a) When a complaint is received or when the administrator's complaint is filed, an initial review and inquiry may be undertaken.

(b) Upon receipt of a complaint, or after an initial review and inquiry, the complaint may be dismissed by the commission or, when authorized by the commission, an investigation may be undertaken.

7000.1 Definitions. For the purpose of this Part...
(i) Initial review and inquiry means the preliminary analysis and clarification of the matters set forth in a complaint, and the preliminary fact-finding activities of commission staff intended to aid the commission in determining whether or not to authorize an investigation with respect to such complaint.

(j) Investigation, which may be undertaken only at the direction of the commission, means the activities of the commission...intended to ascertain facts relating to the accuracy, truthfulness or reliability of the matters alleged in the complaint....

Petitioner asserts that between October 5, 1989 and December 5, 1994, she filed eight complaints with the Commission against various members of the judiciary. She asserts that all eight were dismissed by the Commission. Petitioner was notified by letter of each dismissal, which letters stated that "The Commission has reviewed your letter of complaint dated..."

Petitioner commenced this Article 78 proceeding challenging the constitutionality of one of Respondent-Commission's rules (22 NYCRR 7000.3) as written, and as applied. Essentially petitioner maintains that the Commission's rules have somehow diluted or diminished its constitutional mandate by substituting the words "may" for "shall."

To prevail over Respondent-Commission's construction of the relevant statute, Petitioner must establish not only that her interpretation is a possible one but, also, that her interpretation is the only reasonable construction (see, Blue Spruce Farms, Inc. v. NYS Tax Com'n., 99 AD2d 867, aff'd 64 NY2d 682). An examination of the petition and supporting papers, shows that the Petitioner will not be able to meet that burden; i.e. the Petition as pleaded fails to state an actionable claim.

The constitution is to be construed to give practical effect to its provisions and to allow it to receive a liberal construction, not only according to its letter, but also according to its spirit and the general purposes of its enactment (Ginsberg v. Purcelli, 51 NY2d 272, rearg. denied, 52 NY2d 899; Pfingst v. State, 57 AD2d 163; In Re: Harvey v. Finnicks, 88 AD2d 40 (4th Dept., 1982).

The construction of a statute, and regulations promulgated by the agency responsible for its administration and implementation is entitled to great weight if it is neither irrational or unreasonable. (Lumpkin v. Dept. of Social Services, 45 NY2d 351; Bernstein v. Toia, 43 NY2d 437; Thomas v. Bethlehem Steel Corp., 95 AD2d 118). The term "investigate" as used in the sections of the Constitution and statutes herein quoted do not require any specific form of inquiry into the complaint. A review of the complaint by the Commission, as attested to by the letters sent to petitioner, meets the Constitutional and statutory mandate.

The term "investigate" as used in the constitution and statute has been correctly interpreted by the Commission to include those aspects of its proceedings which the Respondent-Commission has designated and defined as its "Initial review and inquiry." While the initial review and inquiry apparently serves different purposes from its subsequent examination they are each integral parts of the Respondent-Commission's investigatory task, and the performance of each is an investigation, as that term is used in the constitution and statutes herein referred to. Such an interpretation is in accord with the spirit and general purposes of the constitution. To the extent that petitioner contends that the Commission wrongfully determined that her particular complaints lack facial merit and declined to take further action thereon, the issue is not before the court.

Furthermore, Art. VI, §22(c) provides in relevant part: "The commission on judicial conduct may establish its own rules and procedures not inconsistent with law." Judiciary Law §42(5) provides in relevant part that the Commission shall have the power to "adopt, promulgate, amend and rescind rules not inconsistent with law, necessary to carry out the provisions and purposes of this article." The Legislature has given the Commission broad discretion in exercising its powers and carrying out its duties. (See, New York State Commission on Judicial Conduct v. Doe, 61 NY2d 557). Petitioner has pointed to nothing in the Commission's rules or interpretation of its constitutional and statutory mandate that is irrational or contravenes or conflicts with the Constitution or statute. (Howard v. Wyman, 28 NY2d 434; Conde Nast Publications, Inc. v. State Tax Commission, 51 AD2d 17).

As to the petitioner's argument that the respondent improperly served a motion to dismiss, instead of an answer, such procedure is expressly permitted by CPLR §7804(f). The court may resolve an Article 78 proceeding without an answer where only questions of law are presented which are dispositive and there is no challenge to the agency's acts based on substantial evidence. (Davila v. New York City Housing Authority, 190 AD2d 511; Bayswater Health Related Facility v. New York State Dept. of Health, 57 AD2d 996, Jahn v. Town of Patterson, 23 AD2d 688).

Accordingly, respondent's motion to dismiss the petition is granted.

That part of the petition seeking to declare 22 NYCRR §7000.3 unconstitutional is dismissed for the reasons indicated above. Similarly, that part of the petition seeking to annul respondent's dismissal of petitioner's complaints for failure to investigate is dismissed.

That part of the petition seeking an order from the court requesting the Governor to

appoint a special prosecutor is dismissed as not within the court's authority. To the extent that the court, as any citizen, may request the appointment of a special prosecutor, the court declines to do so.

That part of the petition seeking an order of the court referring respondent, its members and staff to the Attorney General, U.S. Attorney, and District Attorney for criminal and disciplinary investigation is dismissed as not within the court's power. To the extent that the court may have the authority to request such referral, the court declines to do so.

That part of the petition seeking the imposition of a $250.00 fine upon respondent pursuant to Public Officers Law §79 is dismissed. Petitioner has failed to adequately allege that respondent refused or neglected to perform a public duty. In any event the imposition of a fine pursuant to POL §79 is discretionary and the court declines to impose such fine.

The clerk is directed to enter judgment of dismissal.

This constitutes the decision and judgment of the court.

Dated: July 13, 1995

J.S.C.

Decision, Order & Judgment, dated September 30, 1999, of Supreme Court Justice Edward Lehner in Michael Mantell v. New York State Commission on Judicial Conduct (NY Co. #99-108655) [299-307] [*Exhibit "A" to AG's December 6, 1999 "Affirmation in Further Support of Respondent's Motion to Dismiss the Verified Petition"*]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 19

----------x

MICHAEL MANTELL,

Petitioner,

- against -

INDEX NO.
108655/99

NEW YORK STATE COMMISSION ON
JUDICIAL CONDUCT,

Respondent.

----------x

EDWARD H. LEHNER, J.:

The central issue on this motion is whether a writ of mandamus is available to require that respondent New York State Commission on Judicial Conduct ("Judicial Commission") investigate an attorney's complaint in which he charges that a particular New York City Criminal Court judge violated the standards of judicial conduct during a court hearing.

On September 14, 1998 petitioner appeared before a Criminal Court judge in New York County representing a defendant. Four days later, petitioner lodged a complaint with the Judicial Commission alleging that the judge acted improperly by: (1) modifying her ruling based on personal feelings against him; (2) demonstrating intemperate conduct; (3) lacking courtesy; (4) engaging in ex-parte communications with petitioner (including giving advice) and; (5) wrongfully ordering petitioner

Exhibit "A" 299

removed from the courtroom during an open courtroom proceeding.

On January 4, 1999, an attorney for the Judicial Commission informed petitioner by letter that:

> "The State Commission on Judicial Conduct has reviewed your letter of complaint dated September 28, 1998. The Commission has asked me to advise you that it has dismissed the complaint.
>
> "Upon careful consideration, the Commission concluded that there was no indication of judicial misconduct upon which to base an investigation."

Thereafter, petitioner commenced this Article 78 proceeding seeking a writ of mandamus directing the respondent to conduct an investigation of his complaint.

It must first be noted that:

> "Our State Constitution specifically authorizes the Commission on Judicial Conduct to 'receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system' (N.Y. Const., Art. VI, §22 subd. a). Recognizing the importance of maintaining the quality of our judiciary, the Legislature has provided the commission with broad investigatory and enforcement powers. (See Judiciary Law, §§41, 42, 44; Matter of Nicholson v. State Comm. on Judicial Conduct, 50 N.Y.2d 597...)" [New York State Commission on Judicial Conduct v. Doe, 61 N.Y.2d 56, 59-60 (1984)].

In accordance with this grant of broad authority, section 44(1) of the Judiciary

Law provides, in part, that:

> "Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit."

Hence, based on the express wording of the governing law, the Judicial Commission's actions at issue here were within its authority. Accordingly, while the "filing of a complaint ... triggers the commission's authority to commence an investigation into the alleged improprieties" (New York State Commission on Judicial Conduct v. Doe, supra at p. 60), it does not require that an investigation take place. This conclusion is supported by the discussion in Doe v. Commission on Judicial Conduct [124 A.D.2d 1067 (4th Dept. 1986)], where the court outlined the role that an administratively generated complaint plays in a Judicial Commission proceeding, stating (pp. 1067-1068):

> "An 'Administrator's Complaint' is merely a procedural device which triggers the commission's authority to commence an investigation into the alleged improprieties.... It represents only the initiation of an investigation of judiciary impropriety and not the institution of formal proceedings...."
>
> * * *
>
> "The Judiciary Law does not require that any action be taken regarding an administrator's complaint. Regulations promulgated by the Commission provide that the Commission may dismiss the [administrator's] complaint

> at any time (22 NYCRR 7000.3[c]); however, neither the statute nor the regulations mandate such action."

While the complaint at issue was filed by an attorney and hence was not administrative in nature, the language granting the Judicial Commission the wide latitude to decide whether or not to investigate a charge does not distinguish between the two delineated types of complaints. The discretion to decline to investigate applies regardless of the source of the complaint. See also, Harley v. Perkinson, 187 A.D.2d 765 (3rd Dept. 1992), where it was said that (p. 766) "[t]o the extent plaintiff requested that these defendants (Office of Court Administration and the Judicial Commission) perform certain duties, his claims were in the nature of mandamus to compel and where, as here, the action involved the exercise of judgment or discretion, no such relief could be granted....".

Moreover, the Judicial Commission's failure to investigate the instant complaint is not appropriately subject to judicial review because the Commission's function is in many respects similar to that of a public prosecutor. A District Attorney enjoys a large amount of independence of judgment as:

> "... the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.... This broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution's general

> deterrence value, the Government's enforcement priorities and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake." [Wayte v. United States, 470 U.S. 598, 607 (1985)].

In terms of challenging a District Attorney's decision not to prosecute, the court in Matter of Hassan v. Magistrates' Court of the City of New York, 20 Misc.2d 509 (Sup. Ct., N.Y. Co. 1959), appeal dismissed, 10 A.D.2d 908 (1st Dept. 1960), motion for leave to appeal dismissed, 8 N.Y.2d 750 (1960), cert. denied, 364 U.S. 844 (1960) very thoroughly examined the authority of a court to order a District Attorney to exercise his discretion to prosecute and concluded that the court is without the power to substitute its judgment for that of the District Attorney. The court ruled that (p. 515):

> "For a court to issue a mandate such as here requested would have a most chaotic effect upon the proper administration of justice. Anyone with experience as a prosecuting official knows that innumerable complaints of all kinds – justifiable and unjustifiable – are made to a District Attorney almost daily. If the petitioner's proceeding here were held to be maintainable, it would open the door wide for any complainant, where the prosecuting officer decides that it is improper or improvident to prosecute, to ask the civil courts to review the discretion exercised by such prosecuting officer...."

* * *

> "From what has been said, it is self-evident that our public policy prohibits – and rightly so – giving approbation to a petition such as this which seeks to compel a District Attorney, by fiat and mandate of a civil court, to initiate a criminal proceeding."

"The manifold imponderables which enter into the prosecutor's decision to prosecute or not to prosecute makes the choice not readily amenable to judicial supervision" [Kerstanski v. Shapiro, 84 Misc.2d 1049, 1051 (Sup. Ct., Orange Co. 1975), quoting, Inmates of Attica Correctional Facility v. Rockefeller, 477 F.2d 375, 380 (2d Cir. 1973)]. See also, Johnson v. Boldman, 24 Misc.2d 592 (Sup. Ct., Tioga Co. 1960); People v. Pettway, 131 Misc.2d 20 (Sup. Ct., Kings Co. 1985).

Moreover, recognizing that prosecutors are required to exercise independence of judgment, prosecutorial decisions are shielded with absolute immunity from civil lawsuits, and "[u]nquestionably, this immunity applies equally to decisions to prosecute and to decisions not to prosecute" [DeJose v. New York State Department of State, 1990 WL 59565 (E.D.N.Y. 1990), aff'd, 923 F.2d 845 (2d Cir. 1990), cert. denied, 500 U.S. 921 (1991)]. See also, People v. Di Falco, 44 N.Y.2d 482 (1978); Whitehurst v. Kavanagh, 218 A.D.2d 366 (3rd Dept. 1996), lv. to appeal dismissed in part, denied in part, 88 N.Y.2d 873 (1996).

While the District Attorney is an elected official whose activity or inactivity is ultimately subject to review by the electorate, in light the wide latitude statutorily

granted to the Judicial Commission in accomplishing its functions and the similarity of the public policy issues involved, the comparison to a District Attorney appropriately serves as a guideline in resolving the issue at hand.

Furthermore, the conclusion that the Judicial Commission's decision to dismiss the instant complaint without investigation is not vulnerable to a writ of mandamus is also supported by a review of comparable challenges to the decisions of attorney disciplinary committees. In an action where the petitioner sought to compel the First Department Disciplinary Committee to investigate his complaint against his attorney, United States District Court Judge Weinstein concluded that the Committee's decision not to proceed is exempt from court review because:

> "[t]he Chief Counsel is in the same position as a public prosecutor required to exercise 'independence of judgment' in deciding how to use the limited resources of the office. Imbler v. Pachtman, 424 U.S. 409, 423 (1976). Prosecutors and those holding equivalent office are immune from suits seeking to force official action...." [Clouden v. Lieberman, 1992 WL 54370 (E.D.N.Y. 1992)].

Along the same lines, in Schachter v. Departmental Disciplinary Committee, 212 A.D.2d 378 (1st Dept. 1995), appeal dismissed, 86 N.Y.2d 836 (1995), the petitioner brought an Article 78 petition challenging the Disciplinary Committee's decision to dismiss his complaint against two attorneys. The First Department dismissed the petition, holding that "petitioner has not established that [the Committee] failed to

perform a purely ministerial act required by law".

In terms of the actual wording of the relevant enabling statute, these holdings are telling because the provision granting the Disciplinary Committee the authority to discipline attorneys does so with broad language (Judiciary Law §90; 22 NYCRR §603.4) and does not specifically permit the dismissal of a complaint on its face, as is explicitly authorized under the provision governing the Judicial Commission [Judiciary Law §44]. Similarly, a District Attorney is not expressly granted the authority to decline to prosecute by the applicable enabling statute, but as set forth above, does indeed possess such authority [County Law §700].

An interesting contrast to the specific deference granted in Judiciary Law §44 to the Judicial Commission in deciding whether to investigate a complaint is the statute that creates the State Board for Professional Medical Conduct. Public Health Law §230(10)(a)(i) provides that the Board of Medical Conduct:

> "shall investigate each complaint received regardless of the source".

Similarly, Education Law §6510, which governs proceedings involving allegations of professional misconduct in numerous other professions (including dentists, psychologists, veterinarians, engineers, architects, and public accountants) contains language requiring some level of investigation. Subdivision 1(b) thereof states:

> "b. Investigation. The department shall investigate each complaint which alleges conduct constituting professional misconduct. The results of the investigation shall be referred to the professional conduct officer designated by the board of regents.... If such officer decides that there is not substantial evidence of professional misconduct or that further proceedings are not warranted, no further action shall be taken."

This mandatory initial investigation is contrary to the explicit discretion granted the Judicial Commission by Judiciary Law §44 [see, Frooks v. Adams, 214 A.D.2d 615 (2d Dept. 1995)].

Accordingly, a writ of mandamus is unavailable against the respondent commission to compel its investigation of the subject complaint, and the petition is therefore dismissed.

This constitutes the decision and judgment of the court.

Dated: September 30, 1999

J.S.C.

Williams, J.P., Mazzarelli, Lerner, Buckley, Friedman, JJ.

2291 Michael Mantell,
Petitioner-Appellant,

-against-

Pro Se

New York State Commission on
Judicial Conduct,
Respondent-Respondent.

Constantine A. Speres

Judgment, Supreme Court, New York County (Edward Lehner, J.), entered on or about September 30, 1999, which, in a proceeding pursuant to CPLR article 78 to compel respondent Commission to investigate petitioner attorney's complaint of judicial misconduct, granted respondent's motion to dismiss the petition, unanimously affirmed, without costs.

Petitioner lacks standing to assert that, under Judiciary Law § 44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct. Respondent's determination whether or not a complaint on its face lacks merit involves an exercise of discretion that is not amenable to mandamus (cf., Matter of Dyno v Rose, 260 AD2d 694, 698, appeal

Ex "F"

dismissed 93 NY2d 998, lv denied 94 NY2d 753).

M-5760 **Mantell v New York State Commission on Judicial Conduct**

Motion seeking leave to intervene and for other related relief denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 16, 2000

Catherine O'Hagan Wolfe

CLERK

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CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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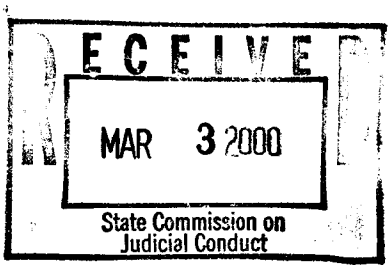
Elena Ruth Sassower, Coordinator



BY HAND

March 3, 2000

Chief Judge Judith Kaye
Chief Judge of the State of New York
230 Park Avenue, Suite 826
New York, New York 10169-0007

RE: 1. Meeting your Administrative and Disciplinary Responsibilities under §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct;
2. Designation of a Special Inspector General to Investigate the Corruption of the New York State Commission on Judicial Conduct.

Dear Chief Judge Kaye:

This letter calls upon you, as Chief Judge of the State of New York, to take steps to ensure that Supreme Court Justice Stephen G. Crane is demoted from his position as Administrative Judge of the Civil Term of the Manhattan Supreme Court and that both he and Acting Supreme Court Justice William A. Wetzel are removed from the bench and criminally prosecuted.

As set forth in the enclosed copy of CJA's February 23, 2000 letter to Governor Pataki – to which you are an indicated recipient[1] -- Administrative Judge Crane and Justice Wetzel collusively used their judicial offices to subvert the judicial process in an important public interest Article 78 proceeding against the New York State Commission on Judicial Conduct to advance ulterior personal and political goals. Among these goals: to keep the Commission as the corrupt façade it is so as to deprive the public of its entitlement under Article VI, §22 of the New York State Constitution and Article 2-A of the Judiciary Law to a functioning disciplinary

[1] *See*, in particular, p. 32, fn. 58.

Rec'd by Chief Judge Kaye
3/2/00

Ex "C"

mechanism against abusive, biased, and dishonest judges – such as Administrative Judge Crane and Justice Wetzel.

This letter also calls upon you to appoint a "Special Inspector General" to investigate the Commission on Judicial Conduct -- comparable to the newly-appointed "Special Inspector General for Fiduciary Appointments in the Unified Court System", who you announced in your January 10, 2000 "State of the Judiciary Address" would "work closely with the Commission on Judicial Conduct" (Exhibit "A", p. 10). It is precisely because the Commission is corrupt that patronage in judicial appointments – long the subject of *facially-meritorious* judicial misconduct complaints, dismissed by the Commission *without investigation* – has flourished to the point where the media call it an "open secret"[2].

Designation of a "Special Inspector General" to investigate the Commission is essential because public agencies and officers having criminal and disciplinary jurisdiction over the Commission are compromised by disabling conflicts-of-interest. This is identified by CJA's enclosed February 25, 2000 memorandum-notice to the New York State Attorney General, the Manhattan District Attorney, the U.S. Attorney for the Southern District of New York, and the New York State Ethics Commission – to which you are an indicated recipient.

The most salient and frightening fact about the Commission's corruption, highlighted by CJA's February 25, 2000 memorandum-notice and particularized in CJA's February 23, 2000 letter, is that in three specific-Article 78 proceedings over the past five years, the Commission – whose duty it is to uphold judicial standards -- has been the beneficiary of fraudulent judicial decisions of Supreme Court/New York County, without which it could not have survived the challenges brought by complainants whose *facially-meritorious* judicial misconduct complaints the Commission had dismissed *without investigation.* Indeed, the Commission had NO legitimate defense in *any* of these three proceedings, relying on litigation fraud by "the People's Lawyer", the State Attorney General, who represented the Commission in flagrant violation of Executive Law §63.1[3].

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[2] Judicial patronage has also flourished because "the attorney disciplinary committees of the Appellate Divisions and other appropriate authorities", with whom the Special Inspector General will also "work closely", are – like the Commission -- dysfunctional and corrupted by conflicts-of-interest.

[3] Executive Law §63.1 requires the Attorney General's involvement in litigation to be

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You are already familiar with the fact that the earliest of these three Article 78 proceedings against the Commission was "thrown" by a fraudulent judicial decision. Like Governor Pataki, you long ago received copies of CJA correspondence describing it and appending CJA's Letter to the Editor, "*Commission Abandons Investigative Mandate*" (NYLJ, 8/14/95), and two public interest ads, "*A Call for Concerted Action*" (NYLJ, 11/20/96, p. 3) and *Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4)[4]. CJA's January 7, 1998 letter to you – which is Exhibit "E" to CJA's February 23, 2000 letter to the Governor[5] – referred (at fn. 2) to all three published pieces and appended a copy of "*Restraining 'Liars'*". This first Article 78 proceeding was *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141), "thrown" by a fraudulent judicial decision of Supreme Court Justice Herman Cahn[6].

It may be expected that you would be familiar with the second Article 78 proceeding "thrown" by a fraudulent judicial decision, *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #99-108655). This, because on October 5, 1999, the New York Law Journal featured a front-page, above-the fold story about Supreme Court Justice Edward Lehner's decision in that case under the eye-catching headline, "*State Commission Can Refuse to Investigate Judge*". From that story – and the published decision appearing two days later – you would have

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predicated on "the interests of the state". No "state interest" is being served by an Attorney General who corrupts the judicial process with defense fraud and misconduct in order to defeat a meritorious claim.

[4] Copies are annexed as Exhibits "B-1", "B-2", and "B-3", respectively, to CJA's February 23, 2000 letter to the Governor.

[5] CJA's January 7, 1998 letter to you – to which we received *no* response -- sought your leadership in vindicating the public's rights relating to the Governor's judicial appointments process, to which you are a participant by virtue of your designation of members of his judicial screening committees. It is annexed to our February 23, 2000 letter to the Governor because it reflects CJA's 1997 opposition to Judge Crane's candidacy to the Appellate Division, which we presented to the First Department Judicial Screening Committee – on which your designee Claire Gutekunst sits (at pp. 2-3).

[6] Conspicuously, Justice Cahn's decision in *Doris L. Sassower v. Commission* has never been printed in the law books – notwithstanding the July 31, 1995 New York Law Journal cited it as a "decision of interest" on its front-page, summarized it on its second front-page, and published it in its second section.

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had no difficulty recognizing that the decision is legally insupportable – not the least reason being because it pretends that a judicial misconduct complaint filed with the Commission by a member of the public is analogous to one initiated by the Commission. Since the Court of Appeals regularly reviews appeals from the small handful of judges which the Commission subjects to public discipline, you surely are aware that these two types of complaints are governed by different provisions of Judiciary Law §44: subdivisions 1 and 2 – which Justice Lehner's decision purposefully obscures. These different provisions were recognized by the Court of Appeals in *Judicial Conduct v. Doe*, 61 NY2d 56 (1984), at 60. Such case followed the Court's recognition in *Matter of Nicholson*, 50 NY2d 597 (1980), that Judiciary Law §44.1 imposes a mandatory investigative duty upon the Commission:

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

Nor would it be surprising if you were already familiar with the recent fraudulent decision of Justice Wetzel in the third Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551), since that decision was cited on the front-page of the February 24, 2000 New York Law Journal as being "of interest", summarized on the Law Journal's second front-page, and published in that second section. On its face, the decision departs from fundamental adjudicative standards – substituting conclusory and defamatory characterizations and innuendo for factual specificity. This includes the two paragraphs of the decision which rest dismissal of *Elena Ruth Sassower v. Commission*[7] exclusively on Justice Cahn's decision in *Doris L. Sassower v. Commission* and Justice Lehner's decision in *Michael Mantell v. Commission*.

As set forth in CJA's February 23, 2000 letter to the Governor (at p. 22), the record before Justice Wetzel in *Elena Ruth Sassower v. Commission* contained fact-specific, legally-supported analyses showing that the decisions of Justices Cahn and Lehner are fraudulent[8] – the accuracy of which was wholly undenied and

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[7] These two paragraphs are analyzed at pp. 20-23 of CJA's February 23, 2000 letter to the Governor.

[8] The 3-page analysis of Justice Cahn's fraudulent judicial decision in *Doris L. Sassower*

undisputed by the Commission and its defense counsel, the State Attorney General.

A fact-specific, legally-supported analysis of Justice Wetzel's fraudulent judicial decision in *Elena Ruth Sassower v. Commission* appears at pages 15-29 of CJA's February 23, 2000 letter to the Governor, prefaced by an extensive discussion at pages 6-14 of Administrative Judge Crane's misconduct, reflecting his complicity in that decision. In summary, Administrative Judge Crane, who was self-interested in the proceeding, twice interfered with random assignment of the case, the second time to "steer" it to Judge Wetzel, who he had reason to know was even more disqualified than the judge to whom he had first "steered" the case, who had recused himself. Thereafter, and in the face of petitioner's written notice to him that within two weeks of receiving the case, Justice Wetzel was already making manifest his disqualifying bias and self-interest, Administrative Judge Crane wilfully ignored the Article 78 petitioner's legitimate request for:

1. the authority for his interference with random assignment;

2. the basis for "steering" the case to Court of Claims Judge Wetzel, whose appointive term had expired five months earlier, and for "steering" the case prior thereto to Court of Claims Judge Ronald Zweibel, whose appointive term was nearing expiration; and

3. information as to his awareness of the facts pertaining to Justice Wetzel's disqualification, set forth in petitioner's December 2, 1999 application for Justice Wetzel's recusal – a copy of which she sent to Administrative Judge Crane.

Likewise, Administrative Judge Crane ignored petitioner's request for a conference so that arrangements could be made to ensure that the proceeding be "assigned to a fair and impartial tribunal". This, notwithstanding the record before him showed that *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission* had each been "thrown" by fraudulent decisions of Supreme Court/New York County and that petitioner was endeavoring to ensure that *Elena Ruth Sassower v. Commission* would not be the third such Article 78 proceeding to be "thrown".

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v. Commission is annexed as part of Exhibit "A" to petitioner Elena Ruth Sassower's verified petition. The 13-page analysis of Justice Lehner's fraudulent judicial decision in *Michael Mantell v. Commission* is Exhibit "D" to her December 9, 1999 letter to Justice Wetzel.

Administrative Judge Crane's misfeasance and wilful nonfeasance, as likewise the fraudulent judicial decisions of Justices Wetzel, Cahn, and Lehner, are wholly inimical to the goal of your "Year 2000 Program" to "build public trust and confidence in our justice system", repeatedly emphasized in your January 10, 2000 "State of the Judiciary Address" (Exhibit "A", pp. 1-2, 10). A justice system that fails to eject such miscreant judges cannot possibly foster "trust and confidence" among the public. Nor should it expect to. Indeed, by their misconduct, these judges knowingly and irreparably harmed the public by covering up the corruption of the *only* state agency empowered to safeguard adherence to judicial standards of conduct, as well as the complicity of New York's *highest* law enforcement officer, the State Attorney General, whose false and deceitful tactics in defending the Commission have constituted "the crimes of, *inter alia*, perjury, filing of false instruments, conspiracy, obstruction of justice, and official misconduct"[9].

You twice repeated in your "State of the Judiciary Address" that:

> "the best way to begin the new millenium is by *being honest with the public* and with ourselves about our shortcomings..." (Exhibit "A", p. 10, emphasis added, *see* also, p. 1)

The second time, you reinforced the need for action:

> "Unquestionably, *we have to do everything in our power* to earn the trust and confidence of the public in the integrity, reliability and efficacy of our courts. And there is only one place to begin improving public perceptions about our courts: *by improving the realities*." (Exhibit "A", at p. 10, emphases added)

In light of such resounding rhetoric, the public has a right to expect that you will at long last be "honest" about the corruption of the Commission on Judicial Conduct, the reality of which is *readily-verifiable* from the record of the three most recent Article proceedings from Supreme Court/New York County. To that end, a copy of the record of *Elena Ruth Sassower v. Commission* is herein transmitted, with its

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[9] *See* notice of motion to petitioner *Elena Ruth Sassower*'s July 28, 1999 omnibus motion and her memorandum of law, pp. 8-9.

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physically-incorporated copies of the record in *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission.*

Being "honest with the public" will require you – like the Governor – to put aside your substantial conflicts of interest, born of your personal and professional relationships with innumerable persons implicated in the corruption of the Commission, or the beneficiaries of it. These may account for your silence throughout the years in which CJA's vigorous advocacy alerted you to the Commission's *readily-verifiable* corruption, which you chose not to verify – all the while referring aggrieved members of the public to the Commission when they turned to you for help against biased and abusive judges. This includes Vietnam War veteran Camou Bey, who twice complained to you about Justice Wetzel (Exhibits "B-1" – "B-4") and whose *facially-meritorious* judicial misconduct complaints against Justice Wetzel the Commission dismissed, *without investigation*[10].

Illustrative of these personal and professional relationships which may be presumed to have deterred you from safeguarding the public's right to a Commission on Judicial Conduct which is not a corrupt façade are those with:

1. Carmen Ciparick, the only other woman on the Court of Appeals, who, until her 1993 confirmation to the Court, was a long-time member of the Commission and whose confirmation CJA opposed, *inter alia*, because of her participation in the Commission's corruption;

2. Court of Claims Judge Juanita Bing Newton[11], a judicial member of the Commission until her appointment last year as Deputy Chief Administrative Judge for Justice Initiatives and whose 1996 reappointment and confirmation to the Court of Claims CJA opposed by reason of her involvement in the Commission's corruption, including her failure to take corrective steps in the face of knowledge that the Commission was the beneficiary of Justice Cahn's fraudulent decision; and

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[10] *See* pp. 29-30 of CJA's February 23, 2000 letter to the Governor and Exhibits "J-1" – "J-8" thereto.

[11] Judge Newton is cited in your "State of the Judiciary Address" (Exhibit "A", p. 2).

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3. Albert Rosenblatt, your newest Court of Appeals colleague, who, while a justice of the Appellate Division, Second Department, was the beneficiary of the Commission's corrupt dismissals, *without reasons*, of three *facially-meritorious* judicial misconduct complaints against him, thereafter challenged in *Doris L. Sassower v. Commission*[12], and who, following his Senate confirmation to the Court of Appeals, was the beneficiary of the Commission's corrupt dismissal, *without reasons*, of an October 6, 1998 *facially-meritorious* judicial misconduct complaint against him based, *inter alia*, on his likely perjury on his publicly-inaccessible application for the Court of Appeals, thereafter challenged in *Elena Ruth Sassower v. Commission*[13].

Of course, also accounting for your silence and inaction on the subject of the Commission's corruption may be the fact that a Chief Judge, too, is subject to the Commission's disciplinary jurisdiction. As such, you have your own self-interest that the Commission continue its pattern and practice of "dumping" *facially-meritorious* complaints against high-ranking, politically-connected judges, which the cases of *Doris L. Sassower v. Commission* and *Elena Ruth Sassower v. Commission*.expressly challenged. That would make it less likely to investigate *facially-meritorious* judicial misconduct complaints against you and your fellow high-ranking colleagues. Certainly, based upon the record herewith transmitted, a *facially-meritorious* judicial misconduct complaint might reasonably be filed against you should you fail and refuse to discharge your mandatory administrative and disciplinary responsibilities under §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct. Pursuant to §100.3D(1),

> "A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part *shall* take appropriate action." (emphasis added)

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[12] These three *facially-meritorious* judicial misconduct complaints, dated September 19, 1994, October 26, 1994, and December 5, 1994, are Exhibits "G", "I", and "J", respectively, to Doris L. Sassower's verified petition.

[13] The *facially-meritorious* October 6, 1998 judicial misconduct complaint is Exhibit "C" to Elena Ruth Sassower's verified petition.

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The transmitted record in *Elena Ruth Sassower v. Commission* provides much more than "information indicating a substantial likelihood". It presents incontrovertible *proof* of judicial misconduct by Administrative Judge Crane and Justice Wetzel so serious and far-reaching as to require you to take steps to secure their removal from office and criminal prosecution. Beyond that, it also presents incontrovertible *proof* of defense fraud by the Attorney General on behalf of the Commission so serious and far-reaching as to trigger your "Disciplinary responsibilities" under §100.3D(2) to "take appropriate action" against them – much as it triggered the "Disciplinary responsibilities" of Administrative Judge Crane and Wetzel – which they ignored.

Without forceful "action" by you, such as appointment of a "Special Inspector General" to investigate the *readily-verifiable* corruption of the Commission on Judicial Conduct – including the defense fraud of its attorney, the Attorney General, to defeat legitimate citizen challenges, as well as the fraudulent judicial decisions of Supreme Court/New York County of which it is a knowing beneficiary -- the public will have ample reason to distrust not only "our justice system", but your own fitness for the pre-eminent judicial position of Chief Judge of New York State.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosures

cc: Administrative Judge Stephen G. Crane
Justice William A. Wetzel
Governor George Pataki
New York State Commission on Judicial Conduct
New York State Attorney General Spitzer
District Attorney, New York County
U.S. Attorney, Southern District of New York
New York State Ethics Commission
U.S. Attorney, Eastern District of New York
Association of the Bar of the City of New York
Patricia Salkin, Director, Government Law Center/Albany Law School
Former Bronx Surrogate Bertram R. Gelfand
Media

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INVENTORY: ***Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct*** **(NY Co. #99-108551)**

1. Petitioner's Notice of Right to Seek Intervention, Notice of Petition, and Verified Petition (April 22, 1999)

2. Attorney General's Affirmation (Carolyn Cairnes Olson) in Support of Respondent's Application Pursuant to CPLR §3012(d) (May 17, 1999)

3. Attorney General's Dismissal Motion (May 24, 1999), consisting of:
   (a) Notice of Motion, with Affirmation of Assistant Attorney General Michael Kennedy and Affidavit of Albert Lawrence, Clerk of the Commission on Judicial Conduct;

   (b) Memorandum of Law in Support of Motion to Dismiss, signed by Assistant Attorney General Carolyn Cairns Olson

4. Petitioner's Omnibus Motion (July 28, 1999), consisting of:
   (a) Notice of Motion, with Affidavit of Petitioner and Affidavit of Doris L. Sassower, CJA's Director;
   (b) Memorandum of Law in Opposition to Respondent's Dismissal Motion & in Support of Petitioner's Motion for Disqualification of the Attorney General, Sanctions, a Default Judgment, and Other Relief

   [*with* free-standing File Folder I: *Doris L. Sassower v. Commission* (NY Co. #95-108141)]
   [*see* inventory of other free-standing File Folders, annexed to Petitioner's Affidavit]

5. Attorney General's Reply Memorandum in Further Support of a Motion to Dismiss and in Opposition to Petitioner's Motion for "Omnibus Relief", signed by Assistant Attorney General Carolyn Cairns Olson (August 13, 1999)

6. Petitioner's Papers in Reply and in Further Support of her Omnibus Motion (September 24, 1999), consisting of:
   (a) Petitioner's Reply Affidavit
   (b) Petitioner's Reply Memorandum of Law

7. Petitioner's November 5, 1999 letter to Acting Supreme Court Justice Barbara Kapnick

8. Petitioner's December 2, 1999 letter to Acting Supreme Court Justice William Wetzel

9. Petitioner's December 2, 1999 letter to Administrative Judge Stephen Crane

10. Petitioner's December 9, 1999 letter to Acting Supreme Court Justice William Wetzel
    [*with* file *Mantell v. Commission* (NY Co. #99-108655)]

11. Petitioner's December 17, 1999 letter to Acting Supreme Court Justice William Wetzel

12. Decision/Order of Acting Supreme Court Justice William Wetzel, dated January 31, 2000

INVENTORY: ***Doris L. Sassower v. Commission on Judicial Conduct of the State of New York***[1] ***(N.Y. Co. #95-109141)***

1. Doris L. Sassower's Article 78 Petition, with Notice of Petition and Notice of Right to Seek Intervention (April 10, 1995)

2. Doris L. Sassower's Order to Show Cause for Preliminary Injunction, Default (May 11, 1995)

3. Attorney General's Affidavit in Opposition to Preliminary Injunction (May 22, 1995)

4. Attorney General's Dismissal Motion (May 30, 1995)

5. Doris L. Sassower's Affidavit in Opposition to Dismissal Motion and in Further Support of Verified Petition, Motion for Injunction and Default, and for Sanctions (June 8, 1995)

6. Doris L. Sassower's Memorandum of Law in Opposition to Dismissal Motion and in Further Support of Verified Petition, Motion for Injunction and Default, and for Sanctions (June 8, 1995)

7. Doris L. Sassower's Notice to Furnish Record to the Court Pursuant to CPLR §§409, 7804(e), and 2214(c) (June 9, 1995)

8. Doris L. Sassower's Affidavit in Support of Proposed Intervenors (June 9, 1995)

9. Supreme Court Memorandum Decision, per Herman Cahn (July 13, 1995)

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[1] Copy of record submitted as one of the free-standing file folders substantiating Elena Ruth Sassower's July 28, 1999 omnibus motion for disqualification of attorney general, sanctions, etc. in *Elena Ruth Sassower v. Commission* (NY Co. #99-108551).

INVENTORY: ***Michael Mantell v. New York State Commission on Judicial Conduct***[1]
(NY Co. #99-108655)

1. Petitioner's Notice of Petition and Verified Petition, dated April 22, 1999

2. Attorney General's May 14, 1999 letter

3. Signed stipulation extending time, dated May 14, 1999

4. Attorney General's Notice of Cross-Motion to Dismiss the Petition, dated June 3, 1999

5. Attorney General's Memorandum of Law in Support of the Cross-Motion to Dismiss the Petition, dated June 3, 1999

6. Petitioner's June 15, 1999 letter

7. Signed stipulation extending time, dated June 15, 1999

8. Petitioner's Amended Petition, dated June 15, 1999

9. Attorney General's Notice of Cross-Motion to Dismiss the Amended Petition, dated June 23, 1999

10. Attorney General's Memorandum of Law in Support of the Cross-Motion to Dismiss the Amended Petition, dated June 23, 1999

11. Petitioner's Reply Affidavit, dated July 14, 1999

12. Petitioner's Memorandum of Law, served July 14, 1999

13. Decision & Judgment of Supreme Court Justice Edward H. Lehner, dated September 30, 1999

14. Short-Form Order of Justice Lehner, dated September 30, 1999

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[1] Copy of record submitted with Elena Ruth Sassower's December 9, 1999 letter to Acting Supreme Court Justice William Wetzel in *Elena Ruth Sassower v. Commission* (NY Co. #99-108551)

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Box 69, Gedney Station
White Plains, New York 10605

By Priority Mail

December 15, 1995

Assembly Judiciary Committee
L.O.B. Room 831
Empire State Plaza
Albany, New York 12248

ATT: Patricia Gorman, Counsel

Dear Pat:

Time moves faster than I do. Ever since our meeting in Albany on October 24th, I have been meaning to write a note of thanks to you and Joanne Barker, counsel to the Assembly Judiciary Committee, to Anthony Profaci, associate counsel of the Assembly Judiciary Committee, to Joan Byalin, counsel to Chairwoman Weinstein, and to Josh Ehrlich, counsel to the Assembly Election Law Committee, for the two hours time each of you gave us to discuss CJA's recommendations for imperatively-required legislative action.

I did telephone Joan Byalin on October 26th and conveyed our appreciation. I hope it was passed on to Chairwoman Weinstein and to the counsel present at the October 24th meeting.

We trust you have now had sufficient time to review the documents we supplied the Assembly Judiciary Committee and to verify their extraordinary significance. This includes the court papers in our Article 78 proceeding against the New York State Commission on Judicial Conduct[1]--and our related correspondence.

* By your review of Point II of our Memorandum of Law[2]--detailed with legislative history and caselaw--there should be no question but that the self-promulgated rule of the Commission (22 NYCRR §7000.3) is, on its face, irreconcilable with the statute defining the Commission's duty to investigate facially meritorious complaints (Judiciary Law, §44.1) and with the constitutional amendments based thereon. For your convenience, copies of the rule and statutory and constitutional provisions are annexed hereto as Exhibits "A-1", "A-2", and "A-3", respectively.

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1 For ease of reference, the court papers in the Article 78 proceeding against the Commission are designated herein by the numbers assigned them by our Inventory of Transmittal.

2 See Doc. 6, pp. 10-17.

Ex "B"

Moreover, you should now be convinced that the Supreme Court's decision of dismissal, justifying §7000.3, as written,--by an argument not advanced by the Commission--is palpably insupportable.

The definitions section of §7000.1 (Exhibit "A-1"), which the Court itself quotes in its decision[3], belies its claim that "initial review and inquiry" is subsumed within "investigation". Such definitions section expressly distinguishes "initial review and inquiry" from "investigation"[4].

Even more importantly, the Court's aforesaid sua sponte argument, which it pretends to be the Commission's "correct[] interpret[ation]" of the statute and constitution, does NOTHING to reconcile §7000.3, as written, with Judiciary Law, §44.1 (Exhibit "A-2"). This is because §7000.3 (Exhibit "A-1") uses the discretionary "may" language in relation to both "initial review and inquiry" and "investigation"--THUS MANDATING NEITHER. Additionally, as written, §7000.3 fixes NO objective standard by which the Commission is required to do anything with a complaint--be it "review and inquiry" or "investigation". This contrasts irreconcilably with Judiciary Law §44.1, which uses the mandatory "shall" for investigation of complaints not determined by the Commission to facially lack merit.

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3 The Supreme Court decision does not quote the entire definition of "investigation", set forth in §7000.1(j). Omitted from the decision is the specification of what "investigation" includes. The omitted text reads as follows:

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

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

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

As to the issue of the constitutionality of §7000.3, as applied, your review of the papers should have persuaded you that such important issue was squarely before the Court[5]--contrary to the Supreme Court's bald representation that it was not.

Finally, we expect you have also confirmed that the threshold issues which the Supreme Court was required to adjudicate before it could grant the Commission's dismissal motion were entirely ignored by it. Those threshold issues--fully developed in the record before the Supreme Court--included the uncontroverted default of the Commission on Judicial Conduct[6] and the uncontroverted showing that the Commission's dismissal motion was insufficient, as a matter of law[7]. This is over and beyond the conflict of interest issues affecting the Attorney General's representation of the Commission, which we made the subject of repeated objection to the Court[8].

Consequently, based on the record before you, you should have now confirmed that the Supreme Court's decision of dismissal is a knowing and deliberate fraud upon the public--and is known to be such by the Commission on Judicial Conduct, the State Attorney General, and the State Ethics Commission, who have each received explicit and extensive communications from us on that subject (Exhibits "C", "D", and "E").

✳ Since none of these public agencies and offices have taken steps to vacate for fraud the Supreme Court's decision of dismissal--which was pointed out as their duty to do[9]--it now falls to the Assembly Judiciary to take action to protect the public. As a first priority, the Assembly Judiciary Committee must require the Commission on Judicial Conduct to address the specific issues raised herein as to the false and fraudulent nature of the Supreme Court's decision.

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5 See Doc. 1: Notice of Petition: (a)(b)(c); Article 78 Petition: ¶¶ NINETEENTH, TWENTIETH, TWENTY-FIRST, TWENTY-SECOND, TWENTY-THIRD, TWENTY-FOURTH, TWENTY-FIFTH, TWENTY-SIXTH, TWENTY-SEVENTH, TWENTY-EIGHTH, TWENTY-NINTH, THIRTY-THIRD, "WHEREFORE" clause: (a), (b), (c).

6 See Doc. 2, Aff. of DLS in Support of Default Judgment; Doc. 5, ¶¶2-3, 7; Doc. 6, pp. 1-2.

7 See Doc. 6, pp. 2-9.

8 See Doc. 2: DLS Aff. in Support of Default Judgment, ¶¶9, 14, Ex. "B" thereto, p. 3; Doc. 5, ¶¶10, 50-4

9 See Exhibit "D", p. 6; Exhibit "E".

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Ex "D"

ANALYSIS OF THE DECISION

Michael Mantell v. NYS Commission on Judicial Conduct **(NY Co. #99-108655)**
Justice Edward H. Lehner (September 30, 1999)

I. The Decision Omits the Procedural History of the Proceeding & the Papers Before the Court

The decision does not recite the procedural history of the case before Justice Lehner, including the papers before him. Most conspicuously, it does not identify that Mr. Mantell superseded his Verified Petition with an Amended Verified Petition. Indeed, the decision's sole reference to either document is an ambiguous reference in its penultimate paragraph "the petition is therefore dismissed" (at p. 9).

Instead, the decision begins as if in the middle of some other discussion, referring to "this motion" (at p. 1), which is not identified either as to whose it is or what it seeks. It is unclear whether it is Mr. Mantell's Verified Petition[1] or his Amended Verified Petition, or whether it is the Attorney General's "Cross-Motion to Dismiss the Petition" or his "Cross-Motion to Dismiss the Amended Petition".

CPLR §2219(a) requires that an order determining a motion "recite the papers used on the motion". Justice Lehner's single short-form order pertaining to this proceeding recites no papers, notwithstanding the form order contains a pre-printed section as to the "papers... read on this motion". This pre-printed section has been left completely blank, as likewise, the pre-printed line inquiring as to what the decided motion is "to/for". The only identification in the short-form order of the motion "decided in accordance with [the] accompanying memorandum decision" is its return date of "5/25/99" and its motion sequence of "001".

It thus appears from the short-form order that the motion being decided is the Verified Petition, whose Notice of Petition set a May 25, 1999 return date. However, by stipulation between the parties, occasioned by the Attorney General's request for additional time, Mr. Mantell consented to a stipulation adjourning the Article 78 proceeding "for all purposes until June 23, 1999". Such date was then reflected on the

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[1] *See* Official Court Rules, Supreme Court, NY County, Chapter 9 "Operating Statement": B(1) Judgements in Special Proceedings. "In special proceedings..the proceeding is the motion..."

Attorney General's June 7, 1999 "Notice of Cross-Motion to Dismiss the Petition", consisting of a Notice, Memorandum of Law, but no supporting affidavit. Thereafter, on June 15, 1999, Mr. Mantell served his Amended Verified Petition[2], accompanied by a request for the Attorney General's consent to an enclosed stipulation to further adjourn the return date to July 15, 1999. The stipulation was signed and the Attorney General's June 23, 1999 "Cross-Motion to Dismiss the Amended Petition", again with no supporting affidavit, was noticed for a July 15, 1999 return date. Mr. Mantell thereafter filed reply papers, consisting of a July 14, 1999 Reply Affidavit and Memorandum of Law.

A review of the documents in the court file does not reveal the Attorney General's June 7, 1999 "Cross-Motion to Dismiss the Petition". This may not have been filed in view of the Attorney General's superseding June 23, 1999 "Cross-Motion to Dismiss the Amended Petition", which is in the court file. The pre-printed short-form order, which provides "Yes" and "No" boxes to signify whether the decided motion has a "cross-motion", has neither box checked.

II. The Decision Obliterates the Critical Arguments Presented by the Papers before the Court, including Mr. Mantell's Arguments that the Key Issue to be Determined was the "Facial Merit" of the Allegations of his Judicial Misconduct Complaint, Dismissed by the Commission without Investigation, and, Based Thereon, His Entitlement to Relief under CPLR §7803(3), in addition to CPLR §7803(1)

In addition to obliterating the identity of the papers in the record, the decision obliterates the arguments presented by those papers. This includes Mr. Mantell's foremost argument that "it would be pointless for the Court to rule in this Article 78 proceeding" without examining the facial sufficiency of the allegations of his judicial misconduct complaint, dismissed by the Commission as presenting "no indication of judicial misconduct upon which to base an investigation". As pointed out in Mr. Mantell's Memorandum of Law (at pp. 1-2), as well as in his Reply Affidavit (¶¶7-8), the Attorney General, as the Commission's "defender in this case", totally ignored the sufficiency of those allegations in his "cross-motion" to dismiss. Yet, in addition to not identifying Mr. Mantell's argument that the undisputed sufficiency of his complaint's allegations is the pivotal ruling to be made, Justice Lehner makes no such ruling in his decision. This, because ruling on

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[2] Mr. Mantell did not serve a new Notice of Motion with a new return date for his Amended Verified Petition.

their sufficiency would necessarily expose that the Commission's determination that the allegations present "no indication of judicial misconduct" is not only "affected by an error of law", is "arbitrary and capricious", and an "abuse of discretion" – entitling Mr. Mantell to relief– but an affront to human intelligence.

It was Mr. Mantell's Amended Verified Petition (¶8) which sought relief on these three grounds, in addition to the single ground in the Verified Petition, which had been limited to "failure to perform a duty enjoined upon it by law" (¶8). This fact was expressly pointed out by Mr. Mantell's Reply Affidavit (at ¶2), with his Memorandum of Law (p. 1) identifying that these four grounds represent challenges under CPLR §7803(3) and CPLR §7803(1).

The decision's closest reference to CPLR §7803 is its general statement that "petitioner commenced this Article 78 proceeding seeking a writ of mandamus directing the respondent to conduct an investigation of his complaint" (at p. 2). The decision supplies no specifics as to the basis upon which Mr. Mantell was seeking a writ of mandamus. Nor does it discuss the legal standard governing relief under the never referred to subdivisions (1) and (3) of CPLR §7803, also not referred to. This, notwithstanding their clear relevance to what the first sentence of the decision purports to be "the central issue on this motion" *to wit*, "whether a writ of mandamus is available to require that respondent New York State Commission on Judicial Conduct investigate an attorney's complaint in which he charges that a particular New York City Criminal Court judge violated the standards of judicial conduct during a court hearing."

This concealment of the subsections of CPLR §7803 and the legal standards relating thereto reflect Justice Lehner's knowledge that disclosing them would reveal that the Commission was without any legitimate defense to Mr. Mantell's challenge. Justice Lehner's knowledge can be presumed from the record before him, showing the utter inability of the Attorney General to construct coherent argument in Points I and II of his Memorandum of Law in support of his "Cross-Motion to Dismiss the Amended Petition". Point I was entitled "Commission's Decision to Dismiss Petitioner's Complaint was Neither Arbitrary, Capricious nor Contrary to Law and Should be Upheld".[3] Point II was entitled "A Proceeding in the Nature of

[3] In Point I (pp. 4-7), the Attorney General reviewed, at length, caselaw for the general legal principle that a determination of an administrative body or officer will not be deemed arbitrary and capricious if there is a rational basis for it. That done, he concluded with a single final paragraph (pp. 6-7), which offered

Mandamus is Inappropriate Because It Seeks to Compel a Purely Discretionary Act".[4]

The decision entirely ignores Points I and II of the Attorney General's aforesaid Memorandum of Law, as well as Mr. Mantell's response

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neither facts nor law to show a rational basis for the Commission's determination that Mr. Mantell's judicial misconduct complaint presented "no indication of judicial misconduct". Instead, the Attorney General immediately shifted to arguing that the Commission did not "fail[] to perform a duty enjoined upon it by law" when it refused to investigate Mr. Mantell's complaint. For this, the Attorney General quoted, *verbatim*, Judiciary Law §44.1(a) and (b), without analyzing or discussing either part, but underlining subdivision (b) "the commission may dismiss the complaint if it determines that the complaint on its face lacks merit...". Then, without claiming that "no indication of judicial misconduct" is equivalent to "on its face lacks merit", or showing that the specific allegations of Mr. Mantell's complaint fell into either category, he rested on a bald assertion, "The Commission clearly acted within its statutory authority when it dismissed petitioner's complaint, determining 'that there is no indication of judicial misconduct upon which to base an investigation." Consequently, the concluding sentence of his Point I that "the Commission's determination...was rationally based, and neither arbitrary, capricious, nor contrary to law" was completely devoid of evidentiary support for even one of these three grounds, let alone all three.

[4] In Point II (pp. 7-10), the Attorney General reviewed, at length, caselaw for the general legal principle that mandamus is inappropriate where a purely discretionary act is sought to be compelled. However, he presented no caselaw showing that Judiciary Law §44.1, in fact, confers discretion upon the Commission to dismiss complaints. Nor did he present any analysis or discussion of Judiciary Law §44.1. Rather, the Attorney General again quoted, *verbatim*, §44.1 (a) and (b), again underlining (b): "the commission may dismiss the complaint if it determines that the complaint on its face lacks merit...". This he followed with a *verbatim* quote of 22 NYCRR §7000.3 – without acknowledging, let alone reconciling, its facially-obvious inconsistency with Judiciary Law §44.1(b) in permitting the Commission to dismiss a complaint with no requirement that it first be determined to lack merit on its face. The Attorney General then summed up with two conclusory sentences that the "statutory language" gives the Commission discretion as to whether to investigate a complaint, which cannot be compelled by mandamus – an assertion belied by Judiciary Law §44.1 – the statutory language at issue, which he had not analyzed or discussed. He then finished by specifying that mandamus was unavailable to compel investigation of Mr. Mantell's complaint. In fact, this was untrue, there having been no claim by the Attorney General that the Commission's determination that his complaint presented "no indication of judicial misconduct" was synonymous with "on its face lacks merit" – which, in order to have probative value would have to have been in affidavit form – and there being no showing that the allegations of the complaint were lacking in merit on their face.

thereto in his Reply Memorandum of Law[5] while nevertheless purporting to determine the "central issue" as to the availability of mandamus. In determining this "central issue", the decision wholly omits anything reflecting Mr. Mantell's CPLR §7803(3) challenge, *to wit*, that the Commission's determination is "affected by an error of law", "arbitrary and capricious" and "an abuse of discretion" – which, along with his Amended Verified Petition raising that challenge -- is never mentioned. Instead, the decision exclusively focuses on CPLR §7803(1), "failure to perform a duty enjoined upon it by law" – which, by holding that the Commission has discretion to investigate complaints, it impliedly rejects.

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

The decision purports (at p. 3) that "based on the express wording of the governing law, the Judicial Commission's actions at issue here were within its authority". The inference is that the "governing law" being referred to is Judiciary Law §44.1 since the decision has just quoted subdivisions (a) and (b) thereof. Yet, nowhere does the decision

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[5] Mr. Mantell's Memorandum of Law characterized the Attorney General's Point I as "merely a string of legal platitudes interspersed with citations of authority from which these platitudes were lifted. It may just as well been lifted from a textbook" (at p. 8). He also analyzed the cases presented by the Attorney General to show that they supported his entitlement to relief and that, by contrast to the reasoned determinations of administrative agencies and officers being judicially reviewed therein, the Commission had provided no reasoning to support its determination that his complaint presented "no indication of judicial misconduct". That the determination was palpably unreasonable was demonstrated by Mr. Mantell in the first Point of his Reply Memorandum (pp. 4-8), showing that the allegations of his judicial misconduct complaint constituted violations of standards of judicial conduct – recognized by the Commission in prior decisions.

In response to the Attorney General's Point II, Mr. Mantell observed that if the availability of mandamus was guided by the interpretation of Judiciary Law §44.1, the term "shall" in the statute mandated the Commission's investigation of allegations of "misconduct in office" and that "as the exact wording of the statute indicates" it "was not the intention of the Legislature in creating the Commission" to give it discretion as to whether to investigate complaints alleging judicial misconduct.

actually state that the dismissal of Mr. Mantell's complaint is within the Commission's authority under Judiciary Law §44.1.

Like the Attorney General's dismissal "cross-motion", the decision contains no analysis of the plain language of Judiciary Law §44.1. Nor does it contain any finding that in dismissing Mr. Mandell's complaint, without investigation, the Commission made the determination expressly required by subdivision (b), *to wit*, that the complaint "lacks merit on its face". This would have required the Court to conclude that the phrase "no indication of judicial misconduct", appearing in the Commission's letter notifying Mr. Mantell of the dismissal of his complaint, was equivalent to "on its face lacks merit". The decision does not do this – any more than the Attorney General did this in his dismissal "cross-motion".

Instead, Justice Lehner embarks upon a *sua sponte* argument, not advanced by the Attorney General, that because the Commission has discretion to investigate complaints filed by its administrator, it also has discretion to investigate complaints received from outside sources, such as Mr. Mandell.

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

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

Indeed, *Doe v. Commission on Judicial Conduct*, 124 A.D.2d 1067 (4th Dept. 1986), which Justice Lehner purports (at p. 3) "support[s]" his conclusion that no investigation is required does so only insofar as it relates to no investigation being required for an administrator's complaint – the sole issue before that court.

It is without identifying that administrator's complaints are governed by Judiciary Law §44.2, not Judiciary Law §44.1, that Justice Lehner states:

> "..the language granting the Judicial Commission the wide latitude to decide whether or not to investigate a charge does not distinguish between the two delineated types of complaints. The discretion to decline to investigate applies regardless of the source of the complaint." (decision, p. 3)

Justice Lehner uses the phrase "the language" in the same way he uses the phrase "the governing law" – with intended ambiguity. To the extent that the "language" to which Justice Lehner is alluding is that of "the Judiciary Law" – referred to generically in *Doe v. Commission* – which he has just excerpted – Judiciary Law §44.1 and §44.2 clearly delineate between the two types of complaints, as likewise the investigative responsibilities of the Commission. To the extent that "the language" to which he is alluding is 22 NYCRR §7000.3, reference to which also appears in *Doe v. Commission*, which he has just quoted, this Commission-promulgated rule is facially inconsistent with Judiciary Law §44.1 precisely because it gives the Commission "wide discretion" not conferred by that statutory provision. Justice Lehner's awareness of this infirmity may be seen from his conspicuous failure to identify or quote 22 NYCRR §7000.3 in connection with his opening discussion of the Commission's authority and Judiciary Law §44.1. This, notwithstanding the Attorney General's "cross-motion" twice cited and quoted it, including under the heading "statutory framework" (p. 2), wherein he falsely claimed (at p. 3) that it "follows the language of Jud. L. §44(1)".

It must be noted that except for the single instance, at the outset of the decision (pp. 2-3), where Justice Lehner cites and quotes Judiciary Law §44.1, the subsequent three references in the decision to Judiciary Law §44 are without specifying the subdivision. Once again, this permits Justice Lehner to make misleading statements as to the discretion it confers which, while true for administrator-filed complaints under Judiciary Law §44.2, are not true for complaints received from outside sources under Judiciary Law §44.1. Thus, he speaks of "the specific deference granted in Judiciary Law §44" (at p. 8) and "the explicit discretion granted the Judicial Commission by Judiciary Law §44." (at p. 9).

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

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

Such definitive interpretation of the "language" of Judiciary Law §44.1 by our state's highest court was based on briefs filed by the Commission. Indeed, instead of pursuing his own *sua sponte* excursion into the Commission's discretion to take no action on an administrator's complaint, Justice Lehner could more profitably have devoted himself to a *sua sponte* exploration of the *Nicholson* briefs so as to verify how the Commission interpreted the "shall" language of Judiciary Law §44.1, upon which the Court of Appeals based its own "must" interpretation. In view of the Commission's failure to interpret Judiciary Law §44.1 in the dismissal "cross-motion" of its attorney, the Commission's interpretation in *Nicholson* was particularly relevant.

Not surprisingly, the Commission's brief in *Nicholson* took the position that "shall" requires an investigation:

> "Unless the Commission determines that the complaint on its face lacks merit, the law requires that the Commission '<u>shall</u> conduct an investigation of the complaint' (Judiciary Law §44[1])..." (at p. 38, emphasis in the original).

Since analysis of the plain language of Judiciary Law §44.1, reinforced by the interpretive decisional law of the Court of Appeals establishes the Commission's mandatory investigative duty, Justice Lehner's citation to *Harley v. Perkinson*, 187 A.D.2d 765 (3rd Dept. 1992) that no relief can be granted because "the action involved the exercise of judgment or discretion" is inapplicable. In the absence of a Commission determination that Mr. Mandell's complaint "lacks merit on its face", mandamus to compel was available – there having been no assertion by the Attorney General or finding by Justice Lehner that the Commission's letter dismissal that "there is no indication of judicial misconduct" is equivalent thereto.

IV. The Court's Analogy of the Commission to a Public Prosecutor whose Discretionary Prosecutorial Decisions are Not Subject to Judicial Review is Unsupported by any Legal Authority and, Additionally, is Belied by Judiciary Law §44.1 and Judicial Interpretation Thereof

Justice Lehner presents no legal authority for his subsequent argument (at pp. 4-6) that "the Commission's function is in many respects similar to that of a public prosecutor" (at p. 4). This duplicates the Attorney General's failure to provide legal authority for his similar claim, albeit more scantily presented in Point III of his memorandum of law in support of his dismissal "cross-motion" (at p. 13), that the Commission is "like a prosecutor".

Rather, the only law Justice Lehner presents is for the proposition that the discretionary prosecutorial decisions of a public prosecutor are not subject to judicial review. Indeed, after two pages of legal citations for that proposition (at pp. 4-6), Justice Lehner concedes that he has no caselaw specifically holding that the Commission is like a prosecutor, not subject to judicial review. He confesses to drawing an analogy – one which, in order to be applicable, rests on the Commission being vested with discretion:

> "While the District Attorney is an elected official whose activity or inactivity is ultimately subject to review by the electorate, in light [of] the wide latitude statutorily granted to the Judicial Commission in accomplishing its functions and the similarity of the public policy issues involved, the comparison to a District Attorney appropriately serves as a guideline in resolving the issue at hand" (at pp. 6-7)

Since, as herein demonstrated, there is no "wide latitude statutorily granted" by Judiciary Law §44.1, Justice Lehner's analogy falls. Moreover, the "public policy issues" are reflected by the language of Judiciary Law §44.1 – as likewise from its legislative history showing that despite two emendations of Article 2A of the Judiciary Law, following the two constitutional amendments creating and strengthening the Commission, that mandatory language remained unchanged.

The fact that the decision cites numerous cases for the proposition that the District Attorney has prosecutorial discretion, which is not subject to judicial review, and fails to cite a single case either for the proposition that the Commission has discretion under Judiciary Law §44.1 to decline to investigate facially-meritorious complaints or for the unavailability of judicial review to challenge the Commission's dismissal, without investigation, of facially-meritorious judicial misconduct complaints takes on added significance further on in the decision. It is there that Justice Lehner admits (at p. 8) that under County Law §700 "a District Attorney is not expressly granted the authority to decline to prosecute". In other words, prosecutorial discretion is not authorized by that statute, but has been judicially created.

This is recognized and rationalized in *Matter of Johnson v. Boldman*, 24 Misc. 2d 592 (1960), a case cited for other purposes in Point III of the Attorney General's Memorandum supporting his dismissal "cross-motion" (at p. 12). In *Johnson v. Boldman*, the court confronted that the seemingly mandatory statutory language pertaining to the district attorney's duty did not support the discretionary judicial interpretation:

> "A cursory examination of annotated statutes shows that section 700 of the County Law has undergone several legislative reviews and revisions in the past 50 years without substantial revision of the phrase: 'It shall be the duty of every district attorney to conduct all prosecutions for crimes and offenses cognizable by the courts of the county'. It is inconceivable that these successive Legislatures were so unaware of the existing practices in the lower courts that when they used the word 'duty' it was intended as a mandate to the District Attorney to conduct all prosecutions for crimes and offenses. It is equally inconceivable that these successive Legislatures all would ignore any real conflict between known actual practices and the true legislative intent behind the wording of the statute." (at p. 594).

In other words, the legislature was deemed to have acquiesced to judicial interpretation at odds with the statute by its failure to respond to it. Since Justice Lehner cites no cases from "the lower courts" over the 25-year history of the Commission countering the mandatory investigative language of Judiciary Law §44.1, recognized nearly 20 years ago by the highest state court in *Nicholson*, the "public policy" is reflected by the plain language of Judiciary Law §44.1 and the faithful interpretation in *Nicholson*.

V. *The Decision's Claim that Judicial Challenges to Attorney Disciplinary Committee Dismissals of Attorney Misconduct Complaints Support the Unavailability of Mandamus to Review the Commission's Dismissals of Judicial Misconduct Complaints is Belied by the Cited Judicial Challenges and, Most Importantly, by the Attorney Disciplinary Law*

Similarly bogus is Justice Lehner's further argument (at p. 7) that a "review of comparable challenges to the decisions of attorney disciplinary committees" supports his claim that a writ of mandamus is not available to review the Commission's dismissal of Mr. Mandell's complaint without investigation. The "comparable challenges" cited by the decision consist of two cases brought against disciplinary committees to compel investigation of complaints against attorneys. The first of these cases is a brief unpublished decision in a §1983 federal action, *Clouden v. Lieberman*, 1992 WL 54370 (E.D.N.Y. 1992) – which the Attorney General cited in Point III of his Memorandum of Law (at p. 13), but with no argument as to its applicability. The second of these two cases is a two-sentence decision in an Article 78 proceeding, *Schachter v. Departmental Disciplinary Committee*, 212 A.D.2d 378 (1st Dept. 1995). Neither case discusses, or even identifies, the pertinent statutory and rule provisions pertaining to attorney disciplinary committees.

Nevertheless, the decision contends that:

> "these holdings are telling because the provision granting the Disciplinary Committee the authority to discipline attorneys does so with broad language (Judiciary Law §90; 22 NYCRR §603.4) and does not specifically permit the dismissal of a complaint on its face, as is explicitly authorized under the provision governing the Judicial Commission [Judiciary Law §44]." (at p. 8)

The inference is that the language authorizing grievance committees to discipline attorneys is broader than that authorizing the Commission to discipline judges – which is not true – and that Judiciary Law §90 and 22 NYCRR §603.4 lay out a procedure for investigation of complaints more stringent than that of Judiciary Law §44.1 – also not true. Indeed, not only is Judiciary Law §90 completely silent about what attorney disciplinary committees are to do upon receipt of a complaint, but 22 NYCRR §603.4(c) is framed in wholly discretionary language: "Investigation of professional misconduct *may* be commenced upon receipt of a specific complaint... by the Departmental Disciplinary Committee..." (emphasis added). Consequently, neither Judiciary Law §90 nor 22 NYCRR §603.4 impose any duty upon the grievance committees to investigate complaints. Thus, the only thing "telling" about the *Clouden* and *Schachter* cases is that, contrary to the decision's claim, they are NOT "comparable challenges".

VI. The Decision's Sua Sponte Comparison of Judiciary Law §44.1 to Other Statutes is Irrelevant and Conspicuously Devoid of Interpretive Caselaw

The decision concludes (at pp. 8-9) by purporting that Public Health Law §230(10)(a)(i) and Education Law §6510(1)(b) are examples of statutes not affording "the specific deference granted in Judiciary Law §44" as to whether to investigate a complaint.

However, as hereinabove discussed, Judiciary Law §44.1, in contrast to Judiciary Law §44.2, grants the Commission no discretion but to investigate complaints which it has not determined to be facially lacking in merit. This duty to investigate facially meritorious complaints received from outside sources does not become less mandatory as to those complaints just because another agency, operating under Public Health Law §230(10)(a)(i) is required to investigate "each complaint received regardless of the source" (at p. 8).

Moreover, as to Education Law §6510(1)(b), whose language the decision also cites (at p. 9), it would appear that it is roughly comparable to Judiciary Law §44.1 in that it requires that "The department shall investigate each complaint *which alleges conduct constituting professional* misconduct" – such language implying that a complaint not alleging conduct constituting professional misconduct – in other words one which "lacks merit on its face" – is not required to be investigated by the department.

Conspicuously, the decision provides no caselaw showing how courts have interpreted these two statutory provisions, notwithstanding the

decision has just conceded (at p. 8) that County Law §700 has been judicially transmogrified so as to confer upon the district attorney discretion not contained in the statute. It seems likely that the agencies dismissing complaints under Public Health Law §230(10)(a)(i) and Education Law §6510(1)(b) have been the subject of legal challenge, including Article 78, much as the district attorneys and attorney disciplinary committees in the cases the decision cites (at pp. 4-7). Likely, too, courts have commented as to the availability of judicial review, including by way of Article 78, in proceedings challenging the dismissals of complaints by those agencies.

rec'd 3/31/00

STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
(212) 428-2160

JONATHAN LIPPMAN
Chief Administrative Judge

MICHAEL COLODNER
Counsel

March 27, 2000

Elena Ruth Sassower
Coordinator
Center for Judicial Accountability, Inc.
P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Dear Ms. Sassower:

As Counsel to the Unified Court System, I am responding to your letter of March 3, 2000, to Chief Judge Kaye regarding the court's handling of your lawsuit against the State Commission on Judicial Conduct.

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

Very truly yours,

Michael Colodner

MC/job

cc: Hon. Judith S. Kaye

Ex "J"

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BY HAND

TO: NEW YORK STATE ATTORNEY GENERAL ELIOT SPITZER
ATT: David Nocenti, Counsel
Peter Pope, Chief, "Public Integrity Unit"
William Casey, Chief Investigator,
"Public Integrity Unit"
NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT
ATT: Commissioners
Gerald Stern, Administrator & Counsel

FROM: ELENA RUTH SASSOWER, COORDINATOR

RE: *Michael Mantell v. New York State Commission on Judicial Conduct*
(NY Co. #99-108655)

DATE: December 1, 2000

Received for the Att'y Gen 12/1/00 Gary Smith

This is to put you on notice of your on-going duty -- of which, by now, you should no longer need to be reminded -- to move to vacate for fraud the fraudulent judicial decisions of which you are the beneficiary. The latest of these fraudulent decisions is the Appellate Division, First Department's unsigned 5-sentence decision in *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #99-108655): (1) affirming Justice Lehner's September 30, 1999 decision; (2) further holding that "Petitioner lacks standing to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct"; and (3) denying my motion to intervene and for other relief.

Significantly, the Appellate Division gives no reasons for denying my motion. As you know, my motion exposes (at Exhibit "E") that Justice Lehner's decision is legally insupportable and further exposes (at pages 9-10, fn. 9; Exhibit "Z-3") the frivolousness of any objection based on lack of standing.

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

Elena Ruth Sassower

Ex "K"

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TO: NEW YORK STATE ATTORNEY GENERAL ELIOT SPITZER
ATT: David Nocenti, Counsel
Mark Peters, Chief, "Public Integrity Unit"
William Casey, Chief of Investigations

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT
ATT: Commissioners
Gerald Stern, Administrator & Counsel

FROM: ELENA RUTH SASSOWER, COORDINATOR

RE: **Your ethical and professional duty to take steps to vacate for fraud the Appellate Division, First Department's December 18, 2001 decision in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York* (NY Co. 108551/99) -- and to secure the criminal prosecution of the five-judge appellate panel, in addition to initiation of disciplinary proceedings to remove them from the bench**

DATE: January 7, 2002

Once again, this is to put you on notice of your ethical and professional duty to take steps to vacate for fraud the fraudulent judicial decisions of which you are the beneficiaries. The latest of these is the Appellate Division, First Department's *per curiam*, seven-sentence December 18, 2001 decision & order in my above-entitled public interest Article 78 proceeding (Exhibit "A")[1], affirming the decision of Acting Supreme Court Justice William A. Wetzel [A-9-14]. Such appellate affirmance perverts the most basic adjudicative standards and obliterates anything resembling the rule of law. This would be *immediately* obvious had the five-judge panel made *any* findings as to the state of the record and identified *any* of my appellate arguments with respect thereto. Instead, by bald and misleading claims

[1] This seven-sentence count excludes the boilerplate announcement, in capital letters, in the decision's final sentence, "THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT."

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Ex "B-1" Ex "L-1"

and by citation to cases it does *not* discuss, the panel flagrantly falsifies the state of the record and knowingly misrepresents legal principles and their applicability. This, to "protect" the Commission and those complicitous in its corruption from the consequences of an adjudication based on the *uncontroverted* documented facts in the record and the *uncontroverted* law pertaining to those facts.

As such, the Appellate Division's decision – like the fraudulent decision of Justice Wetzel it affirmed – is a criminal act – and your duty is also to secure the criminal prosecution of the collusive and conspiring five appellate judges, *to wit*, Presiding Justice Eugene L. Nardelli, Angela M. Mazzarelli, Richard T. Andrias, Betty Weinberg Ellerin, and Israel Rubin. This is additional to securing disciplinary proceedings to remove these judges from the bench – which, pursuant to Judiciary Law §44.2, the Commission may initiate "on its own motion"[2].

The standard for removal, set forth in the Appellate Division's *own* caselaw, was presented, *without controversion*, at the outset of my Appellant's Brief (at p. 4), in summarizing my entitlement not only to reversal of Justice Wetzel's fraudulent decision, but to action by the Court to secure his removal from the bench:

> "'*A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal...*', italics added by this Court in *Matter of Capshaw*, 258 A.D. 470, 485 (1st Dept 1940), quoting from *Matter of Droege*, 129 A.D. 866 (1st Dept. 1909)."

This was further amplified by a footnote, stating:

> "*See also 'Judicial Independence is Alive and Well'* by the Commission's Administrator, NYLJ, 8/20/98 [A-59-60] citing *Matter of Bolte*, 97 A.D. 551 (1st Dept. 1904)... 'A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for *willfully* making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting

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[2] To avoid any delay in the Commission's *sua sponte* initiation of a judicial misconduct complaint against the five-judge appellate panel, pursuant to Judiciary Law §44.2, I am simultaneously filing this memorandum with the Commission, pursuant to Judiciary Law §44.1, as a *facially-meritorious* judicial misconduct complaint against them.. As the Commission has an obvious self-interest in this *facially-meritorious* complaint, the Commission should advise as to what steps it will take to ensure that it is fairly and impartially determined.

> friendship or favoritism toward one party or his attorney to the prejudice of another...' (at 568, emphasis in original). 'Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe.' (at 574)".

Thus, the five-judge appellate panel was fully aware of the consequences of its official misconduct herein.

To aid your review of this analysis of the corrupt December 18th appellate decision (Exhibit "A"), a Table of Contents follows:

I. THE COURT'S KNOWING AND DELIBERATE *FALSIFICATION* OF THE RELIEF REQUESTED BY MY THRESHOLD AUGUST 17TH MOTION, *DENIED WITHOUT REASONS OR FINDINGS* IN THE DECISION'S FINAL SENTENCE, MANIFESTS ITS CONSCIOUSNESS OF ITS "IMPROPER MOTIVES", "FRIENDSHIP[S]", AND "FAVORITISM" 4

II. THE COURT'S FAILURE TO MAKE *ANY* FINDINGS AS TO MY THRESHOLD AUGUST 17th MOTION REFLECTS ITS KNOWLEDGE THAT FINDINGS WOULD ESTABLISH MY ENTITLEMENT TO THE RELIEF REQUESTED THEREIN, AS WELL AS TO THE RELIEF REQUESTED BY MY APPELLANT'S BRIEF 8

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I. THE COURT'S KNOWING AND DELIBERATE *FALSIFICATION* OF THE RELIEF REQUESTED BY MY THRESHOLD AUGUST 17TH MOTION, *DENIED WITHOUT REASONS OR FINDINGS* IN THE DECISION'S FINAL SENTENCE, MANIFESTS ITS CONSCIOUSNESS OF ITS "IMPROPER MOTIVES", "FRIENDSHIP[S]", AND "FAVORITISM"

The Court's conscious knowledge of its "improper motives", "friendship[s]", and "favoritism" is evident from its deliberate concealment in the seventh and final sentence of its decision (Exhibit "A") of the threshold and dispositive relief requested by my August 17th motion, which, *without reasons or findings*, it purports to deny.

The August 17th motion, assigned the designation M-4755 by the Clerk's Office, was NOT, as the seventh sentence purports, "a motion seeking leave to adjourn oral argument of this appeal and for other relief". NOWHERE does my August 17th motion seek "leave to adjourn oral argument".

The relief requested by my August 17th motion was to:

> "specially assign[] 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... 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".

This, in addition to seeking "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", was the whole of the first branch. The second branch was to strike the Attorney General's Respondent's Brief,

> "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".

Based on such findings, this second branch also sought sanctions against the Attorney General and Commission, including disciplinary and criminal referral, as well as the Attorney General's disqualification from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules.

Not only was this relief crystal clear from my August 17th notice of motion, but its threshold and dispositive nature was the very basis upon which I made my November 16th interim relief application to adjourn the November 21st oral argument pending adjudication of my unadjudicated August 17th motion[3]– which application was *unopposed*. It was also the basis for my *unopposed* November 19th interim relief application. The November 16st interim relief application was denied on November 19th, *without reasons or findings*, by the panel's Presiding Justice Nardelli. The November 19th interim relief application was denied on November 20th, *without reasons or findings*, by the Appellate Division's then Presiding Justice Sullivan. Both these denials were PRIOR to the November 21st oral argument – a fact I emphasized at the oral argument, where I protested that there was NO LAW to justify the Court proceeding with oral argument without first adjudicating my threshold August 17th motion, each of whose two particularized branches of relief I orally summarized (Exhibit "B", pp. 2-4)[4].

Consequently, there is nothing "merely erroneous" in the decision's seventh sentence, falsifying the relief sought by M-4755 -- and then, *without reasons or findings*, purporting to deny it. Indeed, based on the record, it must be deemed a tacit admission by the Court that had it identified the *actual* relief M-4755 sought,

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[3] The Court omits *any* identification as to the basis upon which M-4755 was allegedly "seeking leave to adjourn oral argument".

[4] There is no official record of the November 21st oral argument because, in denying my interim relief applications, Justices Nardelli and Sullivan also denied my requests therein for a record to be made of the oral argument, either stenographically or by audio/video taping. There is, however, an improvised record, consisting of the written statement from which I read at the oral argument – annotated by my reconstruction of what took place (Exhibit "B"). The Court received this improvised record under a November 30th letter, requesting permission to supplement the record pursuant to §600.11(f)(4) of the Court's rules (Exhibit "C"). According to the Court's Motions Clerk, Ron Uzenski, my November 30th letter "went up" on that date and the Court's disposition thereon should be in its December 18th decision. No disposition is reflected by the decision (Exhibit "A").

it would have been compelled to provide a reasoned decision, which it could not do without conceding my entitlement thereto.

My Appellant's Brief (at p. 38) highlighted, *without controversion*, the necessity that decisions on recusal be reasoned and address the specific facts set forth as warranting recusal. This, in the context of my argument concerning Justice Wetzel's denial of my recusal application, *without any findings* as to the grounds the application had presented and *without* even identifying those grounds.

> "Adjudication of a recusal application should be guided by the same legal and evidentiary standards as govern adjudication of other motions. If the application sets forth specific supporting facts, the judge, as any adversary, must respond to those specific facts. To leave unanswered the 'reasonable questions' raised by such application would undermine its very purpose of ensuring the appearance, as well as the actuality, of the judge's impartiality.
>
> The law is clear... that 'failing to respond to a fact attested in the moving papers ... will be deemed to admit it....'"

Just days before the November 21st oral argument, the Court, in *Nadle v. L.O. Realty Corp.*, 2001 WL 1408240[5], expressly recognized that reasoned decisions assure litigants that "the case was fully considered and resolved logically in accordance with the facts and law" and, for the same reason, are "necessary from a societal standpoint". Both my *unopposed* November 16th interim relief application (¶¶22-25) and my November 21st oral argument (Exhibit "B", p. 4) emphasized the Court's *Nadle* decision.

As it is, the Court's decision does NOT deny or dispute *any* aspect of my factual or legal showing in support of my threshold August 17th motion. This is all the more significant as the record before the Court showed that, as to the first branch of my

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[5] Although the Court, in *Nadle*, expressly took the "opportunity" of its decision to serve an educational purpose and instruct the lower courts to support their rulings with reasons – the importance of which the New York Law Journal recognized by a November 14th front-page item – the decision is apparently NOT being published, at least not by New York Supplement (2nd Series). Despite the lapse of seven weeks since the Court rendered the November 13th decision, there is no text citation for it.

By contrast, within three weeks of the Court's December 18th decision herein – a decision serving no purpose but to mislead the public and legal community as to the feasibility of lawsuits against the Commission and the legal sufficiency of my lawsuit and the manner in which I advanced it -- it has already been published in New York Supplement (2nd Series) under the citation 734 NYS2d 68.

motion, the Commission – with "unparalleled expertise as to the standards for judicial disqualification and disclosure, with [a] myriad of caselaw examples at its disposal, including its own caselaw" – had NOT denied my demonstration of the Court's disqualification for apparent bias[6], that its opposition to my demonstration of the Court's disqualification for interest and actual bias[7] was fashioned on NO law and on *wilful and deliberate* falsification, distortion and omission of my substantiated factual allegations and, that my right to pertinent disclosure by members of the appellate panel was *undenied*[8]. The Court's knowledge of these facts is clear from my November 21st oral argument, where I specifically brought them to its attention (Exhibit "B", p. 4).

As to the second branch of my threshold August 17th motion – to strike the Attorney General's Respondent's Brief as a "fraud on the court", for sanctions, including disciplinary and criminal referral, and the disqualification of the Attorney General -- the record before the Court showed that my entitlement was not just *uncontroverted*, but essentially *undisputed*[9]. Indeed, the record showed that the Attorney General's opposition to the whole of my August 17th motion, on behalf of the Commission, was so completely "non-probative and knowingly false, deceitful and frivolous" as to entitle me to additional sanctions against both the Attorney General and Commission – which is what my October 15th reply affidavit expressly requested (¶¶2, 3).

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[6] In addition to the apparent bias grounds for disqualification set forth at ¶¶68-74 of my August 17th moving affidavit, is the subsequently discovered additional ground based on the fact that the Commission's Administrator was formerly employed at the Appellate Division, First Department as its "Director of Administration of the Courts" [¶¶31-32 of my October 15th reply affidavit].

[7] As identified by my August 17th motion (¶69 of my moving affidavit) – and undisputed by the Commission -- the grounds constituting the Court's disqualification for interest and actual bias also constitute grounds for its disqualification for apparent bias.

[8] *See* my October 15th affidavit: Exhibit "AA" thereto, pages 28-48, 56; my November 16th interim relief application (Exhibit "C" thereto, p. 7).

[9] *See* my October 15th reply affidavit: Exhibit "AA" thereto, pp. 11-13, 49-55.

II THE COURT'S FAILURE TO MAKE *ANY* FINDINGS AS TO MY THRESHOLD AUGUST 17th MOTION REFLECTS ITS KNOWLEDGE THAT FINDINGS WOULD ESTABLISH MY ENTITLEMENT TO THE RELIEF REQUESTED THEREIN, AS WELL AS TO THE RELIEF REQUESTED BY MY APPELLANT'S BRIEF

The echoes between my threshold August 17th motion -- involving the integrity of the appellate process -- and my underlying appeal -- involving the integrity of the judicial process -- were highlighted by my November 16th interim relief application (at ¶26) and my written statement at the November 21st oral argument (Exhibit "B", p. 5, fn. 5).

From the record before it, the Court knew that making findings as to whether it was disqualified for interest under Judiciary §14 would expose not only its own non-discretionary "legal disqualification", but the non-discretionary "legal disqualification" of Justice Wetzel. This, because the first two grounds in my threshold August 17th motion for the Court's disqualification for interest replicated grounds in my threshold application for Justice Wetzel's recusal. Thus, if the Court found, based on my first ground for its disqualification (¶¶8-14 of my moving affidavit), that it had a proscribed interest in the proceeding because its justices are all under the Commission's disciplinary jurisdiction, such finding would apply, *with even more force*, to Justice Wetzel, who had recently been the beneficiary of the Commission's unlawful dismissal of a *facially-meritorious* complaint against him [A-256-257, 311] – which could have been resubmitted by the complainant or revived by the Commission *sua sponte* were Justice Wetzel to have ruled that Judiciary Law §44.1 imposes on the Commission a mandatory duty to investigate *facially-meritorious* complaints[10]. Likewise, if the Court found, based on my second ground for its disqualification (¶¶15-31 of my moving affidavit), that it had a proscribed interest in the proceeding because its justices are varyingly dependent for redesignation and elevation on Governor Pataki[11], implicated in the corruption that is the subject of this lawsuit, such finding

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[10] Actually, Justice Wetzel had been the recent beneficiary of the Commission's unlawful dismissal of an ADDITIONAL series of three *facially-meritorious* complaints against him. My Appellant's Brief (p. 29, fn. 11) noted that the details were set forth at pages 29-30 of my February 23, 2000 letter to Governor Pataki. [My August 17th motion annexed a copy of that letter as Exhibit "F"].

[11] In a front-page story, the December 28th New York Law Journal reported that Governor Pataki had announced the redesignation of 22 appellate judges. Among these, Justice Andrias, who the Governor redesignated to a new five-year term, and Justice Ellerin, also redesignated by the Governor, after being certified by the Administrative Board for two years. Thereafter, in a front-page item in the December 31st Law Journal, it was reported that Justice Nardelli – the appellate panel's presiding justice – had, by operation of law, become the Appellate Division,

would apply *even more strongly* to Justice Wetzel, who was dependent on the Governor for each day he remained on the bench, his appointive term having long before expired [A-253-255, 310-311]. Plainly, too, if Justice Wetzel were disqualified for interest pursuant to Judiciary Law §14, his appealed-from decision could *not* be affirmed. It could only be voided, based on the treatise authority I quoted at the November 21st oral argument (Exhibit "B", p. 3) – authority also before Justice Wetzel on my application for his recusal [A-232].

From the record, the Court also knew that making findings as to my motion's second ground for its disqualification, based upon its dependency on Governor Pataki, and as to the third ground, based on its dependency on Chief Judge Kaye (¶¶32-48 of my moving affidavit), would expose the fraudulence of Justice Wetzel's appealed-from decision, making affirmance impossible for that reason as well. Findings as to these two grounds would require verifying the accuracy of my *undisputed* 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-52-54; A-189-194] and of my *undisputed* 13-page analysis of Justice Lehner's decision in *Mantell v. Commission* [A-321-334; A-299-307][12] – both of which I had provided to the Governor and Chief Judge. This, in turn, would expose the fraudulence of Justice Wetzel's decision, whose dismissal of my Verified Petition rested *exclusively* on the decisions of Justices Cahn and Lehner [A-12-13]. As highlighted by my Appellant's Brief (pp. 35, 60), Justice Wetzel's decision not only made *no* findings as to the accuracy of my two *undisputed* analyses, in the record before him, but *concealed* their very existence [A-13]. This is repeated in the Court's decision (Exhibit "A"), which makes *no* findings as to these two *undisputed* analyses [A-52-54; A-321-334], whose existence it also conceals.

First Department's Presiding Justice until the Governor names a permanent replacement. These facts, had they been disclosed, would have automatically disqualified Justices Andrias and Ellerin and, possibly Justice Nardelli, whose misconduct herein may have already been rewarded by the Governor's delaying his appointment of a new Presiding Justice to enable Justice Nardelli to have such temporary honor.

As to the long anticipated vacancy in the position of Presiding Justice, the Law Journal identified, at least as early as October 19th, that Justice Andrias "must be considered a contender" as he has "known the Governor since the two were students at Columbia Law School" (front-page item). This friendship, had it been disclosed, would have also disqualified Justice Andrias.

[12] Although I have heretofore referred to such analyses as *uncontroverted*, they are, in fact, *undisputed*. The record shows that the Attorney General and Commission have not only never denied or disputed the accuracy of these two analyses, they have refused to even acknowledge their existence (*see* page 60 of my Appellant's Brief and pages 3-5 of my Critique). The same is true of my 1-page analysis of the Court's appellate decision in *Mantell, infra* [Exhibit "R" to my August 17th motion].

From the record, the Court knew that making findings as to the accuracy of my *undisputed* 13-page analysis of Justice Lehner's fraudulent decision in *Mantell* [A-321-334] would necessarily expose the fraudulence of its own *Mantell* appellate decision, 277 AD2d 96, *lv denied* 96 NY2d 706. The importance of the *Mantell* appellate decision to the Court's decision on my appeal (Exhibit "A") is clear from the fact that of the seven cases it cites -- *all without discussion* -- the *Mantell* appellate decision is cited first and the only one cited without the prefatory "*see*". According to The Blue Book: A Uniform System of Citation (Harvard Law Review Association, 17th edition, 2000), "*see*" before a legal citation means that there is "an inferential step between the authority cited and the proposition it supports". In other words, "the proposition is not directly stated by the cited authority" (at pp. 22-23). Thus, the Court's decision on my appeal rests on only a single supposedly on-point case – its *Mantell* appellate decision[13].

The fraudulence of the *Mantell* appellate decision was the fourth ground upon which my August 17th motion sought the Court's disqualification – for actual bias in addition to interest (¶¶49-67 of my moving affidavit). As particularized, I made a motion in the *Mantell* appeal to prevent the "fraud on the court" therein being committed by the Attorney General, whose Respondent's Brief feigned the correctness of Justice Lehner's decision and resurrected the Commission's unsuccessful argument, not accepted by Justice Lehner, that Mr. Mantell lacked standing. In support of my motion, I annexed my *undisputed* 13-page analysis of Justice Lehner's decision, as well as an excerpt from Professor David Siegel's New York Practice, §136 (1999 ed., pp. 223-5), which, referencing *Matter of Dairylea Cooperative v. Walkley,* identified that the test for standing is a "liberal" and "expanding" one and that "[o]rdinarily only the most officious interloper should be ousted for want of standing"[14]. The *Mantell* appellate panel[15] denied my motion, *without reasons or findings*, in the last sentence of its four-sentence appellate decision[16], simplifying the motion as "seeking leave to intervene and for other

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[13] The Court's reliance on the *Mantell* appellate decision underscores my entitlement to intervene in the *Mantell* appeal – which was among the relief I sought on that appeal by formal motion – denied, *without reasons*, by the *Mantell* appellate panel, *infra.*

[14] This excerpt from New York Practice appears at pages 42-43 of my Critique of Respondent's Brief, *infra.*

[15] Justice Mazzarelli was a member of the *Mantell* appellate panel – a fact she should have disclosed. Indeed, because of her clear self-interest that the Court NOT make findings as to the accuracy of my two analyses establishing the fraudulence of the *Mantell* appellate decision and Justice Lehner's underlying decision – findings essential to both my August 17th motion and my appeal -- she was obligated to have disqualified herself.

[16] This four-sentence count excludes the boilerplate announcement, in capital letters, in the

related relief". This followed three conclusory sentences affirming Justice Lehner's decision, *without* reference to my *undisputed* 13-page analysis, including an ambiguous, factually false and misleading sentence purporting that Mr. Mantell lacked standing – for which legal proposition the *Mantell* appellate panel cited *no legal authority*.

As to the second branch of my August 17th motion – to strike the Attorney General's Respondent's Brief as a "fraud on the court", for sanctions, disciplinary and criminal referral, and disqualification of the Attorney General -- the record before the Court showed that were it to make findings, it would effectively be ruling on my entitlement to comparable relief denied by Justice Wetzel's appealed-from decision, *without reasons or findings* (Br. 35). This comparable relief, sought by my July 28, 1999 omnibus motion [A-195-197], was to disqualify the Attorney General for violation of Executive Law §63.1 and multiple conflicts of interest and to sanction him and the Commission, including by disciplinary and criminal referrals, for their fraudulent dismissal motion, *inter alia*, urging that my Verified Petition be dismissed based on Justice Cahn's decision [A-189-194]– notwithstanding they did *not* deny or dispute the accuracy of my 3-page analysis [A-52-54] showing it to be a judicial fraud and, thereafter, for additionally urging dismissal based on Justice Lehner's decision [A-299-307], notwithstanding their knowledge of that decision's fraudulence, including by my 13-page analysis [A-321-334], the accuracy of which they also did *not* deny or dispute (Br. 32-34).

III. THE COURT'S FAILURE TO MAKE *ANY* FINDINGS AS TO THE SECOND BRANCH OF MY THRESHOLD AUGUST 17th MOTION REFLECTS ITS KNOWLEDGE THAT FINDINGS WOULD ESTABLISH THE FRAUDULENCE OF THE BALD CLAIMS ON WHICH IT RELIES IN AFFIRMING JUSTICE WETZEL'S DECISION

The centerpiece of the second branch of my threshold August 17th motion was my 66-page May 3rd Critique of Respondent's Brief. This Critique constituted a virtual line-by-line analysis of Respondent's Brief, showing it to be fashioned on "*knowing and deliberate* falsification, distortion, and concealment of the material facts and law" and established that there was NO LEGITIMATE DEFENSE to the appeal. Most important of the Critique's 66 pages – whose accuracy was *undisputed* in the record before the Court[17] -- were pages 3-5 and 5-11, relating to the fraudulent

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decision's final sentence, "THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT."

[17] *See* my August 17th motion (¶92 of my moving affidavit); fn. 9 *supra*.

decisions of Justices Cahn and Lehner – and pages 40-47 relating to the fraudulent *Mantell* appellate decision and the inapplicability of a defense of lack of standing, urged in Point I of Respondent's Brief based on the *Mantell* appellate decision. The record shows I repeatedly referred to these pages of my Critique as its dispositive three "highlights", ultimately identifying them as not only dispositive of my entitlement to the granting of the second branch of my August 17th motion, but to the granting of the first branch for the Court's disqualification[18].

It is ***without*** making any findings as to the accuracy of my *undisputed* 66-page Critique, including its three highlights whose significance I also emphasized in my November 21st oral argument (Exhibit "B", p. 6), that the Court has crafted its decision from Respondent's Brief and, in particular, on its Point I (at pp. 14-15). This is evident from the conclusory claims in the decision's second and third sentences as to mandamus and standing to sue and by the legal citations in the decision's third, fourth, and fifth sentences to such inapt and arcane cases as *Valley Forge Christian College v. Americans United for Separation of Church and State* on the issue of standing, *Ocasio v. Fashion Institute of Technology* on the issue of recusal, and *Miller v. Lanzisera* on the filing injunction – citations clearly transported from Respondent's Brief (at pp. 15, 19, 20) – and, of course, by its reliance, in its second sentence on the *Mantell* appellate decision on the issue of mandamus. Additionally, the Court's decision, like Respondent's Brief (at pp. 14-22), shifts the order in which my Appellant's Brief (pp. 1, 36-52) presented the issue of Justice Wetzel's disqualification, moving it from its threshold position where it properly belongs. The illegitimate purpose of this shift is to enable the Court to less conspicuously divert attention from the question of the sufficiency of my application for Justice Wetzel's recusal. This, by inserting a two-sentence purported justification for affirming Justice Wetzel's dismissal of my Verified Petition.

The decision's purported justification for dismissing my Verified Petition in the second and third sentences – the only sentences combined into a paragraph -- flows from its materially misleading first sentence. The calculated deceit of these three sentences, as likewise of the decision's remaining four sentences, is resoundingly established by my *uncontroverted* Appellant's Brief[19] and by my *undisputed* 66-page Critique of Respondent's Brief, which, together with my August 17th motion, was expressly incorporated by reference in my Reply Brief (at p. 5). This is why the

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[18] *See* my August 17th motion (¶¶89, 92 of my moving affidavit), my Reply Brief (p. 5); my October 15th reply affidavit (at ¶¶ 37-40).

[19] Were Respondent's Brief to have been stricken, based on my 66-page Critique, my

Court makes no findings of fact and law as to either.

As to the decision's first sentence, announcing the Court's unanimous affirmance of Justice Wetzel's appealed-from decision [A-9-14], which it purports to summarize, pages 10-11, 61 of my Appellant's Brief and pages 40-47 of my Critique of Respondent's Brief ["highlight #3] detail the material deceit and prejudice caused by simplifying my Article 78 proceeding as one to "compel respondent Commission to investigate" – *which is precisely what the first sentence does*. Particularized by these pages is that my Verified Petition presents six Claims for Relief, raising constitutional challenges to a variety of Commission rules and statutory provisions – thus sharply limiting the applicability of the *Mantell* appellate decision (even were it not a judicial fraud) and any defense based on lack of standing. My November 21st oral argument also emphasized this for the Court (Exhibit "B", pp. 2, 6).

The first sentence is also materially misleading in making it appear that my Article 78 proceeding involves but a single judicial misconduct complaint. This, by referring, in the singular, to "[my] complaint". As pages 12-13 and 46-47 of my Critique detail, my Verified Petition presented TWO *facially-meritorious* judicial misconduct complaints – the second of which the Commission refused to even receive and determine, making mandamus available to compel the Commission *to receive and determine* that complaint.

Additionally, although this first sentence identifies that Justice Wetzel's appealed-from decision granted the Commission's dismissal motion, it materially omits that the decision also denied my omnibus motion [A-10, 14]. As identified by pages 19-21, 35, 53-54, 69 of my Appellant's Brief and pages 35-36 of my Critique, my omnibus motion demonstrated: (a) that the Commission's dismissal motion was *not* properly before the Court; (b) that, from beginning to end, the Commission's dismissal motion was fashioned on wilful and deliberate falsification and concealment of the material facts and controlling law – warranting sanctions against the Attorney General and Commission, including criminal and disciplinary referral, as well as the Attorney General's disqualification for violation of Executive Law §63.1 and multiple conflicts of interest; and (c) that I was entitled to conversion of the Commission's dismissal motion to summary judgment in my favor.

Justice Wetzel's wrongful denial of my omnibus motion, *without reasons or findings*, was a key issue on this appeal. My entitlement to its granting, based on the record, was the fourth of my "Questions Presented" by my Appellant's Brief (p. 1) and my November 21st oral argument expressly identified my entitlement to the summary judgment therein sought (Exhibit "B", p. 2). All this is concealed by the

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Appellant's Brief would have been *unopposed*.

balance of the decision, which never even identifies the omnibus motion to exist. Indeed, the closest reference is in the decision's fifth sentence, where the Court refers to "voluminous... motion papers" as a basis for sustaining Justice Wetzel's filing injunction against me and the *non-party* Center for Judicial Accountability, Inc. The "voluminous... motion papers" are none other than my omnibus motion. These are my *only* "motion papers", apart from my Verified Petition[20].

The first sentence also materially omits the pertinent fact that Justice Wetzel's appealed-from decision imposed, *sua sponte*, a filing injunction on me and the *non-party* Center for Judicial Accountability, Inc. – an imposition highlighted by pages 35, 61-68 of my Appellant's Brief and pages 11-12, 62-66 of my Critique. That the injunction should have been identified in this prefatory first sentence is evident from the decision's fifth sentence, where the Court sustains the injunction it has not previously identified by citing, with an inferential "*see*", *Miller v. Lanzisera*. In *Miller v. Lanzisera*, the prefatory background paragraphs expressly identify that the lower court had "granted that part of plaintiff's cross motion seeking to preclude defendant from filing further motions or proceedings". Similarly, in the two cases cited in *Miller v. Lanzisera* as pertaining to imposition of injunctions, *Harbas v. Gilmore*, 244 AD2d 218, and *Sud v. Sud*, 227 AD2d 319 -- both Appellate Division, First Department cases -- each begins with prefatory paragraphs identifying the lower court's imposition of an injunction.

As to the decision's second sentence, purporting that "[t]he petition to compel [the Commission's] investigation of a complaint was properly dismissed since [the Commission's] determination whether to investigate a complaint involves an exercise of discretion and accordingly is not amenable to mandamus", the Court directly cites its own *Mantell* appellate decision. Pages 10-11, 46 of my Critique of Respondent's Brief [highlights #2, #3] – like my 13-page analysis of Justice Lehner's decision [A-329] on which they rely -- cited HIGHER AUTHORITY: the

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[20] In this regard, the record shows, contrary to what the Court purports at the outset of this first sentence, that Justice Wetzel did not deny my "recusal motion". Rather, as reflected by pages 1, 30, 35, 51-52 of my Appellant's Brief, I made a letter-application to Justice Wetzel [A-250-290], requesting that if he did not disqualify himself based on the facts therein set forth that he make pertinent disclosure and afford me time in which to embody same in a formal motion for his recusal. Justice Wetzel denied such letter-application, *without findings*, and *without* the requested disclosure in the appealed-from decision [A-9-14].

Likewise, there is no basis for Court's reference to "recusal motions" in the decision's fifth sentence upholding Justice Wetzel's injunction. As summarized at pages 64-66 of my Appellant's Brief and page 64 of my Critique of Respondent's Brief, all the lower court judges who recused themselves did so, *sua sponte*, with the exception of Acting Supreme Court Justice Ronald Zweibel, whose recusal granted my meritorious *oral* application therefor.

New York Court of Appeals, whose decision in *Matter of Nicholson*, 50 NY2d 597, 610-611 (1980), long ago interpreted that the Commission has NO discretion but to investigate *facially-meritorious* complaints pursuant to Judiciary Law §44.1:

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

Page 46 of my Critique also cited to a published essay in the August 20, 1998 New York Law Journal by the Commission's Administrator, part of my Verified Petition [A-29], reflecting that Judiciary Law §44.1 "REQUIRES the Commission to investigate complaints that are valid on their face" (emphasis added) [A-59-60].

Moreover, pages 2-5, 8-11 of my Critique [highlights #1, #2] detailed that the two *Mantell* decisions, Justice Lehner's and the appellate affirmance, are judicial frauds, established as such by my analyses of each. Reinforcing this – and putting before the Court my *undisputed* 1-page analysis of the *Mantell* appellate decision[21] -- was my August 17th motion, whose fourth ground for the Court's disqualification for interest and actual bias (¶¶49-67 of my moving affidavit) revolved around these two fraudulent *Mantell* decisions.

My November 21st oral argument identified the fraudulence of both these *Mantell* decisions, as established by my analyses thereof (Exhibit "B", p. 6).

As to the decision's third sentence purporting that I "lack[] standing to sue the Commission" because I have "failed to demonstrate that [I] personally suffered some actual or threatened injury as a result of the putatively illegal conduct", the Court conceals that this was NOT a ground upon which Justice Wetzel dismissed my Verified Petition[22], fails to provide *any* record references for what it is talking about, and fails to discuss any of the three cases which it cites with an inferential "*see*" and does *not* discuss, "*Valley Forge Christian Coll. v. Am. United for Separation of Church and State*, [], *Socy. of the Plastics Indus. v. County of Suffolk*, [], *Matter of Dairylea Coop. v. Walkley*, []". Pages 40-47 of my Critique [highlight #3] expose, with record references and by discussion of legal authority, the inapplicability and bad-faith of a defense based on lack of standing – and I so stated

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[21] My *undisputed* 1-page analysis of the *Mantell* appellate decision is Exhibit "R" to my August 17th motion.

[22] Justice Wetzel's dismissal of my Verified Petition was based, *exclusively*, on Justice Cahn's decision and Justice Lehner's decision, neither purporting there was no standing to sue the Commission.

at the November 21st oral argument (Exhibit "B", p. 6). Additionally, pages 16 and 48 of my Critique identify that Justice Wetzel had rejected a lack of standing defense, urged upon him by the Commission, just as Justice Lehner had rejected such defense, which the Commission had urged upon him in *Mantell*[23]. Indeed, even a non-lawyer, like myself, reading *Society of Plastics Industries v. County of Suffolk* can discern how bogus and deceitful a defense based on lack of standing is to *the facts of this case*. This is further evidenced by the Court's failure to come forth with *any* findings of fact and law on the standing issue.

As to the decision's fourth sentence, affirming Justice Wetzel's denial of my recusal application as "a proper exercise of [his] discretion", citing, *without* discussion and by an inferential "*see*", *People v. Moreno*, after first declaring that "[t]he fact that [Justice Wetzel] ultimately ruled against petitioner has no relevance to the merits of petitioner's application for his recusal", for which, *without* discussion and by an inferential "*see*", it cites *Ocasio v. Fashion Institute of Technology*, the deceit of these two bald assertions is exposed by pages 36-69 of my Appellant's Brief and pages 47-61 of my Critique. These pages not only demonstrate Justice Wetzel's flagrant "abuse of discretion" in denying my meritorious recusal application, *without findings and without even identifying the grounds for recusal asserted therein*, but his wilful cover-up of a record showing his disqualification for interest under Judiciary Law §14 – a disqualification which is NON-DISCRETIONARY. Indeed, pages 54-56 of my Critique reflect that *People v. Moreno* recognizes that Judiciary Law §14 is NOT a matter of "discretion", but is a "mandatory prohibition".

Additionally, page 50 of my Appellant's Brief pointed out that *People v. Moreno* – as likewise a raft of other cases and treatise authority to which I cited -- have held that a judge's "abuse of discretion" in failing to recuse himself is established where his "bias or prejudice or unworthy motive" is "shown to affect the result". My 70-page Appellant's Brief provided an *uncontroverted* fact-specific, law-supported recitation as to how Justice Wetzel manifested his bias, prejudice, and unworthy motive by his appealed-from decision -- a decision which

> "not only departs from cognizable adjudicative standards in substituting characterizations for factual findings, but [which] in *every* material respect, falsifies, fabricates, and distorts the record of the proceeding to deliberately assassinate [my] character and deprive [me] of the relief to which the record resoundingly entitles [me]." (Appellant's Brief, p. 4,

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[23] No defense based on standing was raised by the Commission in *Doris L. Sassower v. Commission*.

emphasis in the original).

Moreover, contrary to the Court's inference, *Ocasio* does *not* hold that a judge's rulings would never have "relevance" to establishing his disqualification – a fact pages 59-60 of my Critique reflect.

Of course, apart from my entitlement to Justice Wetzel's disqualification, was my entitlement to disclosure by him, as expressly requested in my recusal application [A-258-259]. The first and second of the "Questions Presented" by my Appellant's Brief (at p. 1) featured the disclosure issue, with page 51 of my Appellant's Brief underscoring that even where the Court had upheld a lower court's failure to recuse as a proper exercise of discretion, it had nonetheless "recognized the salutary significance of 'full disclosure'". Clearly, for the Court to have made findings of law as to Justice Wetzel's disclosure obligations in response to my application for his recusal would have implicated its own parallel disclosure obligations in response to the first branch of my August 17th motion. *See* footnotes 11 and 15, *supra.*

As to the decision's fifth sentence, purporting that Justice Wetzel's "imposition of a filing injunction against both petitioner and the Center for Judicial Accountability was justified given petitioner's vitriolic ad hominem attacks on the participants in this case, her voluminous correspondence, motion papers and recusal motions in this litigation and her frivolous requests for criminal sanctions"[24], the

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[24] The Court's panoply of supposed reasons materially differs from those in Justice Wetzel's appealed-from decision.

The Court materially omits Justice Wetzel's pretense that my Article 78 proceeding had a "history" and "progeny" [A-13], with his inference that *Doris L. Sassower v. Commission* was part thereof: Justice Wetzel having purported that I was the petitioner therein, seeking virtually the same relief [A-12] – and thereupon dismissing my Verified Petition on grounds of *res judicata* and collateral estoppel based on Justice Cahn's decision. [*see* pages 55-58, 66 of my Appellant's Brief.]

The Court also adds to its panoply a reason *not* specified by Justice Wetzel's decision [A-9-14], *to wit*, my allegedly "frivolous requests for criminal sanctions". The record before Justice Wetzel established, by overwhelming documentary proof, his mandatory duty under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct to refer the Commission and Attorney General for criminal prosecution – which I repeatedly requested. The Court's description of these requests as "frivolous" is not only a flagrant falsification of the record, but a clear attempt to obstruct and impede the success of my independent efforts to obtain these criminal prosecutions, as well as criminal prosecutions of Justices Cahn, Lehner, and Wetzel for their fraudulent judicial decisions. Such independent efforts, consisting of my criminal complaints, copies of which are part of the record, are expressly identified and particularized at page 47 of my Appellant's Brief and further reflected by Exhibit "H" to my August 17th motion. Plainly, my success in securing these criminal prosecutions would lead to further criminal prosecutions. Among those to be criminally prosecuted for their collusion in the systemic

Court conceals that the Center for Judicial Accountability, Inc. is a *non-party* and makes *no findings* as to the particulars of my supposedly offending conduct, *no findings* that such alleged misconduct, in nature and scope, fits within cognizable standards for such draconian punishment, and *no findings* that Justice Wetzel observed due process requirements for its imposition. Pages 61-68 of my Appellant's Brief and pages 62-65 of my Critique of Respondent's Brief expose why the Court has made no such findings. As detailed, the record establishes that my litigation conduct always met:

> "the very highest of evidentiary standards... in documenting the issues pertinent to this lawsuit: (1) [the Commission's] corruption – the gravamen of the proceeding; (2) [my] entitlement to the Attorney General's disqualification from representing [the Commission] by reason of his violation of Executive Law §63.1 and multiple conflicts of interest; (3) the Attorney General's litigation misconduct, entitling [me] to sanctions against him and [the Commission], as well as disciplinary and criminal referral; and (4) the need to ensure the impartiality and independence of the tribunal hearing the proceeding so that it would not be 'thrown' by a fraudulent judicial decision, as happened in *Doris L. Sassower v. Commission* and *Mantell v. Commission*." (Appellant's Brief, pp. 65-66]

Further detailed is that because Justice Wetzel had not the slightest factual basis for his filing injunction, he dispensed with ALL due process: imposing the injunction, *sua sponte*, *without notice*, *without opportunity to be heard*, and *without factual findings* – and that, *as a matter of blackletter law*, denial of notice and opportunity to be heard is so fundamental a due process violation that even were there facts in the record to support the injunction, *which there are not*, it would have to be vacated on that ground alone.

The Court's decision conceals EVERY due process violation detailed by pages 61-68 of my Appellant's Brief and ALL my arguments relative thereto. Among these arguments, that because imposition of a filing injunction is a far more severe sanction than imposition of costs and fees under 22 NYCRR §130-1.1, it requires comparable, if not greater, due process, *to wit*, notice, opportunity to be

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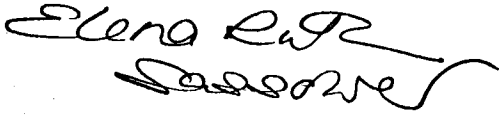
governmental corruption here at issue: Governor Pataki and Chief Judge Kaye, whose complicity and official misconduct was the basis for the second and third grounds for the Court's disqualification for interest in my August 17th motion (¶¶15-31, 32-48 of my moving affidavit). Additional criminal prosecutions would include the Court for its fraudulent *Mantell* appellate decision -- and for its fraudulent decision herein. These two appellate decisions, representing the knowing and deliberate corruption of the appellate process by sitting judges, are – like the fraudulent decisions they affirmed -- criminal acts.

heard, and findings. Also, my argument that the Court of Appeals' decision in *AG Ship Maintenance v. Lezak*, 69 NY2d 1 (1986), and the subsequently-promulgated 22 NYCRR §130-1.1 have circumscribed the inherent power of judges from using filing injunctions as a punishment for frivolous conduct, and certainly not without explaining why 22 NYCRR §130-1.1 would not be adequate to punish such conduct. As highlighted by page 68 of my Appellant's Brief, the most obvious reason for Justice Wetzel's resort to the inherent power sanction of a filing injunction is because 22 NYCRR §130-1.1 fixes "standards and procedures" requiring notice, opportunity to be heard, and a reasoned decision.

As for the Court's citation, with an inferential "*see*" to *Miller v. Lanzisera*, the Court does not identify the proposition for which it is being cited. Since *Miller v. Lanzisera* is a Fourth Department case, such proposition is presumably *not* in the caselaw of either the First Department or the Court of Appeals – and is one which the Court is itself loathe to articulate. Indeed, the proposition is so repugnant that even the Fourth Department had *no* caselaw, legal authority, or argument to support it, *to wit*, that a court may impose a filing injunction against a party *without* any finding that he has engaged in frivolous conduct.

As to the decision's sixth sentence, purporting that the Court has "considered [my] remaining contentions" and found them "unavailing", the Court conceals what these supposedly "unavailing" "remaining contentions" are. It also falsely implies that it has considered some of my other "contentions". These other "contentions" are *nowhere* identified by the decision, which makes *no findings of fact or law* with respect to a single one.

The most superficial review of my appellate "contentions", presented by my Appellant's Brief, by my Reply Brief, and by my August 17th motion (incorporated by reference in my Reply Brief (at p. 5)), reveals my entitlement to the full relief requested by these record-based, law-supported documents[25] -- and the fraudulence of this sixth sentence, as likewise the decision's other sentences.



[25] *See* "Conclusion" to my Appellant's Brief (p. 70); "Conclusion" to my Reply Brief (p. 6); August 17th notice of motion; October 15th reply affidavit, ¶¶2, 3.

rec'd 3/8/02

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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February 27, 2002

CONFIDENTIAL

Ms. Elena Ruth Sassower
P. O. Box 69
Gedney Station
White Plains, New York 10605-0069

Dear Ms. Sassower:

The State Commission on Judicial Conduct has reviewed your letter of complaint dated January 7, 2002. The Commission has asked me to advise you that it has dismissed the complaint.

Upon careful consideration, the Commission concluded that there was insufficient indication of judicial misconduct to justify judicial discipline.

Very truly yours,

Jean M. Savanyu

Jean M. Savanyu

JMS:ld

Ex "L-2"

DAILY NEWS Thursday, January 17, 2002

I rise in defense of state's courts

By JUDITH S. KAYE

As chief judge, I present a State of the Judiciary address each January, summing up the accomplishments of the New York courts over the past year and our plans for the year ahead. Despite the extraordinary challenges of 2001, I was pleased to report on Monday that the New York judiciary is as strong as ever.

Regrettably, however, the courts are generally in the news only when the news is negative. Criticism and suggestions that can make us better are welcome, but it's a shame that the public doesn't get the full picture of what we're about. So it is with great interest that I have followed the Daily News editorial series "Judging the Judges."

I agree with The News that as a public institution the courts must seek ways to better serve the public — and we do. I also agree that as a public institution the courts must recognize their accountability to the public — and we do.

That is perhaps nowhere better shown than by the astronomical case dispositions by our trial judges: for the year 2000, for instance, 1,147,343 criminal cases, 1,224,990 civil cases, 695,431 Family Court cases and 135,475 Surrogates Court cases. By any standard, that is a remarkable record of productivity for the state's 1,137 trial judges.

With more than 3 million new cases a year, our judiciary does an outstanding job serving the citizens of this state. Overwhelmingly our judges, whether elected or appointed, are dedicated, hardworking and effective, resolving demanding case dockets with skill, care and efficiency.

At the same time that we have concentrated on the day-to-day business of managing and resolving staggering caseloads, the courts have successfully integrated significant changes in operations, such as reforming the jury system and introducing a commercial division, drug courts, domestic violence courts and children's centers.

I disagree with The News that an individual judge's performance can be measured by number of hours inside the courtroom or number of reversals. It might be nice to have a simple test to rate a judge. But given the nature of the work, a judge's competence cannot be evaluated by a box score. That does not make the courts any less accountable than the other branches of government.

Our daily business, by definition, is open to the public. With rare exception, the courtroom doors are wide open all day. Hearings and case files are open to the public, judges' decisions and orders are public and appellate reviews of trial decisions are published.

Information about the daily activity of courts and judges is publicly available, as is evident from statistics cited in The News' editorials. Bar associations publish their ratings of candidates for judicial office.

Complaints of judicial misconduct are reviewed by the state Commission on Judicial Conduct, an independent, constitutional body. Its rebukes of sitting judges are published. Indeed, two such rebukes were reported in The News last month, and two more this week.

Yes, the court system uses certain standards in assessing how we might better manage our caseloads. But it is unrealistic to gauge a particular judge's productivity or work ethic by those statistics, given the nature of what judges do. So many factors affect what a judge does on any given day — the complexity of a case, the frequency and type of motions made, the number of parties and trial witnesses in the litigation, even whether the necessary parties show up when they are supposed to, just to name a few.

MARCOS OKSENHENDLER DAILY NEWS

And yes, we have problems. No human endeavor is perfect. But we try to recognize our problems and resolve them where we can, as shown most recently by our action on appointments of fiduciary guardians.

Throughout our nation's history, our courts have protected rights, punished wrongs and helped to distinguish us as a land of freedom and opportunity. I feel that is true of the New York courts in particular. As we work to improve the judicial system, let's not lose sight of the great resource we have in the New York judiciary.

Kaye is chief judge of New York.

Ex "M-1"

State judicial system is accountable to public

Top jurist addresses issues raised in series

By **JUDITH S. KAYE**, Special to the Times Union
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As the state's chief judge, I have naturally followed with interest the Times Union's editorials on judicial misconduct. I would like to address some of the issues raised.

First, like every other member of the public -- including judges -- I am deeply distressed whenever I learn that a judge has betrayed the oath of office. Of course, not every complaint about a judge shows unfitness requiring removal. But when charges of misconduct have merit, no one more than New York's hard-working judiciary wants to see prompt, appropriate measures taken, so that the courts maintain the respect of the public that they need and deserve to have.

Second, as the editorials recognize, both the procedures for disciplining a judge -- who is appointed or elected for a term of years -- and the funding for the Commission on Judicial Conduct are set by the legislative and executive branches. While I would quarrel with several of your statistics and examples, I agree that adequate funding for the commission resolution of misconduct complaints, and I therefore support it.

I cannot, however, agree that the tort law should be enlarged to allow damage suits against judges for their official acts, as this proposal threatens the essential quality of judicial independence in decision making. Not unlike the protection of the First Amendment for the press, this protection for public officials assures that they can act fearlessly and vigorously in the performance of their duties.

Greater openness in the disciplinary process -- both for judges and for lawyers -- is surely desirable. I have long supported legislation that would make judicial and attorney discipline proceedings public from the time a complaint has been investigated and formal charges

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are filed. Opening the proceedings at that point virtually eliminates the risk of undue publicity for baseless complaints. Such legislation would bring New York into line with the of other states. And it would give the public greater confidence in the entire process.

Regrettably, with rare exception, courts are in the news only when the news is negative, so the public gets a skewed picture of us. Now that I have your attention, I'd like to fill out some of the picture.

I start with the fact that New York state courts are among the busiest in the entire nation. Amazingly, our 1,221 state-paid judges resolve well over 3 million cases a year. The 2,300 local town and village justices, mainly non-lawyers, bring that number to more than 4 million annually. The cases run the gamut of difficult human problems -- criminal matters, personal injuries, property damage, broken contracts, constitutional issues, family issues and claims against and involving government.

Our objective is to resolve each case fairly and efficiently. Overwhelmingly, New York judges are people of talent, dedication and integrity, and they do an outstanding job with astronomical case dockets -- resolving disputes, protecting rights and punishing wrongs. I think that is an important context for your editorials.

In addition to our primary focus on the fair and efficient resolution of cases, always the New York courts look for innovative ways to better serve the public. I offer a few examples:

• Jury reform. Not all that long ago, the average term of jury service in New York was two weeks at least, with callbacks every two years like clockwork. Today, typically, jury service is one day or one trial, with minimums of four years between callbacks. All exemptions have been abolished, more equitably distributing the benefits and the burdens of this prized democratic institution.

• Drug courts. We now have drug treatment courts in 29 counties, including Albany, to halt the costly ineffective recycling of low-level nonviolent drug offenders through the courts. Since this program began, there have been 13,500 offenders in the drug treatment courts. These courts work. They have now been initiated for juveniles -- an especially vulnerable population -- as well as for substance-abusing parents at risk of losing their children to foster care limbo.

• Family matters. There are many ongoing programs to better serve families in court, including 32 children's centers that last year saw 51,000 children, Model Family Courts in Erie and New York counties that speed permanent placement of children, and matrimonial reforms to improve the processing of those cases.

• Commercial courts. Albany will soon join Erie, Monroe, Nassau, Westchester and New York counties with its own commercial division to better serve business litigants, whose complex matters are too often backlogged, delaying court dockets generally.

• Domestic violence courts. Responding to the scourge of domestic violence, we have for the past several years piloted special domestic violence courts that sensibly attempt to prevent recurring violence. Only months ago, we launched integrated domestic violence courts, to better serve families who today are whipsawed among several trial courts. We hope that the clear benefits of these courts will at long last spark reform of New York's archaic trial structure.

How are the courts accountable to the public? By fairly and effectively resolving cases before us. By looking for ways to do better. By maintaining open courts -- including even family courts -- that invite the public to see and learn about its justice system. Do we have problems? Of course we do. No human institution is perfect. The point is, we try to face up to our problems, and address them.

Finally, while Sept. 11 is unforgettable for many reasons, one is especially relevant. On that fateful morning, my colleagues and I conferred and decided immediately -- almost instinctively -- that the New York courts, including the trial courts in lower Manhattan, should continue their operations. This was an attack on American values, including the rule of law, and we would not capitulate to terrorists by closing the courts.

It was one thing for us to reach that decision, and quite another for the judges, court personnel, lawyers and jurors to implement it. But they did. They were magnificent in meeting the extraordinary challenges of those extraordinary times. This was, I believe, a shining hour for the New York courts and lawyers, not missing a beat in their service to the public, showing the world the high value we place on our system of justice.

As we work to improve all of our institutions, including the courts, let's not lose sight of the great resource we have.

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