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TESTIMONY BEFORE THE NEW YORK STATE SENATE JUDICIARY COMMITTEE AT ITS HEARING ON NEW YORK'S COMMISSION ON JUDICIAL CONDUCT & ATTORNEY DISCIPLINARY SYSTEM[1]

December 16, 2009

My name is Elena Ruth Sassower. I am director and co-founder of the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization that for nearly two decades has established – by primary source, documentary evidence – the corruption of the New York State Commission on Judicial Conduct and the court-run attorney disciplinary system, which we have sued in four major lawsuits. They are:

1. an Article 78 proceeding, commenced in 1993 and ending in 1995 at the U.S. Supreme Court, against the Appellate Division, Second Department, the chairman and chief counsel of its Grievance Committee for the Ninth Judicial District, and its court-appointed referee.

   * Here is the cert petition, whose single "Question Presented" is as to the unconstitutionality of New York's attorney disciplinary law, lending itself to retaliation against a judicial whistle-blowing attorney, the details of which are summarized in its "Reasons for Granting the Writ" (at pp. 13-29)[2];

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* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

[1] This statement and the documentary evidence it presents will be permanently accessible from CJA's website, www.judgewatch.org, *via* the sidebar panel "Testimony". They are also accessible *via* the top panel "Latest News", which links to a webpage for these hearings.

[2] The four-part "Question Presented" was as follows:

"Whether New York's attorney disciplinary law is unconstitutional, as written and as applied:

2. a federal civil rights action, commenced in 1994 and ending in 1998 at the U.S. Supreme Court, against the Appellate Division, Second Department, the chief counsel, chairman and members of its Grievance Committee for the Ninth Judicial District, its court-appointed referee, and the State Attorney General.

   * Here is the cert petition, whose appendix reprints the initiating verified complaint (at pp. A-49-A-100), particularizing how the disciplinary machinery was utilized to retaliate against that judicial whistle-blowing attorney[3];

3. an Article 78 proceeding, commenced in 1995 against the Commission on Judicial Conduct – and not appealed.

   * Here is the initiating verified petition, annexing nine facially-meritorious judicial misconduct complaints – eight against powerful, politically-connected judges, mostly justices of the Appellate Division, Second Department – each dismissed by the Commission, without investigation, in violation of Judiciary Law §44.1.

   * Here is Judiciary Law §44.1 – the most important statutory provision to a complainant filing a judicial misconduct complaint and whose clear and unequivocal meaning was interpreted nearly 30 years ago by New York's then predominantly-elected Court of Appeals in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980):

> "the commission must investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate";

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1. where an attorney can be immediately, indefinitely, and unconditionally suspended from the practice of law by an interim order, without findings, reasons, notice of charges, a pre-suspension hearing, or a post-suspension hearing...

2. where a disciplined attorney has no absolute right of judicial review, either by direct appeal or by the codified common law writs;

3. where adjudicative and prosecutorial functions are wholly under the control of the courts, enabling them to retaliate against attorneys who are judicial whistle-blowers;

4. where disciplinary proceedings: (a) do not comply with the court's own disciplinary rules; (b) are commenced by ex parte applications, without notice or opportunity to be heard; (c) deny the accused attorney all discovery rights, including access to the very documents on which the proceedings purport to be based; (d) do not rest on sworn complaints; (e) do not rest on an accusatory instrument or are asserted 'on information and belief', not based on any probable cause finding of guilt."

[3] This case is "Test Cases-Federal (Mangano)", accessible from the sidebar panel of CJA's website.

4. an Article 78 proceeding, commenced in 1999 and ending in 2002 at the New York Court of Appeals, against the Commission on Judicial Conduct.[4]

   * Here is the initiating verified petition, annexing two further facially-meritorious judicial misconduct complaints against Appellate Division, Second Department justices – the first dismissed by the Commission without investigation, the second neither dismissed nor acknowledged, both in violation of Judiciary Law §44.1.

   * Here also is the final motion before the Court of Appeals, summarizing the course of the proceeding, the course of the prior Article 78 proceeding against the Commission, and the course of a third Article 78 proceeding against the Commission, independently brought by a Manhattan attorney. This final motion was for leave to appeal and its single Question Presented" was:

> "Whether this Court recognizes a supervisory responsibility to accept judicial review of an appeal against the New York State Commission on Judicial Conduct, sued for corruption, where the record before it [fn] establishes, *prima facie*, that the Commission has been the beneficiary of five fraudulent judicial decisions[fn] without which it would not have survived three separate legal challenges – with four of these decisions, two of them appellate, contravening this Court's own decision in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980), *to wit*:
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> > '...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subd. 1)...' (emphasis added)."

The record of these four lawsuits are perfect "paper trails" establishing, *prima facie*, how New York state judges and the federal courts, aided and abetted by New York's Attorney General, obliterated ALL cognizable legal standards in fraudulent judicial decisions that falsified and omitted the material facts and controlling law to protect and perpetuate New York's verifiably-corrupt attorney disciplinary system and Commission on Judicial Conduct.

For this reason, we have over and again proffered and provided copies of the record of these lawsuits and other documentary evidence to those in leadership positions in support of hearings and official investigations of the systemic governmental corruption they chronicle. Among those in government to whom we have turned: Governor Mario Cuomo, from 1991 onward; Governor George Pataki, from 1996 onward; and Governor David Paterson, from 2001, when he was a senator from Harlem; New York's Attorneys General personally, G. Oliver Koppell, Dennis Vacco, and Eliot Spitzer; as well as the legislative leaders most directly responsible for oversight

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[4] This case is "Test Case-State (Commission)", accessible from the sidebar panel of CJA's website.

of the courts, *to wit*, your predecessor Senate Judiciary Committee Chairs, James Lack and John DeFrancisco; Assembly Judiciary Committee Chair Koppell and, after he became Attorney General, his successor and the present chair of the Assembly Judiciary Committee Helene Weinstein.[5]

* As illustrative, here is our letter of October 26, 2001 to then Senator Paterson, entitled "CJA's Request for Legislative Hearing/Investigation of the New York State Commission on Judicial Conduct", as well as our March 5, 2003 memo to Senate and Judiciary Committee leadership – Senator Malcolm Smith, among them.

We have also throughout the years turned to New York's highest state judge: former Chief Judge Judith Kaye, whose hands-on role in the corruption of the Commission on Judicial Conduct and attorney discipline we summarized in two written statements opposing Senate confirmation of her 2007 reappointment as New York's Chief Judge.

* Here are those two March 6, 2007 statements, the first detailing her knowledge of, and complicity in, the Commission's corruption; the second detailing her knowledge of, and complicity in, the corruption of attorney discipline.

We have also taken out expensive public interest ads so as to further alert our public officers and inform the general public of the situation. Among these, "*Where Do You Go When Judges Break the Law?*" (NYT, 10/26/94, op-ed page; reprinted in NYLJ, 11/1/94, p. 9), "*A Call for Concerted Action*", NYLJ, 11/20/96, p. 3; "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", NYLJ, 8/27/97, pp. 3-4, collectively costing us over $20,000. Additionally, we have written letters to the editors, including "*Commission Abandons Investigative Mandate*", NYLJ, 8/14/95, and "*Judicial Reforms*", Daily News, 12/7/01. * Here they are.

You, Chairman Sampson, must be heralded for your leadership. As you know, in January of this year, when you became chairman of the Senate Judiciary Committee, the first hearing you held as chairman was on the Commission on Judicial Nomination, which nominates judges for our Court of Appeals. In my testimony before you at that first hearing, on January 27, 2009, I stated:

> "...you need to be sure that the regulatory bodies, the Commission on Judicial Conduct, the attorney disciplinary committees are functioning, because they are one of the first stops for the Commission on Judicial Nomination in securing information about candidates. And they are useless. They are worthless and they are corrupt. And there needs to be hearings and investigations of those bodies." (at pp. 88-89).

It is therefore particularly gratifying that immediately upon your concluding the hearings on the Commission on Judicial Nomination, the last of which was on Friday, June 5th – at which I again testified – you commenced new hearings on Monday, June 8th on the Commission on Judicial

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[5] Our years of correspondence with these and other state public officers is posted on CJA's website, accessible *via* the sidebar panel "Searching for Champions—NYS".

Conduct and attorney disciplinary system. The June 8th hearing was cut short by what turned out to be the power struggle in the Senate, from which you emerged as the leader of the Democratic caucus.

In holding the June 8th hearing – and resuming it on September 24th and today – you really are a leader. There has not been a legislative hearing on the Commission on Judicial Conduct for 22 years. There was a routine oversight hearing in 1981, held jointly by the Senate and Assembly Judiciary Committees; and then in 1987, held by the Assembly Judiciary Committee alone. But none since. This, despite the 1989 report of New York State Comptroller Ed Regan about the Commission entitled "*Not Accountable to the Public*", asserting that the Commission was operating without proper oversight and recommending that the Judiciary Law be amended to enable auditing of the Commission.

* Here is the Comptroller's report and his press release, also bearing a title that could not be more pointed, "*Commission on Judicial Conduct Needs Oversight*".

As for hearings on the attorney disciplinary system, I do not believe there has been any – at least in the nearly 30 years since the Appellate Division, First Department took over the disciplining of lawyers from the City Bar Association.

It is significant that you are holding hearings on the Commission, jointly with hearings on the attorney disciplinary system, as the Commission is a key monitor of that system. This, because Judiciary Law §90 vests attorney discipline in the four Appellate Divisions, all of whose justices are under the Commission's disciplinary jurisdiction.

It is the Appellate Division's duty, in the first instance, to ensure the integrity of the attorney disciplinary system[6], followed by the New York Court of Appeals, whose Chief Judge also heads the Office of Court Administration, aided by the Chief Administrative Judge. When these high level judges ignore or facilitate abuses of attorney discipline – as they do – judicial misconduct complaints are properly filed against them with the Commission.

Nor is this the only intersection between the Commission and attorney discipline. Under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct,

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

Thus, when a judge allows an attorney to engage in litigation misconduct, with no sanction of him or referral to disciplinary and/or criminal, authorities, the aggrieved party may rightfully

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[6] "New York State is unusual in assigning the power to license and discipline attorneys to its intermediate, rather than highest, court." "*A Basic Guide to Attorney Discipline*" by Robert H. Straus, counsel to the Grievance Committee for the Second and Ninth Judicial Districts, 36 Brooklyn Barrister 82 (1985)

turn to the Commission with a complaint against the judge.[7]

Parenthetically, §100.3D(1) requires a judge to "take appropriate action" when he "receives information indicating a substantial likelihood that another judge has committed a substantial violation" of the Chief Administrator's Rules Governing Judicial Conduct – thereby making him susceptible to a judicial misconduct complaint being filed against him when he fails to do so.

There is an easy way for this Committee to simultaneously verify the corrupt facade that is attorney and judicial discipline. It is by examining the Commission's handling of judicial misconduct complaints against Appellate Division justices, Court of Appeals judges, and the Chief Administrative Judge involving the attorney disciplinary system – or against these and other judges for failing to "take appropriate action" against misbehaving attorneys and fellow judges pursuant to §100.3D of the Chief Administrator's Rules.

An even greater efficiency, however, is examining lawsuits arising from the Commission's dismissals of such complaints. Among these lawsuits, our two Article 78 proceedings against the Commission[8]. Let me briefly describe them.

The first was brought by CJA's co-founder, Doris L. Sassower – my mother – who is also the whistle-blowing attorney who brought the above-described Article 78 proceeding and federal action against the Appellate Division, Second Department and its Ninth Judicial District Grievance Committee for their lawless and retaliatory exercise of disciplinary power against her. Her Article 78 petition against the Commission asserted that as a result of the Commission's dismissals, without investigation, of facially-meritorious judicial misconduct complaints she had filed, she had become "the victim of retaliatory and vindictive judicial misconduct", including by Appellate Division, Second Department justices who had issued a "knowingly fraudulent and unlawful order, dated June 14, 1991, suspending [her] license to practice law immediately, indefinitely, and unconditionally" – "without charges, without a hearing, without findings, and without reasons"— thereafter denying her both a post-suspension hearing and any independent review, either by direct appeal or Article 78. The petition annexed her judicial misconduct complaints pertaining to the Appellate Division, Second Department's suspension of her law license, including CJA's New York Times op-ed page ad, "*Where Do You Go When Judges Break the Law?*" (October 26, 1994) – a copy of which she had filed with the Commission on the

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[7] Such is consistent with the 1999 report of Chief Judge Kaye's Committee to Promote Public Trust and Confidence in the Legal System, whose recommendations (at pp. 33-4) included: "Encourage judges to exercise their authority to control and require civil behavior of attorneys: Judges should be required to report unethical attorney conduct."

[8] Another such lawsuit would appear to be the federal action entitled *Gary Farrell v. George Pataki as Governor of the State of New York, Judith Kaye as Chief Judge of the State of New York, Henry T. Berger as Chair of the New York State Commission on Judicial Conduct and Mark S. Ochs, as Chief Attorney for the Committee on Professional Standards*, 97 Civ. 1932 (DAB).

day it appeared.[9]

The second was brought by myself four years later. During those four years, the justices of the Appellate Division, Second Department, acting through the State Attorney General, employed fraudulent defense tactics to defeat my mother's federal action against them – tactics summarized by CJA's ad "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (August 27, 1997). Based on this defense fraud, I filed a facially-meritorious October 6, 1998 judicial misconduct against the Appellate Division, Second Department justices[10] – one of whom was then a candidate for the New York Court of Appeals. As to him, the misconduct complaint was additionally based on his believed perjury on his publicly inaccessible application to the Commission on Judicial Nomination in failing to disclose my mother's prior judicial misconduct complaints and federal lawsuit against him, as the application required.

The Commission on Judicial Conduct's dismissal of this facially-meritorious October 6, 1998 complaint, without investigation and without reasons – after sitting on it for 2-1/2 months while that candidate – Appellate Division, Second Department Justice Albert Rosenblatt – was passed on to Governor Pataki, who appointed him, and then passed him on to the Senate, which, after an unprecedented, no-notice, by-invitation-only, confirmation hearing, scheduled the day before it was held, confirmed him, underlay the second Article 78 proceeding.

Bar none, this second Article 78 proceeding, entitled *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*[11] – physically incorporating my mother's Article 78 proceeding against the Commission, as well as the Article 78 proceeding against the Commission independently brought in 1999 by Manhattan attorney Michael Mantell, a CJA member, was then – as it is now – the most powerful and far-reaching lawsuit brought by any complainant against the Commission in its 35-year history. It is properly – and most productively – the starting point for understanding and verifying the Commission's corruption.

Additionally, it is a convenient starting point for your understanding and verifying the corruption of the attorney disciplinary system. First, because its record contains a chronologically organized and inventoried copy of the record of the attorney disciplinary proceedings underlying my mother's two lawsuits against the Appellate Division, Second Department and its Ninth Judicial District Grievance Committee[12]. Second, because it establishes how completely New

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[9] See Exhibits A, D, and G to Doris Sassower's petition.

[10] See Exhibit C to Elena Sassower's petition.

[11] *Cf. Matter of Salvador Collazo*, 91 NY2d 251 (February 17, 1998).

[12] The inventoried & organized copy of the record of the attorney disciplinary proceedings was filed with the New York Court of Appeals in support of my threshold May 1, 2002 motion to disqualify its seven judges for interest and actual bias.

York's highest lawyer, the State Attorney General, was able to evade any attorney discipline as three levels of this state's judges – Supreme Court, Appellate Division, First Department, and the New York Court of Appeals – willfully disregarded their obligations under §100.3(D)(1) of the Chief Administrator's Rules, as well as specific statutory and rule provisions designed to safeguard the integrity of the judicial process –including 22 NYCRR §130-1.1 and Judiciary Law §487 – in denying, without reasons, my fully-documented motions to sanction him and refer him to disciplinary and criminal authorities for his unrestrained litigation fraud, corrupting the judicial process.

Let me just briefly run through the lawsuit's six claims for relief – as they answer the questions that you, Mr. Chairman, identified at the start of these hearings as important – but which were not answered by the Commission:

> "When a complaint comes to a disciplinary body, we want to know how it is handled, how many people examine the complaint to decide what the process is, what review mechanisms are in place to ensure that once the decision is reached it is fair and according to the rules of law" (June 8, 2009 transcript, pp. 3-4).[13]

The first claim for relief (at pp. 16-17) challenged, *as written*, the Commission's self-promulgated rule, 22 NYCRR §7000.3, whereby the Commission has given itself *carte blanche* to do anything – or nothing at all – with the complaints it receives, unbounded by any standard. This is inconsistent and irreconcilable with Judiciary Law §44.1, whereby the Legislature imposed a mandatory duty on the Commission to investigate every complaint it receives unless it determines that the complaint "on its face lacks merit".[14]

The second claim for relief (at pp. 17-19) challenged, *as applied*, this same self-promulgated 22 NYCRR §7000.3, because it enables the Commission to dismiss, without investigation, facially-meritorious complaints which Judiciary Law §44.1 requires it to investigate. Look at the 11 judicial misconduct complaints annexed to the Article 78 petitions against the Commission brought by my mother and myself – and look at the judicial misconduct complaints which witnesses at these hearings are furnishing. Every time you find a facially-meritorious complaint that the Commission dismissed without investigation – which will be often – you are reinforcing that the rule had to be stricken, *as applied*.[15]

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[13] With respect to attorney discipline, only the First Department Disciplinary Committee testified – and its procedures are particular to it. As to the Second Judicial Department, which has three grievance committees, the answers as pertain to its Grievance Committee for the Ninth Judicial District are reflected by my mother's Article 78 proceeding and federal action against the Appellate Division, Second Department.

[14] This standard, equivalent to dismissing lawsuits for "failure to state a cause of action", means that even assuming the truth of the complaint's allegations, they do not state a cause for complaint.

[15] The Commission has various letters for dismissing complaints.

(1) dismissal letters that give no reasons. Used by the Commission in dismissing the October 6, 1998 complaint underlying my Article 78 proceeding [Exhibit F-3 to my petition] and in dismissing several of the

complaints underlying my mother's first Article 78 proceeding, including the complaints against the Appellate Division justices [Exhibits L-2, L-5, L-6 to her petition].

(2) dismissal letters that purport that "upon careful consideration, the Commission concluded there was no indication of judicial misconduct upon which to base an investigation." Used by the Commission in dismissing two complaints underlying my mother's proceeding against the Commission [Exhibit L-1, L-3 to her petition], as well as in dismissing the judicial misconduct complaint underlying Mr. Mantell's Article 78 proceeding [Exhibit B to his petition],

Presumably the phrase "no indication of judicial misconduct" is equivalent to "on its face lacks merit". However, complaints dismissed by these letters do not bear out the claim that they give "no indication of judicial misconduct", as, for instance, Exhibits C & E to my mother's petition and Exhibit A to Mantell's petition.

(3) dismissal letters that purport that "The Commission is not a court of law and does not have appellate authority to review the merits of matters within a judge's discretion, such as the rulings and decisions in a particular case." – sometimes used to explain why there was "no indication of judicial misconduct upon which to base an investigation". As illustrative, a Commission letter dismissing one of the complaints underlying my mother's proceeding [Exhibit L-3].

The pretense that the Commission cannot look at decisions and rulings – which it also purports in its informational brochure – is false. Reflecting this is the 1987 law review article of Gerald Stern, who for 30 years was the Commission's first chief executive officer and under whom Robert Tembeckjian, the Commission's current chief executive officer, served as deputy. He wrote:

> "When judges abuse their discretion and overlook and misinterpret statutes, ordinances and appellate court decisions, their rulings and decisions are subject to review within the courts, and the universal view is that judges should not be disciplined for acting in good faith within a wide range of discretion. Yet legal error and judicial misconduct are not mutually exclusive; a judge is not immune from being disciplined merely because the judge's conduct also constitutes legal error. From earliest times it has been recognized that 'errors' are subject to discipline when the conduct reflects bias, malice or an intentional disregard of the law...
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> ...Judicial 'independence' encompasses making mistakes and committing 'error', but was not intended to afford protection to judges who ignore the law or otherwise pose a threat to the administration of justice." ["*Is Judicial Discipline in New York State a Threat to Judicial Independence*, Pace Law Review, Vol. 5, Number 2, at pp. 303-305, under the subheading "*Disciplining Judges for On-Bench Conduct: Can 'Legal Error' Constitute Misconduct?—Determining Generally When 'Error' is Misconduct*"]

His cited cases from "earliest times" are an Appellate Division, Second Department case from 1895, *In re Quigley*, 32 N.Y.S. 828, and a 1940 Appellate Division, First Department case, *In re Capshaw*, 258 A.D. 470, *mot. denied*, 258 A.D. 1053 – the latter quoting from a 1909 First Department case, *Matter of Droege*, 129 A.D. 866, as follows:

> "'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. ..'" italicized in original.

Even more graphic is *Matter of Bolte*, 97 A.D. 551, 90 N.Y .5 .499 (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

The third claim for relief (at pp. 19-21) challenged, *as applied*, if not *as written*, the confidentiality provision of Judiciary Law §45, which the Commission has wrongfully interpreted to deny complainants any information substantiating the legitimacy or even actuality of its purported dismissals of their uninvestigated complaints. Among the information the Commission refuses to provide complainants: the legal authority for summarily dismissing their complaints without investigation; the identities of the Commissioners who reviewed and voted to dismiss their complaints; the reason for the dismissals; and the availability of review. The Commission is thereby able to conceal its misfeasance and corruption in dismissing, without investigation, facially-meritorious complaints and insulate itself from accountability.

The fourth claim for relief (at pp. 21-22) challenged, *as written and applied*, Judiciary Law §§43.1 and 41.6 and the Commission's rule 22 NYCRR §7000.11, by which the Commission is empowered to dispose of complaints by three-member panels, rather than the full eleven-member Commission. *As written*, these provisions set no standard as to when three-members panels are to be assigned, thereby allowing the Commission to invidiously and selectively choose which complaints will go to the full eleven-member Commission; they articulate no guidelines for the panel composition, other than that one member be "a member of the bar", thereby allowing a panel to be composed of all lawyers, all judges, or a mix of lawyers and judges, without a single lay member, thus defeating the intent of diversity expressed by Article VI, §22(1) of the Constitution and Judiciary Law §41.1, both as far as membership and appointing authority; and they provide no method of selection of panel members – whether random, by rotation, by seniority, or handpicked choice of the Commission's chairman, administrator, clerk or some other party. The Commission's refusal to identify to an aggrieved complainant whether the dismissal of his complaint was by a three-member panel – and the membership thereof – permits complaints to be dismissed, without investigation, by commissioners whose bias and self-interest is concealed by their complete anonymity. The lack of any provision for administrative review by the full eleven-member Commission of a panel dismissal of a complaint, without investigation renders Judiciary Law §§43.1 and 41.6 and 22 NYCRR §7000.11 further unconstitutional;

The fifth claim for relief (at pp. 23-24) challenged the Commission with violating Judiciary Law §41.2, restricting the chairmanship to a member's "term in office or for a period of two years,

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reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another..." (at 568, emphasis in the original) "Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequences as if the judicial officer received and was moved by a bribe." (at 574).

(4) dismissal letters that purport that "upon careful consideration, the Commission concluded there was insufficient indication of judicial misconduct upon which to base an investigation."

(5) dismissal letters that purport that complaints contain "no new allegations beyond those reviewed and disposed of" in an earlier complaint and "cannot be reconsidered". As illustrative, Exhibit L-4 to my mother's petition, which should be compared to Exhibits F and D.

whichever is shorter", by its then chairman who had been chair for approximately nine years;

The sixth claim for relief (at p. 24) challenged the Commission with violating both the Constitution and Judiciary Law §44.1 by failing to acknowledge, let alone determine, a complaint filed against its own highest-ranking judicial member, an Appellate Division, Second Department justice, pertaining to the Commission's dismissal, without investigation, of the October 6, 1998 complaint to which he was an interested party.

What happened to this powerful Article 78 proceeding whose six claims for relief and requests for investigation and prosecution of the Commission were aimed at vindicating the public's trampled rights? Acting New York Supreme Court Justice William Wetzel dismissed it based, exclusively, on the decision of New York Supreme Court Justice Herman Cahn dismissing my mother's Article 78 proceeding against the Commission and the decision of New York Supreme Court Justice Edward Lehner dismissing Mr. Mantell's Article 78 proceeding against the Commission – notwithstanding the record before him contained my analyses of both those decisions establishing each to be a judicial fraud as to the sole issue they adjudicated, Judiciary Law §44.1.[16] Additionally, Justice Wetzel *sua sponte* and without notice enjoined me and CJA from bringing any further lawsuits against the Commission, thereby insulating the Commission from litigation challenge by us, its most formidable adversaries.

On appeal, the Appellate Division, First Department – without identifying ANY of the facts, law or legal argument I presented, or that I had made a threshold motion for its disqualification for interest and to disqualify and sanction the Attorney General for his demonstrated litigation fraud, which it was simultaneously denying, without reasons – not only affirmed Justice Wetzel's decision, but held, as it inferentially had in affirming Justice Lehner's decision on Mr. Mantell's appeal, that a complainant has no standing to sue the Commission for dismissal of his complaint – thereby insulating the Commission from litigation challenge by any complainant.

The law thereby established by the Appellate Division, First Department in Mr. Mantell's case and my own is that complainants have no review of the Commission's dismissals of their uninvestigated facially-meritorious complaints.[17] To this judicial fraud, the New York Court of

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[16] Whereas Justice Cahn had not contested that Judiciary Law §44.1 mandates investigation of facially-meritorious complaints, Justice Lehner purported that investigation was discretionary, which he accomplished by falsely pretending that Judiciary Law §44.1 pertaining to a complaint received from an outside source was the same as Judiciary Law §44.2 pertaining to a complaint initiated by the Commission's administrator, which it is not.

[17] Illustrating this is the July 9, 2002 decision of Manhattan Supreme Court Justice Walter Tolub in an Article 78 proceeding against the Commission brought by Manhattan attorney Eleanor Capogrosso, who testified at the June 8, 2009 hearing. His dismissal of the case was based, exclusively, on the Appellate Division, First Department's decisions in my case and Mr. Mantell's, stating:

> "While the Constitution and enabling statutes creating the [Commission] permit judicial review of a determination to discipline a judge by the Court of Appeals at the request of the

Appeals put its imprimatur: denying Mr. Mantell leave to appeal and denying me both appeal by right and by leave after falsifying a motion I had made to disqualify the Court's judges for interest[18]. Simultaneously, the Court denied, without reasons, my motions to disqualify the Attorney General and sanction and refer him to disciplinary and criminal authorities for his litigation fraud.

My final motion to the Court of Appeals, summarizing the lower court decisions in the three Article 78 proceedings which I, my mother, and Mr. Mantell brought against the Commission will enable you to verify, within a few hours, that the Commission was the beneficiary of a succession of fraudulent judicial decisions, without which it would not have survived. It will also enable you to recognize the deceit of the Commission's June 8, 2009 written statement to this Committee in stating:

> "Since its creation, the Commission has been challenged on more than a hundred occasions – in federal as well as state courts – by judges and complainants attacking the constitutionality, authority, procedures and decisions of the Commission. In no instance has a Commission procedure or rule been overturned...the courts over the years have underscored the Legislature's enactment of the public will that there be a strong Commission to enforce ethics standards on the judges of [] New York State." (Commission's June 8, 2009 statement, at p. 8)

The reason there has been "no instance" of a "Commission procedure or rule...[being] overturned" – demonstrated by my final motion to the Court of Appeals – is because New York's courts – at every level – have protected the Commission by decisions which obliterated all judicial standards, aided and abetted by the State Attorney General, corrupting the judicial process with litigation fraud.

So, too, New York's attorney disciplinary system has survived legal challenge because it has been protected by fraudulent judicial decisions of the New York and federal courts, also aided and abetted by the State Attorney General, corrupting the judicial process with litigation fraud. The cert petition of my mother's federal action against the Appellate Division, Second

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> judge who is the target of investigation (New York Constitution, Art. 6, §22; Judiciary Law §§44; Wilk, supra, 97 A.D.2d at 716), there is no comparable statutory provision for judicial review of a determination not to investigate or prosecute at the request of the complainant. Indeed, the determination whether to dismiss a case that, in the [Commission's] determination, lacks merit on its face is a matter vested to the [Commission's] sole discretion and is not reviewable. Sassower v. New York State Commiss'n on Judicial Conduct, 289 A.D.2d 119 (1st Dept. 2001); Mantell v. New York State Comm'n on Judicial Conduct, 277 A.D.2d 96 (1st Dept. 2000)."

[18] The outright fraud committed by the Court of Appeals in connection with this disqualification motion – verifiable within minutes – is particularized by my October 15, 2002 motion for reargument/vacatur. The motion is posted on CJA's website, accessible *via* the sidebar panel "Test Cases-Commission".

Department recites the particulars – with pertinent record evidence in its appendix.

The above-described cases are dispositive – and provide a contextual framework for understanding and organizing the testimony and evidence being presented by witnesses at these hearings as to the systemic corruption that has destroyed and devastated their lives, encompassing the judicial process at all levels and a vast array of oversight agencies and offices. Consequently, it is essential that this Committee to make findings of fact and conclusions of law as to the record of these cases. Indeed, my mother's federal lawsuit against the Appellate Division, Second Department and my Article 78 proceeding against the Commission are – and were crafted to be – perfect "test cases", empirically exploding a plethora of myths perpetuated by the judicial and legal establishment. This includes as to the efficacy of the appellate process on which you, Chairman Sampson, expressed faith during these hearings.

As this Committee has limited time and resources, it behooves you to seek the assistance of bar associations and lawyer-staffed good-government organizations which routinely opine and advocate on attorney and judicial discipline issues and otherwise purport to be acting in the public interest. This is especially appropriate as the Committee will likely designate representatives of the bar associations and good government organizations as members of the task force proposed by Senator Adams and endorsed by you, Mr. Chairman, at the September 24, 2009 hearing.

Tellingly, the bar associations and good-government organizations have been absent from these hearings. The only bar representative to testify, Robert Ostertag, former President of the New York State Bar Association, limited his June 8, 2009 testimony to "the question of when [attorney] disciplinary proceedings should be made known to the public" (at p. 167) – which he predicated on assumptions that grievance committees are properly handling complaints and Appellate Divisions properly authorizing prosecutions and adjudicating issues. This, without identifying any evidence substantiating these assumptions – let alone confronting the casefile evidence that CJA repeatedly provided the State Bar refuting such assumptions and directly discrediting his single recommendation that the courts "open" attorney discipline by utilizing the expedient of interim suspension of attorneys.

The 70,000-member New York State Bar has a Committee on Professional Discipline, charged with reporting annually to its House of Delegates as to "the status of disciplinary rules, procedures and their administration throughout the state". It also has a Committee on Professional Responsibility, a Committee on Professional Ethics, a Committee on Attorney Professionalism, and a Committee on Public Trust and Confidence in the Legal System. As for the 20,000-member City Bar, it has a Committee on Professional Discipline, whose purpose is to "monitor the professional disciplinary system"[19] and a Committee on Professional and Judicial

[19] This Committee was created by the City Bar to replace its Grievance Committee which handled complaints against lawyers in the First Department until April 1, 1980, when it was replaced by the Appellate Division, First Department. See, City Bar's Report of the President, 1979-1980, at pp. 384.

Ethics. To each of these bar associations, we long ago provided the cert petitions and other court papers and disciplinary files in my mother's lawsuits against the Appellate Division, Second Department.[20]

Likewise, the State Bar has a Special Committee on Procedures for Judicial Discipline[21], whose express purpose is to "review legislation relating to the State Commission on Judicial Conduct and the rules, procedures, and performance of the Commission" and "receive and consider information [and] complaints with respect to the operation of the commission. The City Bar had an ad hoc Committee on Judicial Conduct, which it disbanded. To each, we long ago provided the record of our lawsuits against the Commission.[22]

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[20] CJA's website posts the pertinent correspondence, accessible *via* the sidebar panel "Searching for Champions-Bar Associations":

As relates to *attorney discipline* and the New York State Bar Association, see, *inter alia*, (1) CJA's February 3, 1995 letter to Professor J. Carlisle, member of the State Bar's Committee on Professional Discipline; (2) CJA's April 7, 1995 letter to Professor Carlisle; (3) CJA's May 16, 1995 letter to Richard E. Grayson, Esq., State Bar's Committee on Professional Discipline member; (4) CJA's June 1, 1995 letter to Frank Rosiny, chairman of the State Bar's Committee on Professional Discipline – with a copy to State President Maxwell Pfeifer; (5) June 5, 1995 letter from State Bar Counsel Kathleen Mulligan Baxter; (6) CJA's January 27, 2003 to Barry Kamins, chairman of the State Bar's Committee on Professional Discipline; (7) CJA's February 3, 2003 letter to Barry Kamins; (8) Barry Kamins' March 17, 2003 letter; (9) Barry Kamins' October 22, 2003 letter; (10) CJA's November 25, 2003 letter to State Bar President A. Thomas Levin.

As relates to *attorney discipline* and the New York City Bar Association, see, *inter alia*, (1) CJA's October 16, 1992 letter to City Bar counsel Alan Rothstein; (2) CJA's February 20, 1994 letter to Gregory Joseph, chairman, City Bar Committee on Professional Responsibility; (3) February 23, 1994 letter to Erica Raved, Esq., Secretary, City Bar Committee on Professional Responsibility; (4) February 24, 1994 from Erica Ravid (5) CJA's October 17, 1994 letter to City Bar President Barbara Robinson; (6) CJA's October 27, 1994 letter to City Bar President Robinson; (7) December 13, 1994 letter from City Bar Counsel Alan Rothstein; (8) CJA's September 15, 1997 letter to General Counsel Alan Rothstein; (9) CJA's November 10, 1997 letter to Mr. Rothstein; (11) Mr. Rothstein's December 23, 1997 letter; (12) CJA's August 12, 1998 letter to Mr. Rothstein.

[21] At both the 1981 and 1987 Judiciary Committee hearings on the Commission on Judicial Conduct, the State Bar's chairman of its Special Committee on Procedures for Judicial Discipline testified.

[22] CJA's website posts this correspondence, accessible *via* the sidebar panel "Searching for Champions-Bar Associations".

As relates to *judicial discipline* and the New York State Bar Association, see, *inter alia*, (1) CJA's May 5, 1996 memo; (2) CJA's March 1, 2001 letter to State Bar President-Elect Steven Krane; (3) CJA's June 18, 2001 letter to President Krane; (4) President Krane's July 5, 2001 letter; (5) CJA's two November 13, 2001 letters to President Krane; (6) CJA's November 13, 2001 letter to A. Rene Hollyer, Chairman/State Bar's Special Committee on Procedures for Judicial Discipline; (7) CJA's January 7, 2001 letter to Chairman Hollyer; (8) President Krane's January 15, 2002 e-mail; (9) CJA's February 20, 2002 letter to Chairman Hollyer; (10) CJA's March 6, 2002 letter to Chairman Hollyer; (11) Chairman Hollyer's April 22, 2002 letter; (12) Chairman Hollyer's May 23, 2002 letter; (13) CJA transcription of exchange at State Bar's December 11, 2002 forum on Commission, co-sponsored with Fund for Modern Courts; (14) CJA's November 25, 2003 letter to State Bar President Levin (at pp. 1-2, 10-13).

The response of these bar associations has been the same. No evaluative comment of any of these casefile records – nor action consistent with their professional responsibilities. Instead, they have brazenly covered-up and perpetuated the corruption of attorney and judicial discipline of which they again and again have been given evidence. This includes by their issuance of materially false and misleading reports – as well as by their participation in materially false and misleading reports by the state judiciary.

Likewise, so-called good-government and court reform organizations. Among these, the Fund for Modern Courts whose chair, Victor Kovner, testified at this Committee's September 24, 2009 hearing, without confronting the lawsuit evidence that CJA long ago provided it[23]. Indeed, the Fund is an alter ego of the bar associations, working in tandem with them. Illustrating this, its co-sponsorship with the State Bar of a forum on the Commission on Judicial Conduct, held in Albany on December 11, 2002 – a stone's throw from the Court of Appeals where by my final motion in my Article 78 proceeding against the Commission was then pending. Here is the transcript of my exchange at that forum, directly challenging the Fund and State Bar to confront the casefile evidence of the Commission's corruption and endorse legislative oversight hearings, neither of which they ever did.

This Committee should also turn to the Office of Court Administration for findings of fact and conclusions of law about these dispositive cases – and, in particular, the entities that former Chief Judge Kaye set up within it, at taxpayers' expense, which have functioned to mislead the public into believing that the Commission and attorney disciplinary system are properly functioning. These include:

As relates to *judicial discipline* and the New York City Bar Association, see, *inter alia*, (1) CJA's March 18, 1996 letter to City Bar President Barbara Paul Robinson; (2) President Robinson's March 26, 1996 letter; (3) CJA's April 12, 1996 letter to President Robinson; (4) April 17, 1996 letter from Steven Krane, Chairman of City Bar Committee on Professional and Judicial Ethics; (5) CJA's February 10, 1997 letter to City Bar General Counsel Alan Rothstein; (6) CJA's April 25, 1997 letter to Robert Jossen, Chairman of the City Bar's ad hoc Committee on Judicial Conduct; (7) CJA's May 6, 1997 fax to President Cardozo; (8) CJA's May 13, 1997 faxes to Chairman Jossen & Lawrence Zweifach, member of ad hoc Committee on Judicial Conduct; (9) CJA's May 14, 1997 written statement; (10) CJA's May 18, 1999 letter to City Bar President Michael Cooper; (11) CJA's May 19, 1999 letter to the City Bar's Special Committee on Judicial Conduct; (11) CJA's February 9, 2000 letter to Mr. Rothstein; (12) CJA's June 20, 2000 letter to City Bar President Evan Davis; (12) CJA's January 31, 2001 letter to Mr. Rothstein; (13) CJA's March 26, 2003 memo; (14) CJA's June 13, 2003 memo.

[23] CJA's website posts our correspondence with the Fund, accessible *via* the sidebar panel "Searching for Champions-Organizations". See, *inter alia*, (1) CJA's August 22, 1995 letter to John Feerick, Chairman of the Fund; (2) CJA's May 5, 1995 memo; (3) CJA's July 11, 2000 letter to Barbara Reed, Deputy Director; (4) Modern Courts' September 5, 2000 letter signed by Executive Director Steven Zeidman & Deputy Director Barbara Reed; (5) CJA's February 16, 2001 letter to Executive Director Zeidman; (6) CJA's May 9, 2001 letter to Executive Director Zeidman; (7) transcription of Modern Courts' December 11, 2002 forum on the Commission, co-sponsored with the State Bar.

(1) the Office of Inspector General – successor to the Inspector General for Fiduciary Appointments, which, in 2000, was provided with what was then a full copy of the record of my Article 78 proceeding against the Commission – including its physically-incorporated record of my mother's Article 78 proceeding against the Commission and Mr. Mantell's[24];

(2) the Judicial Institute on Professionalism in the Law – the permanent successor[25] to the defunct Committee on the Profession and the Courts, which in 1996, was provided with the cert petition in our Article 78 proceeding against the Appellate Division, Second Department and Grievance Committee for the Ninth Judicial District, laying out the unconstitutionality of New York's disciplinary law, *as written and as applied*[26]; and

(3) the Committee to Promote Public Trust and Confidence in the Legal System, which – like the Judicial Institute on Professionalism in the Law – was, in 2001, provided with an October 16, 2000 report detailing how the corruption of the Commission on Judicial Conduct and the attorney disciplinary system necessarily

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[24] CJA's website posts the correspondence, accessible *via* the sidebar panel "Searching for Champions-NYS", which brings up a link for the Office of Court Administration. See: (1) CJA's April 24, 2000 letter to Sherrill Spatz, Special Inspector General for Fiduciary Appointments; (2) CJA's April 27, 2000 letter to Ms. Spatz; (3) CJA's December 11, 2001 letter to Ms. Spatz.

[25] This permanent Institute was intended to "demonstrate to the public the profession's commitment to ensuring that it deserves the privilege accorded to few professions – the privilege of regulating itself". Its function, set forth in Chief Judge Kaye's March 3, 1999 administrative order which created it, includes:

> "Monitor and comment on the methods of enforcing standards of professional conduct for lawyers in the state, without limitation, the procedures for imposing discipline or sanctions for misconduct and for compensating clients victimized by the misbehavior of lawyers within the state;
>
> "Hold public hearings and convene forums, seminars or other meetings in order to carry out its purposes;"
>
> "From time to time recommend measures, including, without limitation, proposed legislation, rules of practice, and modifications of the Code of Professional Responsibility, that in its judgment would improve the professionalism and ethical behavior of lawyers within the state."

[26] CJA's website posts the correspondence, by its link to the Office of Court Administration, accessible *via* the sidebar panel "Searching for Champions-NYS". See (1) CJA's March 7, 2001 letter Chairman Louis Craco; (2) March 21, 2001 letter from Antonio Galvao, Esq.; (3) CJA's December 22, 2003 letter to Counsel Catherine O'Hagen Wolfe.

> corrupts "merit selection" to the New York Court of Appeals, in addition to a November 13, 2000 report detailing how four bar associations – the State Bar and City Bar among them – were collusive in this corruption, including by demonstrably rigged and fraudulent ratings for New York Court of Appeals nominees in violation of disciplinary rules proscribing lawyers from making knowingly false statements concerning candidate qualifications.[27]

In that connection, CJA submits – as further evidence of the corruption of the attorney disciplinary system – the record of our November 14, 2000 misconduct complaint filed with the First Department Disciplinary Committee against those four bar associations and the culpable lawyers acting on their behalf for their demonstrably rigged and fraudulent ratings of candidates to the New York Court of Appeals, accomplished by their disregard of conflict of interest rules. Such should be of particular interest to this Committee, as Martin Gold, who testified at the June 8, 2009 hearing as to procedures of the First Department Disciplinary Committee, disposed of what the Committee purported to be CJA's request for reconsideration of the dismissal of our complaint without addressing ANY of the procedural questions therein contained or confronting any of the facts, law, or legal argument presented, including as to the Disciplinary Committee's conflicts of interest.

Mr. Gold's insupportable disposition was with knowledge that both the Judicial Institute on Professionalism in the Law and the Committee to Promote Public Trust and Confidence in the Legal System had been provided with copies of the record of CJA's November 14, 2000 complaint. Both entities declined to comment on the complaint and its handling by the First Department Disciplinary Committee – with counsel for each also ignoring our requests for information and documents pertaining to their functioning. Nor did Office of Court Administration's counsel respond to our documents request pursuant to FOIL. Such comment and documents must now be requested, if not demanded, by this Committee.

State judges and the Office of Court Administration are presently suing the legislature for pay raises in cases that the Court of Appeals has accepted for review. The foregoing casefile evidence, documenting the state judiciary's corruption of the Commission and attorney discipline, including by its corrupting of the judicial process, establishes that no judicial pay raises are warranted. This is yet a further reason for findings of fact and conclusions of law, so that the judges responsible are removed from office and criminally prosecuted, with monies saved in judicial salaries and recaptured through fines used for restitution of the innocent victims of their corruption.

[27] CJA's website posts the correspondence, accessible *via* the sidebar panel "Searching for Champions-NYS", which brings up a link for the Office of Court Administration – See (1) CJA's March 2, 2001 letter to Patricia K. Bucklin, Counsel; (2) CJA's March 7, 2001 letter to Counsel Bucklin; (3) May 9, 2001 letter from Justice Evelyn Frazee, Co-Chair, Committee to Promote Trust and Confidence in the Legal System; (4) CJA's December 22, 2003 letter to Wendy Deer, Counsel.