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

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MICHAEL MANTELL,

Petitioner-Appellant,

- against -

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Respondent-Respondent.

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S.Ct./ NY Co. 99-108655

Reply Affidavit of
Elena Ruth Sassower

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

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

1. This Affidavit is submitted in reply to the non-factual, conclusory, and otherwise patently improper September 27, 2000 "Affirmation in Opposition to Motion" [hereinafter "Opposing Affirmation"], filed by Assistant Attorney General Constantine Speres. Said Opposing Affirmation establishes that there is NO legitimate defense to my September 21, 2000 motion[1] based on Mr. Speres' fraudulent Respondent's Brief. It also furnishes this Court with further evidence of the unrestrained defense misconduct employed by this state's highest law enforcement officer, the New York State Attorney General, with the knowledge and complicity of the New York State Commission on Judicial Conduct – the state agency whose function it is to enforce judicial standards of conduct.

2. As hereinafter demonstrated, Mr. Speres' Opposing Affirmation reinforces the necessity that this Court grant the "other and further relief" requested in the third branch of my motion, *to wit*: (a) disqualifying the Attorney General from representing the Commission, based on his demonstrable violation of Executive Law §63.1 by reason of his litigation misconduct; (b) striking the Attorney General's Respondent's Brief as a fraud upon this Court and upon Mr. Mantell; (c) imposing financial sanctions and costs sanctions upon the Attorney General and the Commission, pursuant to 22 NYCRR §130-1.1; and (d) referring them for disciplinary and criminal investigation and prosecution, consistent with this Court's mandatory "Disciplinary responsibilities" under §100.3D(1) of the Chief Administrator's Rules Governing Judicial Conduct.

3. Only such action will demonstrate this Court's commitment to protecting the integrity of the appellate process from an Attorney General and Commission who act as if fundamental standards of ethical and professional responsibility do not apply to them.

4. The Commission is fully knowledgeable of the instant motion based on Mr. Speres' fraudulent Respondent's Brief. On September 21st, the same date as a copy of the motion was served on the Attorney General's Law Department, a copy was also served on the Commission. Presumably, in the days that followed, the Commission conferred with, if not instructed, Mr. Speres as to the response he would

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[1] The motion, originally returnable on Friday, September 29th was adjourned, on consent, so that I might reply to Mr. Speres' Opposing Affirmation (Exhibit "A").

interpose and reviewed his Opposing Affirmation before it was filed on September 27th.

5. At least since September 27th, the highest echelons of the Attorney General's office have been knowledgeable of this motion. On that date, I hand-delivered a letter for Mr. Spitzer (Exhibit "B") to his executive office, with a copy for his executive level staff: David Nocenti, his counsel; Peter Pope, chief of his "Public Integrity Unit"; and William Casey, its chief investigator. The letter apprised Mr. Spitzer of my pending motion for, *inter alia*, disciplinary and criminal prosecution of him based on his Law Department's fraudulent Respondent's Brief. I protested that the Brief sought to mislead this Court into relying on the fraudulent judicial decisions in *Doris L. Sassower v. Commission* and *Elena Ruth Sassower v. Commission* to uphold the fraudulent judicial decision in *Mantell v. Commission*. I stated (at p. 3) that such appellate misconduct would not have occurred had he met his obligatory supervisory duty to verify the fraudulence of those decisions, of which CJA had given him repeated notice. I, therefore, requested that he and his executive level staff provide this Court with affidavits as to what they had done to verify the serious allegations of fraud contained in those notices – copies of which I identified as annexed to my motion. This request expressly included what they did to verify the three analyses of the decisions, identified as Exhibits "D", "E", and "G" to the motion. Simultaneous, I requested Mr. Spitzer to notify the Court that he was withdrawing the Brief and withdrawing from representation of the Commission as

inconsistent with Executive Law §63.1, requiring that his advocacy be predicated on "the interests of the state".

6. At the time I delivered the September 27th letter to Mr. Spitzer, providing copies as well to the Commission and to Mr. Speres, Mr. Speres' fraudulent Opposing Affirmation had been filed with the Court. At 3:04 p.m. on October 4th, in the absence of any discernible supervisory oversight by the Attorney General's office, which necessarily would have been reflected in communication to me that Mr. Speres' Respondent's Brief and Opposing Affirmation were being withdrawn, I faxed a letter to the Attorney General (Exhibit "C"), expressly calling upon him to meet his supervisory duty by withdrawing the Opposing Affirmation. I also advised him that I wished to inform the Court as to what supervisory steps he had taken in the wake of the September 27th letter and requested that he have a member of his staff call me by 5:00 p.m. October 5th so that I might include that information in my reply. Copies were additionally faxed to Mr. Speres' more immediate supervisors, as well as to the Commission. Nevertheless, I received no call.

7. Consequently, to the extent that supervisory and executive level staff in the Attorney General's office were unaware of Mr. Speres' Opposing Affirmation before it was submitted, they clearly endorse it now by their wilful failure to take corrective steps to withdraw it – the need for which is obvious by the most cursory comparison of it to the motion.

8. My accompanying Memorandum of Law highlights that Mr. Speres' "factual" opposition, such as it is, is insufficient *as a matter of law*. It also sets forth

the applicable law relating to the first branch of my motion, which law is distorted and concealed by the legal argument that Mr. Speres improperly places in his Opposing Affirmation (*cf.* 22 NCYRR §202.8).

9. Herein detailed are the particulars relating to the rampant mischaracterizations and outright falsehoods that substitute for "facts" in Mr. Speres' Opposing Affirmation. For the convenience of the Court, a Table of Contents follows:

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Mr. Speres' Opposing Affirmation Mischaracterizes the "Allegations of Fraud" that are the *Gravamen* of the Instant Motion and Does Not Deny or Dispute the Particulars Detailed Therein as to the Fraudulent and Deceitful Nature of his Respondent's Brief

10. Mr. Speres' Opposing Affirmation offers **NO** pertinent evidentiary facts in opposition to my motion – notwithstanding it is he who signed Respondent's Brief, which my motion contends to be a fraud upon the Court and Mr. Mantell.

11. Mr. Speres' 12-paragraph Opposing Affirmation does not even mention that my motion involves "allegations of fraud" until his ¶10, whose opening word is "Finally". He there falsely makes it appear that such allegations relate *only* to my application to disqualify the Attorney General and to impose sanctions upon him and the Commission. Wholly concealed is that my "allegations of fraud" are also at the very heart of my intervention/*amicus* requests – which the preceding ¶¶2-8 of his Opposing Affirmation purported to dispose of, with *no* mention of that fact.

12. Mr. Speres' belated and contextually-limited mention of my "allegations of fraud" in his ¶10 is combined with two further deceits: (1) that they are "unsubstantiated"; and (2) that they are the product of a benighted view as to what constitutes fraud. Thus he states that my application is based on:

> "***unsubstantiated*** allegations of fraud...which seem to stem from *Sassower's belief that decisions that go against her are 'fraudulent'* rather than precedent – a concept which, according to Sassower, even Mr. Mantell is too 'overburdened' to appreciate -- and that the Attorney General's reliance upon such cases is a 'fraud upon the court.'" (¶10, emphasis added).

13. The flagrant deceit of these two claims is evident upon examination of my Affidavit. As particularized therein (at ¶¶14-32), when Mr. Speres put before this Court the unreported decisions of Justices Cahn and Wetzel, the Attorney General and Commission had long had in their possession CJA's analyses of these decisions, establishing them as factually fabricated and legally insupportable – the accuracy of which they had never denied or disputed.

14. My Affidavit specifically contended (at ¶¶9-12) that the reason Mr. Speres put the fraudulent decisions of Justices Cahn and Wetzel before this Court was to buttress his Brief's pivotally false claim as to the Commission's "statutory framework", *to wit*, that the Commission had lawfully promulgated 22 NYCRR §7000.3 "pursuant to the Commission's powers and duties as set forth in Article VI, §22(c) of the New York State Constitution and Judiciary Law §42(5)", and that its language "follow[s]" that of Judiciary Law §44.1.

15. My Affidavit also asserted (at pp. 9-11: ¶16(b)) that the further contentions in Mr. Speres' Brief, with the exception of his Point II argument on "standing"[2], were likewise materially false – recycling arguments from Justice Lehner's decision, whose legally-insupportable and spurious nature CJA had also demonstrated in an analysis, likewise long ago provided to the Attorney General and the Commission, who had never denied or disputed its accuracy.

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[2] As to Mr. Speres' argument on "standing", my Affidavit showed (at fn. 8) that it was based on misrepresentation of the law.

16. The analyses of all three of these decisions were annexed to my Affidavit[3]. Additionally annexed were a mountain of notices I had given to the Attorney General, his executive level staff, and the Commission, calling upon them to take corrective steps to vacate the decisions for fraud[4]. Based thereon, I contended (at ¶33):

> "there can be no doubt that both the highest echelons of the Attorney General's office and the Commission had clear notice and unequivocal proof of the fraudulence of the decisions of Justices Cahn and Wetzel – on which they wish this Court to rely in affirming the fraudulent decision of Justice Lehner, as to which they have also had clear notice and unequivocal proof. The only question is the knowledge of Constantine Speres, the Assistant Attorney General, who signed the Brief for Respondent, as well as the September 6, 2000 letter transmitting to the Court copies of the decisions of Justices Cahn and Wetzel (Exhibit "C"). "

17. The aforesaid assertion was the first paragraph under a section of my Affidavit (at p. 21) entitled,

> "The Culpability of Assistant Attorney General Speres for the Fraud Perpetrated Herein by the Brief for Respondent He Signed and the Fraudulent Judicial Decisions He Put Before the Court".

The subsequent paragraphs (¶¶34-45) presented facts from which it would be extremely unlikely for Mr. Speres not to have known of CJA's analyses of the three decisions prior to submitting his Brief.

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[3] CJA's 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* is Exhibit "D" thereto; CJA's 13-page analysis of Justice Lehner's decision in *Mantell v. Commission* is Exhibit "E" thereto; and CJA's 15-page analysis of Justice Wetzel's decision in my Article 78 proceeding against the Commission is Exhibit "G" thereto (at pp. 14-29).

[4] Such notices were annexed as Exhibits "I", "K", "L", "O", "P", "Q", "R", "U", "V".

18. Based on my Affidavit, it was Mr. Speres' obligation to answer that "only question" as to whether he knew of the three analyses before filing his Brief – and to deny or dispute their probative nature in establishing the fraudulence of the decisions in the respects detailed by my Affidavit (at ¶¶10-12, 16) as being germane to his Brief. Yet, Mr. Speres *never* mentions the analyses, does *not* deny or dispute their dispositive nature, and does *not* identify whether he knew of them before filing his Brief, which he also does *not* mention[5]. As detailed by my accompanying Memorandum of Law, these allegations are, *as a matter of law*, deemed conceded.

19. Examination of CJA's three analyses of the decisions of Justices Cahn, Wetzel, and Lehner establishes why Mr. Speres has consciously avoided them and, likewise, why he has not presented sworn statements by supervisory and executive level staff at the Attorney General's office and the Commission. The analyses – along with CJA's many written notices to the Attorney General and Commission – prove that Mr. Speres' Brief is, as particularized by my Affidavit (at ¶¶10-13, 16), fraudulent, being knowingly and intentionally false in its presentation, both of fact and law.

The Uncontroverted Moving Affidavit Setting Forth Document-Supported Facts as to Fraud Being Perpetrated by Respondent's Brief Must be Put Before the Court by Any of the Means Specified by the Instant Motion

20. The *express* purpose of my motion was to put before the Court my supporting Affidavit "setting forth essential facts, based on direct, personal

[5] The closest Mr. Speres comes to mentioning his Respondent's Brief is his ¶5, which makes a generic reference to "submission of all briefs".

knowledge, in order to protect the Court against the fraud being perpetrated on it and the *pro se* Petitioner" (Notice of Motion, p. 1, Affidavit ¶3).

21. As these essential facts relating to the fraud perpetrated by Mr. Speres' Respondent's Brief have *not* been denied or disputed by Mr. Speres, it is all the more essential for the Court to have my Affidavit before it "for consideration on the above-entitled appeal". It makes no difference to me in what fashion the Court receives the Affidavit. As set forth in my Notice of Motion, it can be by granting me intervention of right, pursuant to §1012(a)(2), intervention by leave, pursuant to §§1013 and 7802(d), by according me *amicus curiae* status, or *via* this Court's inherent power to protect itself from fraud – a power referenced by my Affidavit (page 30, fn. 25).

22. Mr. Speres, however, would not have the Court protected from the fraud perpetrated by his Respondent's Brief – fraud which, *as a matter of law*, his Opposing Affirmation concedes, yet does not acknowledge. To this end, each and every paragraph of his Opposing Affirmation falsifies, distorts, and conceals the applicable law and/or the material facts pertinent to my motion.

Mr. Speres' Opposing Affirmation Conceals the Basis for, and Intent of, the Requested Intervention – Entitlement to which It Falsifies and Distorts

23. Mr. Speres' falsification and concealment of my intervention requests begins in his ¶1 summary of the relief sought by my motion. This paragraph omits the statutory provisions cited by my Notice of Motion (at pp. 1-2), and repeated in my Affidavit (at ¶3) under which I moved for intervention of right, as well as by leave. That then enables Mr. Speres to deceive the Court in his ¶2 into believing that I have

moved to intervene, by right, under *inapplicable* sections of the CPLR, which is UNTRUE, and, in his ¶¶3-6, that I have moved to intervene, by leave, pursuant to only a *single* section of the CPLR, which is also UNTRUE.

24. Thus, Mr. Speres' ¶2 – the only paragraph pertaining to my requested intervention, of right -- begins "Sassower has failed to demonstrate any entitlement to intervention as of right under CPLR §1012(a)(1) because no statute confers an absolute right to intervene." The clear implication from this first sentence is that I have sought intervention thereunder. Likewise, Mr. Speres' third sentence, "Further, CPLR §1012(a)(3) does not apply since the two lawsuits do not involve disputes between Mantell and Sassower over property or conflicting claims for damages." These two sentences in Mr. Speres' four-sentence ¶2 serve *no* purpose but to mislead the Court, as I have invoked NEITHER of these two *inapplicable* sections of the CPLR, but rather CPLR §1012(a)(2) – and CPLR §1012(a)(2) alone -- as the basis for intervention of right.

25. As to intervention by leave – to which Mr. Speres devotes four paragraphs (¶¶3-6) – he omits that my motion invokes CPLR §7802(d) in addition to CPLR §1013. This omission is material, as Mr. Speres may be presumed to know that in an Article 78 proceeding, such as this, §7802(d) preempts the more general

provision of CPLR §1012(a)[6] and the standard under §7802(d) is "more liberal than that of CPLR §1013..."[7].

26. Indeed, had Mr. Speres identified that I had moved under CPLR §7802(d), he would have been forced to admit that I meet its *only* requirement, namely, that I am an "interested person[]". His ¶2 effectively concedes as much by his statement that "the issues presented in both appeals are similar and a decision in the Mantell appeal may impact the arguments presented in and the outcome of Sassower's appeal".

27. As to the factual misrepresentations on which Mr. Speres' ¶¶2-6 oppose my requested intervention pursuant to CPLR §§1012(a)(2) and 1013, all five paragraphs omit any reference to the reason stated in my motion for my seeking to intervene and what form I intended that intervention to take. Thus, these paragraphs nowhere identify that my stated reason for moving to intervene was to file, for the Court's consideration on Mr. Mantell's appeal, my supporting Affidavit containing facts pertaining to the fraud committed upon it and Mr. Mantell by Mr. Speres' Respondent's Brief. This omission is likewise material. It enables Mr. Speres to baldly assert "there is *no evidence* to support [Sassower's] belief that Mr. Mantell, a licensed and practicing attorney, is incapable for representing his interests adequately" (at ¶2, emphasis added). This is false. Examination of Mr. Mantell's

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[6] *See* New York Practice, David Siegel, at §178 (1999 ed., p. 295).

[7] McKinney's Consolidated Laws of New York Annotated, Book 7B, Practice Commentaries by Vincent C. Alexander (1994).

Reply Brief plainly shows *no* awareness of any of the facts presented by my Affidavit as to the fraudulence of Mr. Speres' Brief – facts whose accuracy Mr. Speres does not deny or dispute. It also enables Mr. Speres to interpose (at ¶4) a timeliness objection that I had nearly a year to intervene and "should have made application prior to the perfection of Mantell's appeal". This, too, is false. My intervention request is based on Mr. Speres' Respondent's Brief, which bears a date of September 6th. Clearly, I have not "waited until the eleventh hour", as Mr. Speres asserts (at ¶5). Rather, I served my motion within six days of Mr. Mantell's submission of his September 15th Reply Brief, which, as hereinabove stated, reflects *no* awareness of the fraudulence of Mr. Speres' Brief.

28. In that connection, I wish to state that on Friday afternoon, September 8th, I received a phone call from Mr. Mantell, who told me – in this order -- that he had just received two unreported "Sassower decisions" and Respondent's Brief. I asked him to fax me this Brief, which he did at 4:34 p.m. We agreed to discuss it together on Monday, September 11th. On September 11th, I telephoned Mr. Mantell, but he told me he was too busy to speak, that he wanted to keep his Reply Brief "short", and that he would draft something and send it to me. I believe I again spoke with him on Wednesday, September 13th, when he told me, for the first time, that his Reply Brief was due that Friday, September 15th.

29. Mr. Mantell did not fax me the draft of his 6-page Reply Brief until 12:45 p.m. on Thursday, September 14th. Although I phoned him with my comments, he told me, once again, that he was very busy, didn't have the time, and wanted to

keep his Reply Brief "short". In desperation, I wrote out "SUGGESTED CHANGES" for pages 1 and 2 of his draft Reply Brief – pages relating to the "governing" law as it relates to the Commission and the two "Sassower decisions". I kept these "SUGGESTED CHANGES" as limited as possible to maximize the likelihood that Mr. Mantell would incorporate them. Upon faxing the "SUGGESTED CHANGES" for these 2 pages, which I did separately at 3:39 p.m. and 4:38 p.m. (Exhibits "D-1" and "D-2"), I telephoned Mr. Mantell's secretary, Holly Habashi, to confirm their receipt and to make sure she brought them to Mr. Mantell's immediate attention, as she told me he couldn't be disturbed because he was working on the Reply. I also asked Ms. Habashi to tell Mr. Mantell that after he had reviewed my "SUGGESTED CHANGES", he should let me know whether he wanted me to write out similar "SUGGESTED CHANGES" for the four remaining pages of his Reply Brief.

30. I did not hear back from Mr. Mantell – or from Ms. Habashi – that day. The next day, Friday, September 15th, I phoned Ms. Habashi, who faxed me a copy of Mr. Mantell's Reply Brief at 10:15 a.m. From this I saw that none of my "SUGGESTED CHANGES" were incorporated. Indeed, except for minor non-substantive changes, Mr. Mantell's final Reply was essentially his draft document.

31. Until then, I reasonably believed that Mr. Mantell would incorporate my written "SUGGESTED CHANGES" into his Reply Brief. This, because Mr. Mantell had previously used, *verbatim*, my written suggestion as to the phrasing of what became his "Statement of the Questions Involved" in his July 31st Appellant's

Brief. I saw this Appellant's Brief, for the first time, on Wednesday, September 13th, when it arrived in the mail with his Record on Appeal, in the same envelope as transmitted to me a "hard copy" of Mr. Speres' Respondent's Brief and the two "Sassower decisions"[8].

32. My written suggestion of "Questions Presented" for Mr. Mantell's Appellant's Brief (Exhibit "E-1") was in response to the draft Brief that Mr. Mantell sent me under a July 11th coverletter (Exhibit "E-2")[9]. The coverletter, which I did not receive until July 24th[10], is extremely pertinent, not only because Mr. Mantell states therein that he is "more than very busy", but because he expresses an attitude toward his Appellant's Brief that he thereafter expressed to me in connection with his Reply Brief.

33. I feel it incumbent to state that in addition to Mr. Mantell's crushing workload, Mr. Mantell has repeatedly expressed to me his cynical view that investing time in this appeal is a waste of time as he believes this Court is going to cover-up Justice Lehner's cover-up by a no-decision affirmance. As a result, he just wants to "get it over with".

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[8] Not included in this envelope was a copy of Mr. Speres' September 6, 2000 letter to this Court's Clerk, transmitting ten copies each of the decisions of Justices Cahn and Wetzel. I did not see that letter until Friday, September 15th, when, after several requests for it, a copy was finally faxed to me at 12:28 p.m. (Exhibit "D-3").

[9] The coverletter is annexed together with the first page of Mr. Mantell's draft Appellant's Brief, showing his original "Question".

[10] I was out of the country, at the American Bar Association convention in London, England, from July 13th to July 23rd.

34. As to Mr. Speres' objection (at ¶¶4, 6) that my motion for intervention does not attached my "proposed brief on appeal", he conceals that my intervention request is limited to permission to file my supporting Affidavit for the Court's consideration on Mr. Mantell's appeal – which is attached to my motion.

Mr. Speres' Opposing Affirmation Conceals the Nature of the Requested *Amicus Curiae* Request – Entitlement to which It Falsifies and Distorts

35. Mr. Speres' ¶7 raises a similar objection in connection with my request for permission to appear *amicus curiae*. Objecting that I have not attached a "proposed amicus brief for this Court's review", he purports that I "merely state[] that [I] will file it on December 23, 2000 – the last day that [my] appeal may be perfected." Again, he conceals that my motion neither requested to submit an *amicus* brief in Mr. Mantell's appeal – nor requested that the brief in my appeal be deemed an *amicus* brief in this appeal. Instead, my request was limited to permission to file my Affidavit for the Court's consideration in Mr. Mantell's appeal, "setting forth essential facts, based on direct, personal knowledge" as to the fraud committed on the Court and Mr. Mantell by Mr. Speres' Respondent's Brief.

36. Obviously, "facts, based on direct, personal knowledge" do NOT belong in a brief, but in a sworn affidavit (*cf.* 22 NYCRR §202.8). Consequently, my *amicus* request – as likewise my intervention request – properly asked to that my Affidavit be considered by the Court on Mr. Mantell's appeal.

37. Moreover, under the section heading,

"The Commonality of Issues Presented by Mr. Mantell's Appeal with the Appeal of *Elena Ruth Sassower v. Commission* Requires that They be Heard Together and/or the Appeals Consolidated" (at p. 26),

my Affidavit (at ¶¶46-54) makes plain that an *amicus* "brief" is wholly superfluous. *All* the legal arguments germane to the issues on Mr. Mantell's appeal have *already* been briefed in my Article 78 proceeding – the record of which will be before this Court on my soon-to-be perfected appeal from Justice Wetzel's decision which, in the interests of justice and judicial economy, should be heard with Mr. Mantell's appeal.

38. As to Mr. Speres' ¶8, it is a deceit for Mr. Speres to quote from *Matter of Mayer*, 110 Misc.2d 346, 351 (Surr. Ct., NY Co. 1981), aff'd 92 A.D.2d 756 (1983), and from *Rourke v. NYS Dep't of Corr. Services*, 159 Misc.2d 324 (Sup. Ct., Albany Co. 1993) for propositions he dares not say outright, *to wit*, "[a]s all possible points of view are represented by counsel in this proceeding, nothing will be served by allowing additional appearance" and "petitioner's contentions have been fully and ably presented".

39. As applied to Mr. Mantell's appeal, the aforesaid quotations from the cited cases, are flagrant lies. Examination of my Affidavit shows that my contentions therein are neither "represented", nor "presented" by Mr. Mantell or Mr. Speres. Foremost of these contentions is that the decisions of Justices Cahn and Wetzel – on which Mr. Speres' Respondent's Brief relies to buttress his false claim that 22 NYCRR §7000.3 is part of the "statutory framework" of the Commission and that it "follow[s]" Judiciary Law §44.1 -- are factually fabricated and legally insupportable – and are known as such by the Commission and Attorney General, who further know

that Justice Lehner's decision – on which Mr. Speres' Respondent's Brief largely bases itself – is a legal fiction. As hereinabove stated (at ¶23), Mr. Mantell's Reply Brief shows *no* awareness of CJA's dispositive analyses of the decisions of Justices Cahn, Wetzel, and Lehner – let alone of CJA's repeated notice to the Attorney General and Commission with respect thereto.

40. Moreover, apart from awareness of the existence of CJA's analyses of the three decisions, Mr. Mantell's Reply Brief reflects none of the pertinent facts and legal argument therein, exposing the material misrepresentations in Mr. Speres' Respondent's Brief. These facts and legal arguments – which, but by my Affidavit – are not before the Court – expose: (1) that the language of 22 NYCRR §7000 does NOT "follow" Judiciary Law §44.1 and, therefore, was NOT lawfully promulgated pursuant to Article VI, §22(c) of the New York State Constitution and Judiciary Law §42.5 and NOT part of the Commission's "statutory framework" and "governing law"; (2) that "initial review and inquiry" is NOT synonymous with "investigation", *a la* Justice Cahn's decision, which falsely asserted this to be the Commission's "correct[] interpret[ation]"; (3) that Mr. Mantell's appeal involves more than the availability of a writ of mandamus to compel the Commission to investigate his complaint (§7803(1)), but also review, pursuant to §7803(3), of whether the Commission's dismissal of his complaint was "affected by an error of law", was "arbitrary and capricious", and "an abuse of discretion"; and (4) that the Commission is NOT analogous to a public prosecutor, immune from judicial review.

41. It is without identifying that these pivotal contentions are wholly absent from Mr. Mantell's Reply Brief that Mr. Speres' ¶8 falsely characterizes as a "unilateral claim" my assertion that Mr. Mantell is not "'adequately protect[ing] his own interest, let alone the larger public interest at stake in this appeal'". Conspicuously, Mr. Speres does *not* directly deny or dispute the truth of such assertion. Instead, he moves to a nonsequitur that it "does not require a different result since [I am] not an attorney and, therefor, lack[] capacity to appear in this appeal pro bono publico or on behalf of anyone other than herself", citing Judiciary Law §478.

42. Inasmuch as the elementary research that Mr. Speres was required to do before advancing such argument would have readily disclosed that an *amicus curiae* does not have to be a lawyer, Mr. Speres offers no legal authority for implying, as he does, that, as a nonlawyer, I am ineligible.

43. Nor does he offer any legal authority for the proposition that Judiciary Law §478 bars a nonlawyer from acting *pro bono publico*. That Judiciary Law §478 contain *no* such proscription was previously pointed out by me in the record of my Article 78 proceeding[11] – a record with which Mr. Speres has not denied familiarity.

Mr. Speres' Opposing Affirmation Omits the Reasons for the Requested Postponement of Oral Argument on Mr. Mantell's Appeal, Thereby Concealing the Meritorious Basis Therefor

44. Mr. Speres' ¶9 mischaracterizes as "alternative[]" my request for postponement of oral argument on Mr. Mantell's appeal so that it can be heard

together with my appeal. This is not reflected by my Notice of Motion or supporting Affidavit (at ¶3) – nor in Mr. Speres' incomplete summary thereof in his ¶1.

45. Mr. Speres ¶9 conceals the *express* reason stated by my Notice of Motion and supporting Affidavit for having oral argument of Mr. Mantell's appeal heard with mine – just as his ¶2-8 conceals the *express* reason for my intervention/amicus requests. The reason for deferring oral argument on Mr. Mantell's appeal to the date of oral argument on my appeal is "by reason of the common issues it presents and in the interests of justice and judicial economy" (Notice of Motion, p. 2, Affidavit, ¶3).

46. Mr. Speres does not deny that the two appeals present "common issues". Indeed, his ¶2 concedes that "the issues presented in both appeals are similar". Nor does he deny that "judicial economy" would be served by having them heard together and, as further requested by my motion, possibly consolidated. Additionally, he neither alleges – nor shows – any prejudice that would be suffered by the granting of this relief. As such, his opposition thereto is frivolous.

Mr. Speres' Opposing Affirmation Conceals and Falsifies the Pertinent Facts Pertaining to the Motion's Request to Disqualify the Attorney General and for Sanctions

47. Mr. Speres' ¶10 conceals that my requests for disqualification of the Attorney General and imposition of sanctions upon him and the Commission is part of the final branch of my motion seeking "other and further relief". This final branch also specified two further requests, wholly omitted by Mr. Speres, to which he

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[11] *See* page 52 of my September 24, 1999 Reply Memorandum of Law in support of my

interposes no specific opposition. These are: "striking the Attorney General's Brief for Respondent as a fraud upon this Court and the *pro se* Petitioner" and "referring [the Attorney General and Commission] for disciplinary and criminal investigation and prosecution, consistent with this Court's mandatory 'Disciplinary responsibilities' under §100.3D(1) of the Chief Administrator's Rules Governing Judicial Conduct."

48. All four requests specified by this final branch of my motion are derivative, flowing from this Court's finding that Mr. Speres' Respondent's Brief is a fraud upon the Court and Mr. Mantell. As hereinabove particularized, such finding is compelled *as a matter of law* and fully substantiated by examination of the record on this motion.

49. As to my request to disqualify the Attorney General from representing the Commission on this appeal, Mr. Speres conceals that it is expressly "based on his demonstrable violation of Executive Law §63.1 by reason of his litigation misconduct" (Notice of Motion, p.2; Affidavit, ¶¶3, 60-62.)

50. Mr. Speres does not deny or dispute the accuracy of my affirmative statement that:

> "nothing in Executive Law §63.1, by itself, automatically entitles [the Commission] to the Attorney General's representation or confers upon the Attorney General authorization to defend [the] proceeding. Rather a determination must be made as to 'the interests of the state'" (at ¶61).

or argue against my assertion:

> "There is NO state interest served by fraud – and the fact that a fraudulent defense is required to sustain the Commission's position

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July 28, 1999 omnibus motion.

reflects the absence of any legitimate defense in which the state would have an 'interest'. (at ¶62).

51. Instead, he piles deceit upon deceit. First, he claims, "Sassower's earlier challenge [to] the authority of the Attorney General to represent the Commission in her Article 78 proceeding was *flatly rejected* by the Supreme Court" (¶11, emphasis added). Aside from the fact that Mr. Speres has not denied or disputed CJA's analysis showing Justice Wetzel's decision to be fraudulent, the decision does not "flat reject[]" my challenge to the Attorney General's representation of the Commission – unless its blanket denial of my "other requests for relief" (at p. 6) constitutes a "flat reject[ion]".

52. Conspicuously, Mr. Speres' ¶11 gives no citation to Justice Wetzel's decision for this alleged "flat reject[ion]", such as appears in the very next paragraph where Mr. Speres not only gives a page citation for Justice Wetzel's injunction against me, but annexes the decision as his only exhibit to his Opposing Affirmation. This omission may be to foster confusion as to whether the "flat[] reject[ion] of my challenge was in *Sassower v. Signorelli*, 99 A.D.2d 358 (2d Dep't 1984) – a confusion fostered by not identifying that I am a different *Sassower*.

53. Mr. Speres' citation to *Sassower v. Signorelli* is a further deceit, as he strings it alongside Executive Law §63.1, as if they are consistent with each other. This is precisely what he did in his footnote #1 to his June 23, 1999 motion to dismiss Mr. Mantell's petition [R-54] to support his pretense -- here repeated, ***verbatim*** -- that under Executive Law §63.1 "The Commission is statutorily entitled to such

representation [by the Attorney General] and the Attorney General is statutorily authorized to defend this proceeding." Mr. Speres does not deny or dispute that my Affidavit (p. 23, fn. 21; p. 31, fn. 27; p. 32, ¶61) exposed that pretense, which he nonetheless blithely repeats.

54. In view of the plainly prejudicial nature of *Sassower v Signorelli*, it is further reprehensible for Mr. Speres to have cited it and, additionally, where he has not denied or disputed my assertion in my Affidavit (p. 31, fn. 27), that "upon information and belief, such decision was without any hearing having been held by the lower court or the Appellate Division as to the facts allegedly supporting the defamatory conclusory statements therein".

55. Mr. Speres' determination to exploit *Sassower v. Signorelli* is clear from the case he cites beside it, *Kilcoin v. Wolansky*, 75 A.D2d 1(2d Dept. 1980), *aff'd* 52 NY2d 995 (1981), for the irrelevant proposition that "'a plaintiff's motion to disqualify the Attorney General from representing the defendant State official suggests 'something more than a concern over the Attorney General's ethical position. Rather it bespeaks her continuing effort to harass and punish' the official". NOTHING in *Kilcoin* indicates that the attempt to disqualify the Attorney General therein was based on Executive Law §63.1 and NOTHING in this case, either in the record before this Court or before the lower court, would remotely support a view that my motion to disqualify the Attorney General is not meritorious, both factually and legally.

56. It would appear that these inapt and misleadingly prejudicial case citations are to set the stage for his final ¶12. In that paragraph, Mr. Speres deceitfully claims that my request for sanctions pursuant to 22 NYCRR §130-1.1 "is, itself, frivolous" and should be not only be denied, but "denied, with costs"[12]. Indeed, Mr. Speres makes it appear that "costs" are the very least that should be imposed, as what is really "need[ed]" is an injunction against me such as imposed by Justice Wetzel's decision, the language of which he cites. He then compounds this assault on decency by physically annexing a copy of Justice Wetzel's defamatory decision to his Opposing Affirmation – adding to the 10 copies of the decision he has already provided this Court under his September 6, 2000 letter[13]. This, notwithstanding his failure to deny or dispute the accuracy of CJA's analysis, showing the decision to be factually fabricated in *every* material respect. This includes the 6 pages of the analysis specifically addressed to Justice Wetzel's injunction[14], which further details how completely devoid of due process the injunction is, depriving me and the non-party Center for Judicial Accountability, Inc. of ANY notice or opportunity to be heard with respect thereto.

57. Finally, as to the two examples that Mr. Speres' ¶12 gives to demonstrate the supposed "need" for Justice Wetzel's injunction order, the record

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[12] Mr. Speres' WHEREFORE clause (at p. 6) adds "disbursements" to its request for "costs".

[13] *See* Exhibit "C" to my Affidavit supporting my motion.

[14] *See* pp. 23-29 of CJA's February 23, 2000 letter to Governor Pataki, annexed as Exhibit "G" to my moving Affidavit.

before this Court shows that I am not "inject[ing] myself into this *appeal at this late stage*" (emphasis added) – but have acted swiftly in response to Mr. Speres' September 6th Respondent's Brief to properly advise the Court of facts, on direct, personal knowledge, establishing the fraud perpetrated on it and Mr. Mantell by such Brief – facts whose accuracy Mr. Speres' Opposing Affirmation does not deny or dispute. Nor is there any evidence to support Mr. Speres' claim that I am "clutter[ing]" the appeal with "unrelated issues" I "wish to address in [my] appeal – like the manner in which the Attorney General assigns cases and responds to [my] FOIL requests" – for which he cites ¶¶36-45 of my Affidavit. Examination of those paragraphs, as well as the preceding ¶¶ 33-35, show that they are included to establish that when Mr. Speres' submitted his Respondent's Brief, it was not only the Commission and his superiors at the Attorney General's office who knew it was fraudulent, but he himself. Indeed, these paragraphs all appear in the section of my Affidavit entitled,

> "The Culpability of Assistant Attorney General Speres for the Fraud Perpetrated Herein by the Brief for Respondent He Signed and the Fraudulent Judicial Decisions He Put Before the Court".

WHEREFORE, it is respectfully prayed that the Court grant relief as requested in the Notice of Motion herein, together with additional costs, sanctions, and disciplinary and criminal referral, as warranted by the fraudulent Opposing Affirmation of Assistant Attorney General Constantine Speres.

Elena Ruth Sassower

ELENA RUTH SASSOWER

Sworn to before me this
5th day of October 2000

Beth Avery

Notary Public

BETH AVERY
Notary Public - State of New York
NO. 02AVA5056824
Qualified in Westchester County
My Commission Expires 3/11/01