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

----------x

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

Petitioner-Appellant,

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

----------x

NOTICE OF APPEAL

NY Co. #99-108551

PLEASE TAKE NOTICE that Petitioner-Appellant, ELENA RUTH SASSOWER, hereby appeals to the Appellate Division, First Department, 27 Madison Avenue, New York, New York 10010, from the Decision, Order, & Judgment of the Supreme Court, New York County of Acting Supreme Court Justice William A. Wetzel, dated January 31, 2000 and entered February 18, 2000, and from each and every part thereof.

Dated: White Plains, New York
March 23, 2000

Yours, etc.

Elena Ruth Sassower

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

TO: New York State Attorney General Eliot Spitzer
Attorney for Respondent-Respondent
120 Broadway
New York, New York 10271
(212) 416-8611

Ex "A"

New York State Attorney General Eliot Spitzer
Proposed Intervenor
120 Broadway
New York, New York 10271

District Attorney, New York County
Proposed Intervenor
1 Hogan Place
New York, New York 10013

New York State Ethics Commission
Proposed Intervenor
39 Columbia Street
Albany, New York 12207-2717

United States Attorney, Southern District of New York
Proposed Intervenor
1 Saint Andrews Plaza
New York, New York 10007

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

----------x

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

Petitioner-Appellant,

- against -

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

----------x

PRE-ARGUMENT STATEMENT

NY Co. # 99-108551

1. CASE TITLE:

As set forth above.

2. FULL NAMES OF ORIGINAL PARTIES:

As set forth above.

3. NAME, ADDRESS, & TELEPHONE NUMBER OF PETITIONER:

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

4. NAME, ADDRESS, & TELEPHONE NUMBER OF COUNSEL FOR RESPONDENT:

NYS Attorney General Eliot Spitzer, Counsel for Respondent-Respondent
120 Broadway
New York, New York 10271
(212) 416-8611

5. COURT AND COUNTY FROM WHICH APPEAL IS TAKEN:

Supreme Court of the State of New York, County of New York.

6. DECISION, ORDER, & JUDGMENT APPEALED FROM:

This is an appeal from a Decision, Order, & Judgment, dated January 31, 2000, by Acting Supreme Court Justice William A. Wetzel. The Decision, Order, & Judgment was entered on February 18, 2000 and served by mail with Notice of Entry on February 22, 2000.

7. NATURE AND OBJECT OF THE CASE:

This is an Article 78 proceeding, whose Verified Petition contains six separate Claims for Relief:

(1) declaring 22 NYCRR §7000.3, *as written*, unconstitutional and unlawful in contravening Article VI, §22a of the New York Constitution and Judiciary Law §44.1;

(2) declaring 22 NYCRR §7000.3 *as applied*, unconstitutional and unlawful in contravening Article VI, §22a of the New York Constitution and Judiciary Law §44.1;

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

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

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

(6) commanding Respondent to formally "receive" and "determine" Petitioner's February 3, 1999 judicial misconduct complaint against Appellate Division, Second Department Justice Daniel W. Joy in conformity with Article VI, §22a of the New York Constitution and Judiciary Law §44.1;

The Verified Petition also seeks other relief against Respondent:

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

(8) a court referral of Respondent for appropriate criminal and disciplinary investigation by the New York State Attorney General, the United States Attorney, the Manhattan District Attorney, and the New York State Ethics Commission – all proposed intervenors in the proceeding; and

(9) imposition of the statutory fine of $250, payable to the State Treasurer, pursuant to Public Officers Law §79.

As part of its "other and further relief", the Notice of Petition specifies that as to those branches of relief seeking a declaration of the unconstitutionality of statutory provisions, the proceeding be converted to a declaratory judgment action to the extent required by law.

Following service of the Verified Petition, the nature and object of the case shifted as petitioner endeavored to ensure the integrity of the judicial process:

By omnibus motion, petitioner sought, *inter alia*: (1) to disqualify the Attorney General from representing Respondent for violation of Executive Law §63.1 and multiple conflicts of interest; and (2) to sanction the Attorney General and Respondent for their litigation misconduct, including their fraudulent dismissal motion, and to have them each referred for criminal and disciplinary action, *inter alia*, for the crimes of "perjury, filing of false instruments, conspiracy, obstruction of the administration of justice, and official misconduct" in connection with the litigation.

In view of the self-interest of every state judge under Respondent's disciplinary jurisdiction in the outcome of the proceeding and the fact that the proceeding criminally implicates Governor Pataki in Respondent's corruption, petitioner requested that the proceeding be specially assigned to a retired or retiring judge, willing to disavow future political and/or judicial appointment. In support, petitioner identified that the two most recent other Article 78 proceedings against Respondent, both in Supreme Court/New York County, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141) and *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co.

#99-108655) had each been "thrown" by fraudulent judicial decisions – for which she provided written analyses of the decisions, substantiated by copies of the record of those two Article 78 proceedings, which she physically incorporated in the record of her Article 78 proceeding.

Thereafter, upon Justice Wetzel's assignment to the case, petitioner made a written application for his recusal, based on the appearance and actuality of his self-interest and bias. This was not only because Justice Wetzel, an Acting Supreme Court Justice, was a Court of Claims "hold-over", sitting at the pleasure of the Governor, who had appointed him in 1995 and with whom he had had a professional and personal relationship, but because Justice Wetzel had recently been the beneficiary of Respondent's dismissal, without investigation, of a facially-meritorious judicial misconduct complaint against him – a complaint based, in part, on a 1994 fundraiser that then village town justice Wetzel had held at his home for then gubernatorial candidate Pataki. Petitioner's recusal application included an alternative request that in the event Justice Wetzel did not recuse himself, he disclose the facts as to the grounds for his disqualification specified in the application and that he afford petitioner time to incorporate such disclosure in a formal recusal motion.

Simultaneously, petitioner made a written request to Administrative Judge Stephen G. Crane for the legal authority for his interference with "random selection" in "directing" the case to Justice Wetzel, the basis for his having done so, and whether, before making such "direction", he was aware of the facts pertaining to Justice Wetzel's disqualification, as identified in the recusal application.

8. RESULT BELOW:

Administrative Judge Crane did not respond to petitioner's written request for information pertaining to his interference with "random selection" and his "direction" of the case to Justice Wetzel.

Thereafter, in a single Decision, Order, & Judgment, Justice Wetzel:

(1) denied petitioner's written recusal application, without identifying any of the grounds it had set forth as warranting his recusal and without making any factual findings with respect thereto;

(2) ignored, without mention, Petitioner's alternative request for disclosure and time to make a formal recusal motion, thereby implicitly denying it;

(3) denied petitioner's omnibus motion, without reasons or factual findings;

(4) dismissed the Verified Petition, based on the decisions in *Doris L. Sassower v. Commission* and in *Michael Mantell v. Commission* – without identifying the existence of petitioner's record-supported written analyses of those decisions, without making any factual findings with respect thereto, and without examining whether those decisions were germane to the Verified Petition's six separate Claims for Relief;

(5) enjoined petitioner and the *non-party* Center for Judicial Accountability, Inc. from instituting "related" actions or proceedings, of whose "relatedness" Justice Wetzel designated himself the judge – without any factual findings to support the injunction nor legal authority for appointing himself arbiter of the "relatedness" of any future actions or proceedings.

9. GROUNDS FOR SEEKING REVERSAL:

The Decision, Order, & Judgment violates the most *fundamental* standards of adjudication and due process. It substitutes unwarranted aspersions and characterizations for factual findings and, in *every* material respect, falsifies, fabricates, and distorts the record of the proceeding. This, to wholly subvert the judicial process and deprive petitioner of the relief to which she is entitled by her Verified Petition, omnibus motion, and recusal application. As such, it is more than *prima facie* proof of Justice Wetzel's disqualifying actual bias and self-interest, it is a criminal act by him, in which Administrative Judge Crane is complicitous.

10. RELATED PROCEEDINGS:

A Notice of Appeal to the Appellate Division, First Department has been filed in *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #99-108655) by the petitioner therein, dated November 5, 1999. Such Article 78 proceeding against the same Respondent is "related", *inter alia*, because notwithstanding petitioner's uncontroverted record-supported analysis showing that the decision therein was a legally insupportable and contrived cover-up, Justice Wetzel's Decision, Order, & Judgment refers to the decision as "a carefully reasoned and sound analysis of the very issue raised in the within petition" and specifically adopts its "finding" that "mandamus is unavailable to require the respondent to investigate a particular complaint."

Dated: White Plains, New York
March 23, 2000

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*
Box 69, Gedney Station
White Plains, New York 10605-0069

TO: New York State Attorney General
Attorney for Respondent-Respondent
120 Broadway
New York, New York 10271

New York State Attorney General
Proposed Intervenor
120 Broadway
New York, New York 10271

District Attorney, New York County
Proposed Intervenor
1 Hogan Place
New York, New York 10013

New York State Ethics Commission
Proposed Intervenor
39 Columbia Street
Albany, New York 12207-2717

United States Attorney, Southern District of New York
Proposed Intervenor
1 Saint Andrews Plaza
New York, New York 10007

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

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

WILLIAM A. WETZEL, J.:

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

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

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

(3) compels removal of Commission member Harold Berger;

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

Division, Pet. Exh. F-6;

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

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

(7) imposes a $250 fine against the Commission pursuant to POL § 79.

See Petition ("Pet."), Para. Fifth.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: New York, New York
January 31, 2000

JUSTICE OF THE SUPREME COURT
WILLIAM A. WETZEL