"The power and authority to determine whether to investigate or prosecute a complaint of judicial misconduct, and *whether to dismiss it where the Commission determines 'that the complaint on its face lacks merit,' Jud. L. §44.1(b)*, has been vested to the discretion of the Commission." (at p. 23, emphasis added)

"Accordingly, the Commission's decision to dismiss *a complaint where, as here, the complaint lacks merit on its face*, is a matter over which the Court's (sic) have no oversight." (at p. 23, emphasis added)

"Accordingly, petitioner's invitation for the court to overrule the Legislature's decision to extend discretion to dismiss a complaint *where, in the Commission's opinion, it lacks merit on its face*...should be declined" (at p. 24, emphasis added)

The inference intended by the Attorney General is that Petitioner seeks to have the Court strike down the will of the Legislature, reflected by Judiciary Law §44.1(b), because it gives Respondent discretion not to investigate facially-meritless complaints -- such as hers. This inference echoes the Attorney General's affirmative misrepresentation in his "Statement of the Case" (at p. 9) that Petitioner's First and Second Claims for Relief challenge Judiciary Law §44.1(b). However, since the First and Second Claims make no such challenge, his argument and legal authorities based thereon in his Subpart A are wholly deceitful and irrelevant[45].

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[45] Without directly saying so, the Attorney General implies (at p. 21) that Petitioner should have no judicial review of Respondent's dismissal of her complaints because the statute contains no provision for judicial review comparable to that permitting a "judge who is the target of ...investigation". This is a false argument. The silence of the statute on a complainant's right to review is in the context of its requirement that Respondent's dismissal of a complaint be based on its determination that a complaint lacked merit on its face -- and does not govern the situation, at bar, where Respondent made NO such determination as to the October 6, 1998 complaint -- or as to the eight facially-meritorious complaints annexed to the verified petition in the prior Article 78 proceeding against it -- and where it has failed to acknowledge, let alone dismiss, the February 3, 1999 complaint. Moreover, even where a statute expressly proscribes judicial review, review is NOT barred. Illustrative of the relevant law -- of which the Attorney General is presumed to be familiar -- is the Court of Appeals decision in *NYC Department of Environmental Protection v. NYC Civil, Service Commission, et al.*, 78 NY2d 318, (1991) -- where Respondent's former Chairman, Victor Kovner, as Corporation Counsel,

Ex "2-2"

As to the Attorney General's argument that Petitioner's Third Claim for Relief is non-justiciable, he actually concedes Respondent's violation of the legislative intent. He does this by claiming that "...the legislature did not impose a requirement that the Commission articulate a reason for its decision to dismiss the complaint, *other than to explain that the complaint was dismissed because it lacked merit on its face*." (at pp. 23-4). This he refers to as "...the notice requirement of Jud. L. §44.1(b)" (at p. 24). In view of the fact that ¶¶TWENTY-THIRD and TWENTY-FOURTH of the Verified Petition allege -- and Exhibits "F-3" and "F-4" substantiate -- that Respondent did *not* explain to Petitioner that her October 6, 1998 complaint "lacked merit on its face" when it purported to dismiss it by letter dated December 23, 1998 and, that it, thereafter, took the position that Judiciary Law §45 barred Respondent from providing her

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successfully presented that argument:

> "Even where judicial review is proscribed by statute, the courts have the power and the duty to make certain that the administrative official has not acted in excess of the grant of authority given [***] by statute or in disregard of the standard prescribed by the legislature" (*Matter of Guardian Life Ins. Co. v. Bohlinger*, [308 NY 174], at 183)
>
> ...But we emphasize that however explicit the statutory language, judicial review cannot be completely precluded. First, if a constitutional right is implicated, some sort of judicial review must be afforded to the aggrieved party. ...
>
> Second, judicial review is mandated when the agency has acted illegally, unconstitutionally, or in excess of jurisdiction. In *Pan Am. World Airways v. New York State Human Rights Appeal Bd.* (61 NY2d 532, 548), for example, we stated that even if statutory language precluded review, '[s]ome standards to guide [the agency's] broad discretion are necessary if the statute is to be valid. Quoting from *Baer* [*v. Nyquist*, 34 NY2d 291, 298], we said that a court should step in if an agency acts in violation of the Constitution, statutes or its own regulations (*id.*; see also, *Marine Midland Bank v. New York State Div. of Human Rights*, 75 NY2d 240, 246)." [*supra*, at 323-324]