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

MICHAEL MANTELL,

Petitioner-Appellant,

NOTICE OF MOTION

- against -

S.Ct/NY Co. 99-108655/99

Cal. # 2000-3833

NEW YORK STATE COMMISSION ON
JUDICIAL CONDUCT,

Respondent-Respondent.

PLEASE TAKE NOTICE that upon the annexed Affidavit of ELENA RUTH SASSOWER, sworn to on September 21, 2000, the exhibits annexed thereto, and upon all the papers and proceedings heretofor had, ELENA RUTH SASSOWER will move this Court at 27 Madison Avenue, New York, New York 10010 on September 29, 2000 at 10:00 a.m., or as soon thereafter as the parties or their counsel can be heard for an order:

1. Granting to ELENA RUTH SASSOWER, individually and as Coordinator of the Center for Judicial Accountability, Inc., intervention as of right, pursuant to CPLR §1012(a)(2), or by leave pursuant to CPLR §§1013 and 7802(d) so as to file her annexed Affidavit for consideration on the above-entitled appeal, or as *amicus curiae*, setting forth essential facts, based on direct, personal knowledge, in order to protect the Court against the fraud being perpetrated on it and the *pro se* Petitioner,

Michael Mantell, by the Attorney General of the State of New York, herein representing Respondent, the New York State Commission on Judicial Conduct;

2. Postponing oral argument on the above-entitled appeal, calendared for October 24, 2000, so that, by reason of the common issues it presents and in the interests of justice and judicial economy, it can be heard together with oral argument on the appeal of *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York* (NY Co. 99-108551) and/or consolidated therewith; and

3. Granting such other and further relief as to this Court may seem just and proper, including disqualifying the Attorney General from representing Respondent, based on his demonstrable violation of Executive Law §63.1 by reason of his litigation misconduct; striking the Attorney General's Brief for Respondent as a fraud upon this Court and upon the *pro se* Petitioner; imposing costs and financial sanctions upon the Attorney General and Respondent, pursuant to 22 NYCRR §130-1.1; and 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.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, are to be served on or before September 27, 2000.

Yours, etc.

ELENA RUTH SASSOWER
Box 69, Gedney Station
White Plains, New York 10605-0069

TO: MICHAEL MANTEL
Petitioner-Appellant *Pro Se*
1211 Avenue of the Americas
New York, New York 10036

ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorney for Respondent-Respondent
New York State Commission on Judicial Conduct
120 Broadway
New York, New York 10271

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT
Respondent
801 Second Avenue
New York, New York 10017

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

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MICHAEL MANTELL,

Petitioner-Appellant,

- against -

AFFIDAVIT

S. Ct/NY Co. 99-108655

Cal. # 2000-3833

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Respondent-Respondent.

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

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

1. I am the Coordinator and Co-Founder of the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit citizens' organization, based in New York, documenting the dysfunction, politicization, and corruption of the processes of judicial selection and discipline on national, state, and local levels. For more than a decade, I have studied the New York State Commission on Judicial Conduct [hereinafter "Commission"], examining both the legal authority for its operations, as well as empirical evidence as to whether its operations comply with legal requirements.

2. I am fully familiar with the record before the lower court in the above-entitled Article 78 proceeding of Michael Mantell, the *pro se* Petitioner, against the

Commission, represented by the New York State Attorney General. That record is physically part of the record of an Article 78 proceeding in which I am the *pro se* Petitioner, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551). I am currently perfecting my appeal to this Court from the January 31, 2000 Decision, Order & Judgment of Acting Supreme Court Justice William Wetzel, dismissing my Article 78 proceeding. This will be filed on or before the due date, December 23, 2000. A copy of my *pro se* Notice of Appeal and Pre-Argument Statement, filed on March 23, 2000, is annexed hereto as "Exhibit "A", including a copy of Justice Wetzel's Decision, Order & Judgement.

3. This Affidavit is submitted in support of a motion for an order: (a) granting me, individually and as Coordinator of the Center for Judicial Accountability, Inc., intervention as of right, pursuant to CPLR §1012(a)(2), or by leave pursuant to CPLR §§1013 and 7802(d) so as to file this Affidavit, for consideration on the above-entitled appeal, or as *amicus curiae*, setting forth essential facts, based on direct, personal knowledge, in order to protect the Court against the fraud being perpetrated on it and the *pro se* Petitioner, Michael Mantell, by the Attorney General of the State of New York, representing the Commission; (b) postponing oral argument on Mr. Mantell's appeal, calendared for October 24, 2000, so that, by reason of the common issues it presents and in the interests of justice and judicial economy, it can be heard together with oral argument of my appeal and/or consolidated therewith; and (c) granting such other and further relief as to this Court may seem just and proper, including

disqualifying the Attorney General from representing the Commission, based on his demonstrable violation of Executive Law §63.1 by reason of his litigation misconduct; striking the Attorney General's Brief for Respondent as a fraud upon this Court and upon Mr. Mantell; imposing financial sanctions and costs sanctions upon the Attorney General and the Commission, pursuant to 22 NYCRR §130-1.1; and 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.

4. Pursuant to this Court's rule §600.2(a)(3) for motions, Mr. Mantell's Notice of Appeal invoking this Court's jurisdiction is annexed hereto as Exhibit "B", together with his Pre-Argument Statement and a copy of the September 30, 1999 Decision, Order & Judgment of Supreme Court of Justice Edward Lehner from which he appeals.

5. As herein demonstrated, the Attorney General's Brief for Respondent is not only false, but a deliberate fraud upon this Court, known as such by supervisory personnel in the Executive Office of the Attorney General's Office, including Attorney General Spitzer himself, and by the Commission. The extent of this fraud, however, is not known or appreciated by Mr. Mantell, an overburdened litigator in solo practice, who is not getting paid for this appeal, which is of his own case.

6. Consequently, Mr. Mantell cannot, unaided, adequately protect his own interest, let alone the larger public interest at stake in this appeal. This larger public interest has been adversely affected by Justice Lehner's decision, subverting the rights

of every person whose *facially-meritorious* judicial misconduct complaint the Commission dismisses, without investigation, in violation of Judiciary Law §44.1.

7. By contrast, I have the required direct, first-hand knowledge of the facts necessary to protect the unrepresented public interest, as well as to aid Mr. Mantell. Without these facts, the Court cannot begin to recognize the extent of the fraud being perpetrated on it by the Attorney General's Brief for Respondent. Nor can it protect the integrity of the appellate process from the defilement such Brief represents.

8. My knowledge of these facts is the product of my unparalleled familiarity with the two cases that the Attorney General's Brief describes (at p. 9) as "Sassower v. Commission on Judicial Conduct", with index numbers "109141/95 (Sup. Ct. N.Y. Co. 1995)" and "108551/95 (Sup. Ct. N.Y. Co. 1999) (appeal pending)" – of which the Attorney General has provided the Court with ten copies of each of the two unreported decisions[1] under a September 6, 2000 coverletter (Exhibit "C")[2]. The latter of these cases is my own Article 78 proceeding against the Commission, dismissed by Justice Wetzel's January 31, 2000 decision. The former, while not a case to which I am a party, is one with which I am fully familiar, as its *pro se* Petitioner is my mother, whom I assisted therein. It is the Article 78 proceeding, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York,*

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[1] It is not without significance that these decisions are unreported.

[2] Annexed thereto is a copy of the decision in *Doris L. Sassower v. Commission*, as transmitted to Mr. Mantell under the Attorney General's September 6, 2000 letter to the Court. [*See* Exhibit "A" herein for the decision in *E.R. Sassower v. Commission*].

dismissed by the unreported July 13, 1995 decision of Supreme Court Justice Herman Cahn.

The Significance of the Dismissal Decisions in *Doris L. Sassower v. Commission* and *Elena Ruth Sassower v. Commission* to Bolstering the Attorney General's False and Fraudulent Argument in Support of the Dismissal Decision in *Mantell v. Commission*

9. Of the 18 cases cited by the Attorney General's Brief (pp. ii – iii), *Doris L. Sassower v. Commission* and *Elena Ruth Sassower v. Commission* are the most important. Only these two – like Mr. Mantell's Article 78 proceeding – present challenges to the Commission by complainants, whose *facially-meritorious* complaints of judicial misconduct the Commission dismissed, without investigation.[3] However, unlike Mr. Mantell's Article 78 proceeding, resting on the Commission's mandatory duty under Judiciary Law §44.1 to investigate *facially-meritorious* complaints, the Article 78 proceedings against the Commission brought by my mother and myself challenge the constitutionality, *as written and as applied*, of the Commission's wholly discretionary and standard-less self-promulgated rule, 22 NYCRR §7000.3.

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[3] As to *Doe v. Commission on Judicial Conduct*, 124 A.D.2d 1067 (4th Dept. 1986), the Attorney General's Brief (at p. 8) expressly acknowledges that such case, relied on in Justice Lehner's appealed-from decision, involved an administrator's complaint. As to *Matter of Nicholson v. State Commission on Judicial Conduct* (50 N.Y.2d 597) (1980), the Attorney General's Brief (at p. 10) takes issue with Mr. Mantell's reliance on it, stating that it is "factually distinguishable" in that "Nicholson did not involve a decision by the Commission not to investigate a complaint" (emphasis in Attorney General's Brief). As to *Cunningham v. Stern*, 93 Misc.2d 516 (Sup. Ct., Erie and Niagara Co., 1978), cited in the Attorney General's Brief (at p. 14) for rhetorical purposes, it - like Nicholson -- "did not involve a decision by the Commission not to investigate a complaint".

10. It is to dilute the unmistakable investigative mandate imposed by Judiciary Law §44.1 on the Commission – from which the rights of Mr. Mantell and the public flow -- that the Attorney General's "Statutory Framework" (pp. 2-3) and his "Point I: Mandamus Does Not Lie to Compel the Commission to Investigate an Attorney's Complaint" (pp. 5-11) introduce 22 NYCRR §7000.3(a) and (b). Claiming they are part of the "Statutory Framework", the Attorney General alleges them to have been promulgated "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 they "follow the language of Judiciary Law §44(1)" (at pp. 3, 7-8, 9-10).

11. It is to deter an all-too-busy Court from discovering the falsity of these determinative assertions, for which this Court would have to take the time to examine Article VI, §22(c) of the Constitution and Judiciary Law §42.5 so as to discover the *express* restriction on the Commission's rule-making power which the Attorney General's Brief omits (at pp. 3, 7), and then to compare Judiciary Law §44.1 with 22 NYCRR §7000.3 so as to see that they are *facially irreconcilable*, that the Attorney General puts before this Court Justice Cahn's unreported decision upholding 22 NYCRR §7000.3 (Exhibit "C").

12. Indeed, from the Attorney General's standpoint, Justice Cahn's decision is a real tour-de-force. While the decision includes (at p. 2) the text of Article VI, §22(c) of the Constitution and Judiciary Law §42.5, each ***expressly*** restricting the Commission's rule-making power to those "not inconsistent with law",

it pretends, by "smoke and mirrors" verbiage and material misrepresentation of the record (at p. 4), that 22 NYCRR §7000.3 is viable because the Commission has "correctly interpreted" that the term "initial review and inquiry" in 22 NYCRR §7000.3 is subsumed within "the term 'investigate' as used in the constitution and statute".

13. In putting before this Court Justice Cahn's decision, the Attorney General expects the Court to accept it as a legitimate decision, reflective of the true facts and following applicable rules of law. Thus, he hopes to induce this Court's blind reliance on such precedent – much as Justice Wetzel relied on it in his decision (at p. 4), calling it "sound authority in its own right for the dismissal" of my Article 78 petition. Assuredly, the Attorney General expects that Justice Wetzel's *imprimatur* on Justice Cahn's decision will add to the aura of its reliability in the eyes of the Court. This, in addition to bolstering Justice Lehner's decision by having the Court read Justice Wetzel's characterization of it (at p. 5) as a "carefully reasoned and sound analysis of the very issue raised in [my Article 78] petition", and his express "adopt[ion of] Justice Lehner's finding that mandamus is unavailable to require the [Commission] to investigate a particular complaint."

The Attorney General's Knowledge of the Fraudulence of the Three Decisions on which He Would Have this Court Rely

14. Both the Attorney General and Commission are well aware that they are wilfully misleading this Court in putting before it the decisions of Justice Cahn and Justice Wetzel. They know that each decision is legally insupportable, that each

falsifies, fabricates, and distorts the underlying lower court record in every material respect, and that the true record in each case shows that the Attorney General relied on litigation misconduct to defend the Commission because he had NO legitimate defense. Indeed, they further know that Justice Lehner's decision, which they seek this Court to uphold on this appeal, is likewise legally insupportable and fraudulent, covering up a lower court record showing that the Commission had NO legitimate defense and was defended, by litigation misconduct, by the Attorney General.

15. Their knowledge that all three judicial decisions are fraudulent – as to which they have an absolute duty under ethical rules of professional responsibility to seek vacatur – is the result of my unremitting efforts, giving them full and actual notice thereof. This includes providing them with fact-specific, legally-supported analyses of each decision – the accuracy of which they never denied or disputed in any way.

16. As Justice Wetzel's decision disparagingly refers (at p. 5) to my "contention" that the decisions of Justice Cahn and Lehner are "corrupt" – as to which it makes no findings -- my analyses of these decisions, both of which were in the record before Justice Wetzel, are annexed as follows:

(a) My 3-page analysis of Justice Cahn's decision is Exhibit "D" herein. It was before Justice Wetzel as part of Exhibit "A" to my April 22, 1999 verified petition, and consists of the first three pages of CJA's December 15, 1995 letter to the

Assembly Judiciary Committee[4]. Said analysis[5] establishes the outright deceit of the critical assertion in the Attorney General's Brief (at p. 3) that 22 NYCRR §7000.3, *as written*, "follow[s] the language of Judiciary Law §44(1)" and of his pretense (at pp. 9-10) that there is some synonymous relationship between "investigation" and "initial review and inquiry"[6].

(b) My 13-page analysis of Justice Lehner's decision is Exhibit "E" herein. It was before Justice Wetzel as Exhibit "D" to my December 9, 1999 letter to him[7]. Said analysis establishes the deceit in virtually ALL of the Attorney General's Brief[8],

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[4] The Attorney General and Commission were both indicated recipients of the full December 15, 1995 letter – and provided with copies at that time.

[5] Point II of the Memorandum of Law, referred to at page 1 of the analysis, is annexed hereto as Exhibit "Y".

[6] Also clear from the analysis is that Justice Cahn's argument justifying 22 NYCRR §7000.3, *as written*, is entirely *sua sponte* and NOT, as he claims, the Commission's. Obviously, Mr. Mantell did not recognize such fact when he quoted Justice Cahn's argument, *verbatim*, in his Reply Brief (at p. 2) – an argument, which, in any event, Mr. Mantell disparages as "pure sophistry".

[7] As reflected by the receipt stamps on the first page of my December 9, 1999 letter to Justice Wetzel, the Attorney General's office and the Commission received their copies on December 10th (Exhibit "F-1"). My hand-delivery to them is recounted in footnotes 2 and 3 on the first two pages of my December 17, 1999 letter to Justice Wetzel (Exhibit "F-2").

[8] As Justice Lehner's decision did not dismiss Mr. Mantell's proceeding based on any "lack of standing", the analysis does not address "lack of standing", which the Attorney General's Brief introduces in his "Counterstatement" as the second "Question Presented" (at p. 2) and argues in his Point II (at pp. 11-14). However, because the Attorney General raised such noxious ground in moving to dismiss my Article 78 proceeding, the record of my proceeding contains arguments addressed thereto.

The Attorney General's citation to *Dairylea Cooperative, Inc. v. Walkley*, 38 N.Y.2d 6 (1975), *without* interpretive discussion in Point II of his Brief (at p. 12), makes my arguments in my September 24, 1999 Memorandum of Law (Exhibit "Z-3", pp. 56-57) particularly pertinent:

> "...the Attorney General's frivolous, bad-faith invocation of a "standing" defense...is manifest upon reading the commentary on the subject of standing in Siegel, New York Practice, §136 (1999 ed., pp. 223-5). Such commentary quotes and discusses *Dairylea*

and, in particular, the first of the "Questions Presented" in his "Counterstatement, his "Statutory Framework", and his "Point I". These mostly regurgitate and reformat, in a dizzying mishmash, Justice Lehner's legally-insupportable and specious arguments, exposed as such by my 13-page analysis (Exhibit "E"). Among these:

(a) that the issue before the Court is the availability of a writ of mandamus to compel, i.e. CPLR §7803(1) (at pp. 2, 5, 8, 11), omitting the relevance of CPLR §7803(3) to Mr. Mantell's claim that the Commission's dismissal of his judicial misconduct complaint was "affected by an error of law", was "arbitrary and capricious", and "an abuse of discretion" – exposed by the analysis (at pp. 3-5);

(b) that the Commission's "governing law" gives it discretion to dismiss a complaint (at pp. 1, 8) – exposed by the analysis (at pp. 5-9);

(c) that this "governing law" includes 22 NYCRR §7000.3, which "follow(s) the language of Judiciary Law §44(1)" (at p. 3) – exposed by the analysis (at p. 7);

(d) that the Commission is analogous to a public prosecutor and, therefore, not subject to judicial review (at pp. 10-11) – exposed by the analysis (at pp. 9-11);

Cooperative, Inc. v. Walkley, 38 N.Y.2d 6 (1975), a case cited in the Attorney General's dismissal motion (at p. 25), *without* interpretive discussion. According to the commentary:

> 'Although a question of 'standing' is not common in New York, its infrequent appearance is likely to be where administrative action is involved. A good example is *Dairylea Cooperative, Inc. v. Walkley*... The court said that '[o]nly where there is a clear legislative intent negating review...or lack of injury in fact will standing be denied.' The test today is a liberal one, according to *Dairylea*, and the right to challenge administrative action, articulated under the 'standing' caption, is an expanding one.
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> ...With the taxpayer suit having been expressly adopted in New York, and with the Court of Appeals having acknowledged that in general 'standing' is to be measured generously, the occasion for closing the court's doors to a plaintiff by finding that his interest is not even sufficient to let him address the merits, which is what a 'standing' dismissal means, should be infrequent. Ordinarily only the most officious interloper should be ousted for want of standing.'"

(e) that challenges to attorney disciplinary committees are "comparable" and demonstrate that the Commission "is not vulnerable to a writ of mandamus" and is "exempt from judicial review" (at pp. 11) – exposed by the analysis (at pp. 11-12).

These two analyses were further substantiated by a copy of the case file of each proceeding, which I provided and incorporated *physically* into the record of my proceeding. This, in an effort to safeguard the integrity of the judicial process from the Attorney General's attempts to have my public interest Article 78 proceeding dismissed based on the decisions of Justice Cahn and Lehner – notwithstanding repeated prior notice to him, as likewise to the Commission, ***in writing***, that these decisions were fraudulent. As hereinafter particularized, such repeated prior notice, like the copies of the files of the two proceedings, was in the record before Justice Wetzel.

(c) As to my analysis of Justice Wetzel's fraudulent decision – which, unlike my analyses of the decisions of Justice Cahn and Lehner are, obviously, not part of the record before Justice Wetzel – it has been in the possession of both the Attorney General and Commission for *more than six months* prior to the Attorney General's filing of his Brief herein[9]. That 14-page analysis, contained at page 15-29 of CJA's February 23, 2000 letter to Governor Pataki (Exhibit "G), is preceded by an 8-page description at page 6-14 of how Administrative Judge Stephen Crane "steered" the Article 78 proceeding to Justice Wetzel, in violation of random assignment rules, and notwithstanding both he and Justice Wetzel were disqualified for bias and self-

[9] *See* receipted first page of Exhibit "G", reflecting receipt by the Attorney General on February 25, 2000 and receipt by the Commission on March 3, 2000.

interest. The combined 22-page analysis fully substantiates my Pre-Argument Statement (Exhibit "A", pp. 4-6).

History of the Repeated Notice Received by the Attorney General and Commission as to the Fraudulence of the Three Decisions at Issue Before this Court

17. My repeated notice to the Attorney General and Commission of the fraudulence of Justice Cahn's decision is summarized at the very outset of my Article 78 verified petition. This may be seen from ¶¶EIGHTH through SIXTEENTH (Exhibit "H", pp. 4-6) and the first two exhibits of the verified petition to which they refer. The first of these, CJA's May 5, 1997 memorandum (Exhibit "I") to which the Attorney General and Commission were recipients, annexed, in addition to the 3-page analysis of Justice Cahn's decision, which they had repeatedly received over the years[10], my published Letter to the Editor, "*Commission Abandons Investigative Mandate*" (NYLJ, 8/14/95, p. 2) and CJA's $1,600 public interest ad, "*A Call for Concerted Action*" (NYLJ, 11/20/96, p. 3) – each emphasizing that the fraudulence of Justice Cahn's decision is *readily-verifiable* from the case file. The second of these, CJA's $3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4) (Exhibit "J"), emphasizing the Attorney General's *modus operandi* of litigation misconduct in cases in which he had NO legitimate defense, including in *Doris L. Sassower v. Commission* -- likewise, *readily-verifiable* from case files.

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[10] The 3-page analysis of Justice Cahn's decision is separately annexed herein as Exhibit "D".

18. This fact-specific presentation in my verified Article 78 petition (Exhibits "H", "I", "J") did not, however, restrain the Attorney General from proffering Justice Cahn's decision to advance a bogus *res judicata*/collateral estoppel defense in a May 24, 1999 motion to dismiss my proceeding. Said dismissal motion, from beginning to end, in virtually every line, falsified, distorted, and omitted the material allegations of my verified petition. As to my allegations that Justice Cahn's decision was "false" and "fraudulent" in ¶¶EIGHTH – SIXTEENTH, the Attorney General contended that this was a "conclusory claim". This deliberate misrepresentation was made in the face of the specificity of ¶NINTH (Exhibit "H", p. 4), as well as of the 3-page analysis of Justice Cahn's decision (Exhibit "D"), the accuracy of which I had attested at ¶FOURTEENTH (Exhibit "H", p. 6).

19. This resulted in my July 28, 1999 omnibus motion -- to which Justice Wetzel's decision refers (at p. 2). By that motion, I sought, *inter alia*, to disqualify the Attorney General for violation of Executive Law §63.1 and multiple conflicts of interest, as well as imposition of sanctions against Attorney General Spitzer *personally* and his executive and supervisory staff, for knowingly permitting the Assistant Attorneys General handling my Article 78 proceeding to engage in litigation misconduct constituting "perjury, filing of false instruments, conspiracy, obstruction of the administration of justice, and official misconduct" [7/28/99 Notice of Motion, #6].

20. The bulk of my submissions in my Article 78 proceeding – derided by Justice Wetzel's decision (at p. 4) as being "fourteen inches in height and requir[ing]

two court officers to deliver to chambers" – were submitted in support of my omnibus motion. These consisted of copies of documents I had supplied to Mr. Spitzer and his highest-level staff to enable them to verify the Attorney General's litigation misconduct in *Doris L. Sassower v. Commission* and Justice Cahn's fraudulent decision therein, as well as copies of correspondence imploring them to stop the litigation misconduct of the Assistant Attorneys General assigned to my Article 78 proceeding. Among the pertinent documents: a copy of the case file of *Doris L. Sassower v. Commission* – identical to the one that I had transmitted for Mr. Spitzer under a December 24, 1998 coverletter – as well as a subsequent January 27, 1999 letter to Mr. Spitzer (Exhibit "K")[11]. Such January 27, 1999 letter expressly put Mr. Spitzer "on notice of [his] mandatory obligations under professional and ethical rules to take corrective steps to vacate the fraudulent judicial decisions" featured in "*Restraining 'Liars'*" (Exhibit "J") – Justice Cahn's decision being the first of the cases so-featured by that public interest ad.

21. I personally gave the January 27, 1999 letter to Mr. Spitzer, ***in hand***, at the conclusion of a public exchange at the Association of the Bar of the City of New York. This is recited in my affidavit supporting my omnibus motion (at pp. 23-4) and reflected by the transcript of the exchange (Exhibit "L", pp. 13-14)[12]. Included among

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[11] Record reference for the January 27, 1999 letter to Attorney General Spitzer: Exhibit "D" to my affidavit in support of my July 28, 1999 omnibus motion.

[12] Record reference for the January 27, 1999 transcript exchange between me and Attorney General Spitzer: Exhibit "E" to my affidavit in support of my July 28, 1999 omnibus motion [transcript is Exhibit "B" thereto].

the exhibits to the January 27, 1999 letter (Exhibit "K") were copies of two letters, dated September 19, 1995 and January 13, 1998[13], delivered to Mr. Spitzer's predecessor, Attorney General Dennis Vacco, pertaining to his ethical and professional duty to take steps to vacate for fraud, *inter alia*, Justice Cahn's decision.

22. My supporting affidavit to my omnibus motion also recited (Exhibit "M", ¶102) that on July 26, 1999, I had a phone conversation with Attorney General Spitzer's counsel, David Nocenti, in which I detailed the litigation misconduct of the Assistant Attorneys General assigned to my Article 78 proceeding and my exhaustive – and completely unsuccessful -- attempts to obtain oversight by supervisory personnel. As recited therein, I asked Mr. Nocenti "that our phone conversation together be deemed notice to Mr. Spitzer (from whom he stated he was 'two doors' away)" that I was going to be seeking sanctions against Mr. Spitzer ***personally***. I told Mr. Nocenti I would provide him with a copy of my omnibus motion and pointed out the supervisory duty imposed on law firms by New York's Disciplinary Rules of the Code of Professional Responsibility.

23. Nonetheless, there was no abatement of the litigation misconduct of the assigned Assistant Attorneys General, whose opposition to my omnibus motion falsified, distorted, and concealed its evidence-supported allegations. Ignoring ¶¶NINTH and FOURTEENTH of my verified petition relating to the fraudulence of Justice Cahn's decision, both highlighted by my omnibus motion, they continued to

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[13] These are the only exhibits herein included to CJA's January 27, 1999 letter to Attorney General Spitzer.

maintain that Justice Cahn's decision provided a basis for dismissing my proceeding on *res judicata*/collateral estoppel grounds.

24. My September 24, 1999 reply papers reinforced my entitlement to sanctions against Mr. Spitzer *personally* and his executive level staff. Among the substantiating documents annexed to my reply affidavit was my August 6, 1999 letter to Mr. Spitzer (Exhibit "N")[14], transmitting to Mr. Nocenti a copy of my July 28, 1999 omnibus motion with a request that it be "immediately inspected, not only by [him]self, but by Attorney General Spitzer, *personally*".

25. Still, there was no cessation of the litigation misconduct by the primary Assistant Attorney General assigned, Carolyn Cairns Olson. Of this, I gave Mr. Nocenti continued notice by providing him with duplicate copies of my subsequent submissions in my Article 78 proceeding. Additionally, I provided him with copies of the extensive formal ethics and criminal complaints against the Attorney General and Commission which, beginning in September 1999, CJA filed with the New York State Ethics Commission, the Manhattan District Attorney, and the U.S. Attorneys for the Southern and Eastern District of New York, based on the Attorney General's litigation misconduct in my Article 78 proceeding, as well as in Mr. Mantell's Article 78 proceeding which had, by then, resulted in Justice Lehner's fraudulent decision. CJA's October 25, 1999 letter to Mr. Spitzer, transmitting two such criminal complaints for Mr. Nocenti's attention, is annexed hereto as Exhibit "O". All such

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[14] Record reference for my August 6, 1999 letter: Exhibit "A" to my September 24, 1999 Reply Affidavit in further support of sanctions against the Attorney General.

complaints, as well as CJA's October 25, 1999 letter, were part of the record before Justice Wetzel, annexed to my various court submissions[15].

26. My repeated notice to the Attorney General and Commission as the fraudulence of Justice Lehner's decision is, like the notice of Justice Cahn's fraudulent decision, all part of the record of my Article 78 proceeding before Justice Wetzel. Illustrative is CJA's memorandum to the Attorney General and Commission, dated October 29, 1999 (Exhibit "P")[16], transmitting copies of an ethics complaint against them, based on their litigation misconduct in Mr. Mantell's proceeding, and constituting notice to them of their ethical duty to take corrective steps to vacate Justice Lehner's "palpably fraudulent dismissal decision". This memorandum is one of several written communications identifying the fraudulence of Justice Lehner's decision, which the Attorney General and Commission received *prior* to the further litigation misconduct of Assistant Attorney General Olson by her December 6, 1999

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[15] Record references: CJA's September 15, 1999 ethics complaint to the NYS Ethics Commission is Exhibit "G" to my September 24, 1999 Reply Affidavit; CJA's September 7, 1999 criminal complaint to the U.S. Attorney for the Eastern District of New York is Exhibit "H" to my September 24, 1999 Reply Affidavit; CJA's October 21, 1999 criminal complaint to the Manhattan District Attorney is Exhibit "G" to my November 5, 1999 letter to Acting Supreme Court Justice Barbara Kapnick; CJA's October 21, 1999 criminal complaint to the U.S. Attorney for the Southern District of New York is Exhibit "H" to my November 5, 1999 letter to Justice Kapnick; CJA's October 27, 1999 ethics complaint to the NYS Ethics Commission is Exhibit "J" to my November 5, 1999 letter to Justice Kapnick; CJA's October 25, 1999 letter to Mr. Spitzer is Exhibit "I" to my November 5, 1999 letter to Justice Kapnick.

[16] Record reference for the October 29, 1999 memorandum to the Attorney General and Commission: Exhibit "C" to my December 9, 1999 letter to Justice Wetzel.

request to Justice Wetzel that he use Justice Lehner's decision as authority for dismissing my Article 78 proceeding[17].

27. My repeated notice to the Attorney General and the Commission as to the fraudulence of Justice Wetzel's decision, which is not part of the record of my Article 78 proceeding, began with CJA's February 7, 2000 memorandum to the Attorney General and Commission (Exhibit "Q"), faxed to them on that date. This memorandum explicitly "put [them] on notice of [their] ethical and professional duty to take steps to protect the integrity of the judicial process, wilfully subverted by Acting Supreme Court Justice William A. Wetzel". It further asserted "The fraudulence of the decision, brazenly falsifying and fabricating the Article 78 record in EVERY material respect... is evident from the most cursory examination of that record – copies of which you each have." The memorandum demanded that they "expeditiously move to vacate Justice Wetzel's decision/order for fraud" and, also, the fraudulent decisions of Justice Cahn and Lehner, relied on by Justice Wetzel to dismiss my proceeding.

28. Hard copies of the February 7, 2000 memorandum (Exhibit "Q") were delivered to the Attorney General and Commission in conjunction with CJA's

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[17] Record references for such prior notice of the fraudulence of Justice Lehner's decision appear in my December 9, 1999 letter to Justice Wetzel (at pp. 8-9) which lists: (1) my December 2, 1999 letter to Justice Wetzel (at p. 3); (2) my November 5, 1999 letter to Justice Kapnick (at pp. 5-7); (3) Exhibits "G", "H", and "I" to my November 5, 1999 letter to Justice Kapnick, consisting of CJA's October 21, 1999 letter to the Manhattan District Attorney; CJA's October 21, 1999 letter to the U.S. Attorney for the Southern District of New York; and CJA's October 27, 1999 letter to the New York State Ethics Commission – each of which had been hand-delivered to Attorney General Spitzer's executive offices, as well as to the Commission, as free-standing documents.

February 23, 2000 letter to the Governor (Exhibit "G"), which, in addition to containing the analysis of Justice Wetzel's fraudulent decision (at pp. 14-29), called upon the Governor (at p. 33-34) to appoint a special prosecutor or investigative commission to investigate the Commission's readily-verifiable corruption, established by the record of all three Article 78 proceedings. Accompanying delivery to the executive suite of the Attorney General's office, on February 25, 2000, was a memorandum of that date (Exhibit "R"), to which the Attorney General was the first indicated recipient. The opening sentence of that February 25, 2000 memorandum identifies my Article 78 proceeding as "the third proceeding against the Commission on Judicial Conduct to be 'thrown' by a fraudulent judicial decision of the Supreme Court/New York County in the past five years" and calls for the Attorney General, among other criminal and disciplinary authorities, to "vacate the decision for fraud, and... initiate disciplinary and criminal prosecutions based thereon."

29. By the time the aforesaid materials were hand-delivered to the Commission, on March 3, 2000, it was with two additional documents: CJA's March 3, 2000 judicial misconduct complaint against Justices Wetzel and Administrative Judge Crane (Exhibit "S"), based on the analysis of their judicial misconduct in my Article 78 proceeding, as particularized in CJA's February 23, 2000 letter to the Governor (Exhibit "G", pp. 15-29, 6-14), as well as CJA's March 3, 2000 letter to Chief Judge Kaye (Exhibit "T"), highlighting the fraudulent judicial decisions of Justices Cahn, Lehner, and Wetzel, for which CJA requested that she designate a "Special Inspector General" to investigate.

30. Copies of CJA's March 3, 2000 judicial misconduct complaint against Justices Wetzel and Crane and March 3, 2000 letter to Chief Judge Kaye were sent to the Attorney General, certified mail/return receipt[18], under a March 17, 2000 memorandum (Exhibit "U"), to which the Attorney General was the first indicated recipient and which enclosed CJA's further letters to the Manhattan District Attorney and the U.S. Attorneys for the Southern and Eastern District of New York. The Commission, likewise, was sent, by certified mail/return receipt[19], the March 17, 2000 memorandum and these further letters.

31. The Attorney General and the Commission received additional correspondence under an April 24, 2000 memorandum (Exhibit "V"), concerning the "*readily-verifiable* proof of the corruption of the New York State Commission on Judicial Conduct, including its corruption of the judicial process to defeat the three most recent Article 78 proceedings against it in Supreme Court/NY County (#95-109141; #99-108551; 99-108655)".

32. Ever since April 24, 2000, the Commission has continued to receive voluminous correspondence from CJA pertaining to the three fraudulent decisions of Justices Cahn, Lehner, and Wetzel – of which it is the beneficiary. This has included CJA's August 3, 2000 judicial misconduct complaint against Chief Judge Kaye (Exhibit "W"), based on her failure to discharge her mandatory administrative and

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[18] *See* Exhibit "U" for appended certified mail/return receipt: Z-294-568-941.

[19] *See* Exhibit "U" for appended certified mail/return receipt: Z294-568-953.

disciplinary duties under §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct.

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

33. Based upon the foregoing, 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").

34. As reflected by the documents in the record herein, Assistant Attorney General Speres is not appearing for the first time on this appeal. He also appeared before Justice Lehner, representing the Commission against Mr. Mantell's Article 78 proceeding. This was simultaneous to Assistant Attorney General Olson's representing the Commission against my Article 78 proceeding.

35. Although Mr. Mantell's Article 78 proceeding was commenced within days of my own in April 1999 – and, like mine, in Supreme Court/New York County – for nearly half a year we were wholly unaware of each other's proceeding. Mr. Speres, however, seems to have been quite familiar with Ms. Olson's defense against

my proceeding. Of the four points of his "Argument" in his Memorandum of Law supporting his June 23, 1999 motion to dismiss Mr. Mantell's verified Article 78 petition [R-57-69], two replicated, *verbatim*, portions of points in Ms. Olson's May 24, 1999 motion to dismiss my verified Article 78 petition, with two others being substantially similar[20].

36. I only discovered this fact – and indeed the very existence of Mr. Mantell's Article 78 proceeding – after a front-page, above-the-fold story about Justice Lehner's decision appeared in the October 5, 1999 New York Law Journal under the eye-catching headline, "*State Commission Can Refuse to Investigate Judge*". It was then that I immediately contacted Mr. Mantell, arranged to review and copy his litigation file, and compared Mr. Speres' dismissal motion with Ms. Olson's.

37. This is recounted in my November 5, 1999 letter to Acting Supreme Court Justice Kapnick (at p. 5), wherein I also recited an October 8, 1999 conversation I had with Ms. Olson about Mr. Mantell's Article 78 proceeding:

> "She would not respond to my question as to the Attorney General's procedure for assigning attorneys to related cases, nor as to why she had not been assigned to handle Mr. Mantell's concurrent proceeding. She did, however, admit that she was fully familiar with it and that 'absolutely' she knew that substantial portions of Mr. Speres' dismissal motion therein were *verbatim* identical to her dismissal motion herein." (at p. 7).

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[20] The identical Points are ALL of Mr. Speres' Point III, "Petitioner's Claim is Non-Justiciable" [R-63-66], except for its first and last paragraphs; and ALL of Mr. Speres' Point IV, "Petitioner Lacks Standing to Sue" [R-66-69]. The substantially similar Points are Mr. Speres' Point I, "Commission's Decision to Dismiss Petitioner's Complaint was Neither Arbitrary, Capricious, Nor Contrary to Law and Should be Upheld" [R-57-60]; and Mr. Speres' Point II, "A Proceeding in the Nature of Mandamus is Inappropriate Because it Seeks to Compel a Purely Discretionary Act" [R-60-63].

38. As it is logical that the Attorney General would have assigned the same Assistant Attorney General to handle "concurrent Article 78 proceedings against the Commission, involving similar issues", my November 5, 1999 letter postulated that the reason this had not been done was:

> "to reduce the culpability of the Assistant Attorney General handling Mr. Mantell's proceeding who would be making representations therein that either already were – or were likely to be – exposed as frivolous and fraudulent in my proceeding."[21] (at p. 7)

39. The Attorney General never countered this thesis or provided a different explanation as to why Mr. Mantell's proceeding and my own were not handled by the same Assistant Attorney General.

40. I did try to get further information on the subject through a Freedom of Information Law request to the Attorney General's office. CJA's December 6, 1999 F.O.I.L. request (Exhibit "X-3") sought access to publicly-available documents as to:

> "the Attorney General's procedures, pursuant to CPLR §7804(c), upon receipt of Article 78 proceedings and, in particular, Article 78 proceedings against the NYS Commission on Judicial Conduct."

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[21] My November 5, 1999 letter to Justice Kapnick provided an illustrative example of this. Identifying that footnote 1 of Mr. Speres' June 23, 1999 Memorandum of Law to dismiss Mr. Mantell's Article 78 proceeding was identical to the initial paragraph of footnote 1 of Ms. Olson's May 24, 1999 Memorandum of Law to dismiss my Article 78 proceeding, I stated:

> "In both the Attorney General falsely purported that Executive Law §63 and *Sassower v. Signorelli*, 99 A.D 2d 358 (2d Dept. 1984) – each presented *without* discussion – entitles the Commission to his representation. That the Attorney General's office knew this to be false when Mr. Speres interposed the June 23rd Memorandum in Mr. Mantell's proceeding may be seen from my statements at the June 14th court conference in the presence of Ms. Olson about both Executive Law §63.1 and *Sassower v. Signorelli* (Tr. pp. 18-21)." (at p. 6)

41. The Attorney General's response that "[n]o documents exist that are responsive to this request" was in the very March 13, 2000 letter (Exhibit "X-8") as identified that Mr. Speres works in the same "Section 'D'" of the Attorney General's office as Ms. Olson[22] and that it consists of only six attorneys, whose responsibilities include representing the "Office of Court Administration" and "State Judges".

42. Obviously, the small size of Section "D" makes it unlikely, in the extreme, for Mr. Speres not to be familiar with my voluminous submissions in my Article 78 proceeding, including their appended analyses of the fraudulent decisions of Justices Cahn and Lehner (Exhibits "D" and "E"). Mr. Speres' desk may be presumed to be in reasonably close physical proximity to that of Assistant Attorney General Olson, with whom, assuredly, he has had many occasions to speak.

43. It is also reasonable to assume that Mr. Speres consulted with his client, the Commission, before preparing the Brief – or, at very least, that the Commission's counsel reviewed his draft before Mr. Speres finalized it for filing. Indeed, reflecting contact with the Commission is the copy of Justice Cahn's unreported decision that Mr. Speres sent Mr. Mantell under his September 6, 2000 letter to the Court (Exhibit "C"). It bears a fax line, identifying its source, as follows:

"JUDICIAL CONDUCT FAX: 212-949-8804 Aug 31 '00"

From this may be seen that the copy of Justice Cahn's 1995 decision that Mr. Speres supplied to the Court was obtained from the Commission itself.

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[22] The curriculum vitae of Mr. Speres and Ms. Olson, which the Attorney General transmitted in response to CJA's initial October 15, 1999 F.O.I.L. request, is annexed to Exhibit "X-6".

44. If by some truly extraordinary stretch of the imagination Mr. Speres was ignorant of CJA's 3-page analysis of Justice Cahn's decision when he put that decision and Justice Wetzel's before this Court, it would mean that he works in some hermetically-sealed vacuum at the Attorney General's office, without contact with colleagues and supervisory personnel, and that the Commission led him to commit fraud upon the Court and Mr. Mantell by withholding from him the salient facts it knew about these decisions, as likewise, about Justice Lehner's decision, by virtue of the three analyses (Exhibits "D", "E", and "G") and CJA's exhaustive advocacy.

45. Tellingly, despite repeated reminders (Exhibits "X-7", "X-9", "X-10") the Attorney General's office has not responded to that branch of CJA's December 6, 1999 F.O.I.L. request (Exhibit "X-3") seeking publicly-available documents as to:

> "the Attorney General's procedures for ensuring the workproduct of assistant attorneys general assigned to defense of Article 78 proceedings and, in particular, those against the NYS Commission on Judicial Conduct."[23]

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[23] Despite even more reminders, the Attorney General has also not responded to that branch of CJA's October 15, 1999 F.O.I.L. request (Exhibit "X-1") as sought:

> "access to the litigation files of all cases, state and federal, in which the New York State Attorney General defended the New York State Commission on Judicial Conduct, sued by complainants for not pursuing their judicial misconduct complaints."

Obviously, access to such case files would permit determination as to whether the Attorney General's *modus operandi* of defense misconduct, already documentarily established as to the three most recent Article 78 proceedings against the Commission in Supreme Court/New York County, extends to such other cases.

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

46. The issues before this Court on Mantell's appeal – whether framed by Mr. Mantell's accurate "Statement of Questions Presented" or by the Attorney General's deceptive and repugnant "Counterstatement of Questions Presented" – require the Court to examine "the governing law" pertaining to the Commission, as well as the public policy reasons that led to the Commission's being established, *first* by legislative enactment and *then* by constitutional amendment.

47. These issues are already comprehensively presented in the record of my Article 78 proceeding, containing pertinent legislative history, rules of statutory interpretation, determinative legal principles, and probative evidence. These are necessary components to this appeal – and all the more so in view of the Attorney General's false and deceitful advocacy in his Brief for Respondent, containing ***no*** legislative history, *no* rules of statutory interpretation, *no* applicable legal principles, and *no* probative evidence.

48. As illustrative of the essential presentation on the legal questions on this appeal found in the record of my Article 78 proceeding – quite apart from the uncontroverted legal presentations in CJA's analyses of the fraudulent decisions of Justice Cahn and Lehner (Exhibits "D" and "E"):

49. On the issue of "the governing law" of the Commission: Point II of the Memorandum of Law (Exhibit "Y") referred to at page 1 of CJA's 3-page analysis of Justice Cahn's decision (Exhibit "D"). The accuracy of Point II's content was

completely undenied and undisputed by the Attorney General and Commission in the record of *Doris L. Sassower v. Commission*, where it was originally presented, and, thereafter, in the record of my Article 78 proceeding, in which its significance was additionally highlighted.

50. On the separate and distinct meaning of "initial review and inquiry" and "investigation": Page 29 of my July 28, 1999 Memorandum of Law (Exhibit "Z-1"), quoting (at fn. 31) from the American Judicature Society's Practices and Procedures of State Judicial Conduct Organizations (1990*), based on information supplied by the Commission's own Administrator.* The accuracy of the citation therein – and its relevance in further establishing the Commission's knowledge of the fraudulence of Justice Cahn's decision – are completely undenied and undisputed by the Attorney General or Commission.

51. On the right to judicial review of agency determinations: Pages 72-73 (fn. 45) of my July 28, 1999 Memorandum of Law (Exhibit "Z-2"), quoting from the New York Court of Appeals' decision in *NYC Department of Environmental Protection v. NYC Civil Service Commission, et al.*, 78 NY2d 318 (1991). The controlling significance of this case was not denied or disputed by the Attorney General or Commission – and, conspicuously, Mr. Speres's Brief fails to put the case before this Court.

52. On "standing" to seek judicial review: Pages 56-57 of my Reply Memorandum of Law (Exhibit "Z-3"), quoting the commentary in Siegel, New York Practice, §136 (1999 ed., pp. 223-5), which discusses and quotes *Dairylea*

Cooperative v. Walkley, 38 NY2d 6 (1975). Neither the Attorney General nor Commission denied or disputed the accuracy of such commentary and discussion, rebutting their false and misleading "standing" defense for which they had cited *Dairylea*, without interpretive discussion[24]. Mr. Speres' citation to *Dairylea* in his Brief (at p. 12) is, likewise, without interpretive discussion.

53. Since the issues on this appeal will also be before this Court on my soon-to-be perfected appeal of Justice Wetzel's decision (Exhibit "A"), which relies on Justice Lehner's decision as "a carefully reasoned and sound analysis of the very issue raised in the within petition" (p. 5), it is plainly in the interest of judicial economy for the Court to postpone argument on Mr. Mantel's appeal so that it can be heard together with mine and, if deemed appropriate, consolidated therewith.

54. There is absolutely no prejudice by the granting of such relief, which would further safeguard the integrity of the appellate process herein. On the contrary, the public interest at stake herein will be compromised if such relief were not granted.

The Wilful and Deliberate Fraud Upon the Court Perpetrated by the Attorney General and Commission Mandates Forceful Action by the Court

55. The demonstrated fraud complicitously perpetrated upon this Court by the Attorney General, with the Commission's knowledge and consent, calls for decisive action by this Court.

56. This is all the more necessary as the Attorney General is this State's highest law enforcement officer and the Commission is the State agency whose duty

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[24] *See* fn. 8 herein.

it is to uphold judicial standards. Their blatant official misconduct, designed to corrupt the appellate process in a case where the public's fundamental rights are so dramatically at stake, must result in severe penalties against them. Otherwise, disciplinary rules, sanction provisions, and criminal statutes will have no meaning.

57. Not only are the Attorney General and Commission chargeable with knowledge of those disciplinary rules, sanction provisions, and criminal statutes, but the record of my Article 78 proceeding gave them ample notice thereof. This, in the context of my July 28, 1999 omnibus motions to disqualify the Attorney General and for sanctions against him and the Commission, which included my request that they be referred for disciplinary and criminal investigation and prosecution. Reflecting the clarity of this notice are pages 5-12 of my July 28, 1999 Memorandum of Law in support of my omnibus motion (Exhibit "AA"). The "Applicable Ethical and Legal Provisions" set forth therein include this Court's Disciplinary Rules of the Code of Professional Responsibility, 22 NYCRR §§1200 *et seq.*, among them, 22 NYCRR §1200.3(a)(4) proscribing "conduct involving dishonesty, fraud, deceit, or misrepresentation"; §1200.3(5) "conduct that is prejudicial to the administration of justice"; 1200.33(a)(1) "knowingly mak[ing] a false statement of law or fact"; §1200.33(a)(5) "[k]nowingly mak[ing] a false statement of law or fact; Judiciary Law §487, "Misconduct by attorneys"; and 22 NYCRR §130-1.1 [Part 130-1.1 of the Chief Administrator's Rules].

58. Such Memorandum of Law further gave notice of §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, which the Commission is

charged with enforcing. Such rule imposes upon a judge mandatory "Disciplinary responsibilities" – such as would bind this Court:

> "A judge who received information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility *shall* take appropriate action" (Exhibit "AA", p. 6, *see* also, fn. 11 therein)

59. Consistent with the facts evidentiarily established by this Affidavit, it should be obvious that this Court is duty-bound to "take appropriate action" against the Attorney General and Commission. To do otherwise, would be to countenance the knowing and deliberate subversion of the appellate process herein by fraud[25] – and to irreparably damage the "public trust and confidence in the legal system" which Chief Judge Kaye has established a committee to specifically promote and whose recommendations include that "Judges should be required to report unethical attorney conduct."[26]

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[25] Fraud is so inimical to the legal process that "The inherent power of a court to set aside its judgment which was procured by fraud and misrepresentation cannot be doubted", *Matter of Lyons v. Goldstein*, 290 N.Y. 19 (1943).

See, also, Matter of Hogan v. N.Y. Supreme Court, 295 N.Y.92 (1946), at 96:

> "It is an old, old principle that a duly constituted court, even in the absence of express statutory warrant, has the right 'to exercise so efficient a control over every proceeding in an action as to effectually protect every person actually interested in the result, from injustice and fraud, and that it will not allow itself to be made the instrument of wrong, no less on account of its detestation of every thing conducive to wrong than on account of that regard which it should entertain for its own character and dignity' (*Baldwin v. Mayor &c. of New York*, 42 Barb. 549, 550, affd. 45 Barb. 359)."

[26] *See* p. 34 of the May 1999 Report to the Chief Judge and Chief Administrative Judge by the Committee to Promote Public Trust and Confidence in the Legal System.

60. Such mandate judicial action should, *sua sponte*, include striking the Attorney General's Brief, as well as imposing monetary sanctions and awarding costs pursuant to 22 NYCRR §130-1.1, and directing the Attorney General and Commission for disciplinary and criminal prosecution – which relief I further explicitly seek. However, it should also include a declaration that the Attorney General's representation of the Commission herein, founded as it is on wholly fraudulent defenses, is a knowing violation of Executive Law §63.1 – the sole statutory authority Assistant Attorney General Speres cited to justify representing the Commission before Justice Lehner [R-54][27].

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[27] As the record shows [R-54], Mr. Speres' citation to Executive Law §63.1 was in footnote 1 to his July 23, 1999 Memorandum of Law in support of his motion to dismiss Mr. Mantell's Article 78 proceeding. He followed this by a single case citation to "Sassower v. Signorelli, 99 A.D.2d 358 (2d Dept. 1984)". As set forth at fn. 21 herein, this footnote 1 replicated the initial paragraph of footnote 1 of Ms. Olson's May 24, 1999 Memorandum of Law in support of her motion to dismiss my Article 78 proceeding. My responding July 28, 1999 Memorandum of Law, as to *Sassower v. Signorelli*, was as follows:

> "Since *Sassower v. Signorelli* confines discussion of Executive Law §63.1 to a single sentence which palpably misrepresents the statute by its assertion, without analysis or discussion, that 'The Attorney General, by statute (Executive Law §63, subd 1) is 'required to represent'' a public official sued in litigation, citation to the case serves no purpose but to further mislead the Court as to what Executive Law §63.1 *actually* says..." (at p. 35)

Inasmuch as Justice Wetzel's relies on *Sassower v. Signorelli* in his Decision (at p. 6) as "[a]uthority" for his injunction against me and CJA, it is appropriate that I identify the further information about the case which was before Justice Wetzel as part of my aforesaid July 28, 1998 Memorandum of Law:

> "...the *pro se* plaintiffs in *Sassower v. Signorelli* are [my] judicial whistle-blowing attorney parents, who the Appellate Division, Second Department 'cautioned' for their supposedly frivolous litigation in connection with a lawsuit against the Suffolk County Surrogate, enjoining them from further litigation therein. *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.*" (at p. 35,

61. The record in my Article 78 proceeding establishes that, over and again, I gave the Attorney General repeated notice 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'"[28].

62. There is NO state interest served by fraud – and the fact that a fraudulent defense is required to sustain the Commission's position reflects the absence of any legitimate defense in which the state would have an "interest". Consequently, the Attorney General's fraudulent defense of the Commission on this appeal must be seen as violative of Executive Law §63.1, with the Attorney General disqualified by reason thereof.

WHEREFORE, it is respectfully prayed that the Court grants the relief requested in my accompanying Notice of Motion so that it can have before it a full and fair record in order that justice may be done.

Elena Ruth Sassower

ELENA RUTH SASSOWER

Sworn to before me this
21st day of September 2000

MICHAEL MANTELL
Notary Public, State of New York
No. 2516116
Qualified in Rockland County
Commission Expires May 31, 2001

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emphases added) [note: the Memorandum of Law places this latter sentence in a footnote to the previous sentence]

[28] *See* p. 35 of my July 28, 1999 Memorandum of Law in support of my omnibus motion to disqualify the Attorney General and for sanctions, etc.; and pp. 24-27, 35 of my September 24, 1999 Reply Memorandum of Law.

Michael Mantell v. NYS Commission on Judicial Conduct
S.Ct/NY Co. #99-108655
Appellate Division, First Dept. Cal. #2000-3833

INVENTORY OF EXHIBITS
to Elena Ruth Sassower's September 21, 2000 Affidavit
in Support of her Motion

Exhibit "A":	Notice of Appeal and Pre-Argument Statement in *Elena Ruth Sassower v. Commission*, with January 31, 2000 Decision, Order & Judgment of Justice William Wetzel
Exhibit "B":	Notice of Appeal and Pre-Argument Statement in *Michael Mantell v. Commission*, with September 30, 1999 Decision, Order & Judgment of Justice Edward Lehner
Exhibit "C":	Attorney General's September 6, 2000 letter to Clerk of the Appellate Division, First Department, with July 13, 1995 Decision, Order & Judgment of Herman Cahn in *Doris L. Sassower v. Commission*
Exhibit "D":	First three pages of CJA's letter to Assembly Judiciary Committee constituting its 3-page analysis of Justice Cahn's July 13, 1995 Decision
Exhibit "E:	CJA's 13-page analysis of Justice Lehner's September 30, 1999 Decision
Exhibit "F-1":	Receipted first page of CJA's December 9, 1999 letter to Justice Wetzel
"F-2":	First two pages of CJA's December 17, 1999 letter to Justice Wetzel, containing footnotes 2 and 3

Exhibit "G": CJA's February 23, 2000 letter to Governor Pataki, containing its analysis of Justice Wetzel's January 31, 2000 Decision at pages 15-29, with a recitation of Administrative Judge Crane's misconduct in "steering" the case at pages 6-14

Exhibit "H": Pages 4-6 of the Verified Petition in *Elena Ruth Sassower v. Commission*, containing ¶¶EIGHTH - SIXTEENTH

Exhibit "I": CJA's May 5, 1997 memorandum-challenge, annexing CJA's Letter to the Editor "*Commission Abandons Investigative Mandate*" (NYLJ, 8/14/95) and $1,600 public interest ad, "*A Call for Concerted Action*" (NYLJ, 11/20/96, pp. 3)

Exhibit "J": CJA's $3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4)

Exhibit "K": CJA's January 27, 1999 letter to Attorney General Spitzer, with CJA's September 19, 1995 and January 13, 1998 letters to Attorney General Vacco annexed thereto as Exhibits "B-1" and "B-2", respectively

Exhibit "L": Pages 1, 13-14 of transcript of the January 27, 1999 program at the Association of the Bar of the City of New York, containing the public exchange between Elena Sassower and Attorney General Spitzer

Exhibit "M": Pages 47-48 of Elena Sassower's July 28, 1998 Affidavit in Support of Her Omnibus Motion, containing ¶102

Exhibit "N": Elena Sassower's August 6, 1999 letter to Attorney General Spitzer

Exhibit "O": CJA's October 25, 1999 letter to Attorney General Spitzer

Exhibit "P": CJA's October 29, 1999 memorandum to Attorney General Spitzer and the Commission

Exhibit "Q": CJA's February 7, 2000 memorandum to Attorney General Spitzer and the Commission

Exhibit "R": CJA's February 25, 2000 memorandum to Attorney General, *et al.*

Exhibit "S": CJA's March 3, 2000 judicial misconduct complaint against Acting Supreme Court Justice Wetzel and Chief Administrative Judge Crane

Exhibit "T": CJA's March 3, 2000 letter to Chief Judge Kaye

Exhibit "U": CJA's March 17, 2000 memorandum to Attorney General, *et al.*

Exhibit "V": CJA's April 24, 2000 memorandum to Attorney General, *et al.*

Exhibit "W": CJA's August 3, 2000 judicial misconduct complaint against Chief Judge Kaye

Exhibit "X-1": CJA's October 15, 1999 letter to Attorney General
"X-2" Attorney General's October 15, 1999 letter to CJA
"X-3": CJA's December 6, 1999 letter to Attorney General
"X-4": Attorney General's December 14, 1999 letter to CJA
"X-5": Attorney General's January 19, 2000 letter to CJA
"X-6": Attorney General's February 1, 2000 letter to CJA
"X-7": CJA's February 25, 2000 letter to Attorney General
"X-8": Attorney General's March 13, 2000 letter to CJA
"X-9": CJA's March 22, 2000 letter to Attorney General

"X-10": CJA's April 24, 2000 letter to Attorney General

Exhibit "Y": Point II of Doris Sassower's Memorandum of Law in *Doris L. Sassower v. Commission* – referred to in CJA's 3-page analysis of Justice Cahn's Decision [Exhibit "D" herein]

Exhibit "Z-1": Page 29 (fn. 31) of Elena Sassower's July 28, 1999 Memorandum of Law in support of her Omnibus Motion in *Elena Ruth Sassower v. Commission*

"Z-2": Pages 72-73 (fn. 45) of Elena Sassower's July 28, 1999 Memorandum of Law in Support of her Omnibus Motion in *Elena Ruth Sassower v. Commission*

"Z-3": Pages 56-57 of Elena Sassower's September 24, 1999 Reply Memorandum of Law in support of her Omnibus Motion in *Elena Ruth Sassower v. Commission*

Exhibit "AA": Pages 5-12 of Elena Sassower's July 28, 1999 Memorandum of Law in support of her Omnibus Motion in *Elena Ruth Sassower v. Commission*