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

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.

**NOTICE OF MOTION
FOR REARGUMENT**

App. Div. 1st Dept. #5638
S.Ct./NY Co. #108551/99

PLEASE TAKE NOTICE that upon the annexed Affidavit of Petitioner-Appellant *Pro Se* ELENA RUTH SASSOWER, sworn to on January 17, 2002, 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 Thursday, February 7, 2002 at 10:00 a.m., or as soon thereafter as Respondent-Respondent and its counsel can be heard for an order:

1. Granting reargument of this Court's December 18, 2001 decision & order, recalling and vacating same, and referring this appeal for adjudication to the Appellate Division, Fourth Department, as requested by Petitioner-Appellant's August 17, 2001 motion.

2. Granting such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on or before January 31, 2002.

January 17, 2002

Yours, etc.

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

TO: ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorney for Respondent-Respondent
120 Broadway
New York, New York 10271
(212) 416-8020

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT
Respondent-Respondent
801 Second Avenue
New York, New York 10017
(212) 949-8860

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AFFIDAVIT

App.Div. 1st Dept. #5638
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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 Petitioner-Appellant *Pro Se* in the above-entitled public interest Article 78 proceeding against Respondent-Respondent, the New York State Commission on Judicial Conduct [hereinafter "Commission"], and fully familiar with all the facts, papers, and proceedings heretofore had herein.

2. This Affidavit is submitted in support of a motion for reargument of this Court's December 18, 2001 decision & order and, upon the granting of same, for the decision & order to be recalled and vacated and this appeal referred for adjudication to the Appellate Division, Fourth Department, as requested by my August 17, 2001 motion.

3. This reargument motion is timely, having been made within 30 days of the December 18, 2001 decision & order (Exhibit "A-1"), as required by §600.14(a) of this Court's rules.

4. Pursuant to §600.14(a), I am required to "concisely state the points claimed to have been overlooked or misapprehended by the court, with proper reference to the particular portions of the record and the authorities relied upon."

5. At bar, the Court "overlooked or misapprehended" EVERY "point[]" presented by my appellate submissions and ALL the uncontroverted, documented facts and controlling law on which they are based. Demonstrating this, as "concisely" as possible, "with proper reference to the particular portions of the record and the authorities relied upon", is my 19-page, single-spaced January 7, 2002 memorandum-notice to the Attorney General and Commission (Exhibit "B-1")[1]. To avoid needless duplication, I incorporate this memorandum-notice by reference. It presents a line-by-line analysis of the Court's seven-sentence December 18, 2001 decision & order [hereinafter "decision"], demonstrating that it

> "perverts the most basic adjudicative standards and obliterates anything resembling the rule of law. This would be *immediately* obvious had the five-judge panel made *any* findings as to the state of the record and identified *any* of my appellate arguments with respect thereto. Instead, by bald and misleading claims and by citation to cases it does *not* discuss, the panel flagrantly falsifies the state of the record and knowingly misrepresents legal principles and their applicability. This,

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[1] For the convenience of the Court, the three exhibits which the January 7th memorandum-notice annexed are separately appended to this Affidavit as follows: (1) Exhibit "A-2" herein is this Court's December 18th decision, as published in the December 20th New York Law Journal – with the sentences numbered for ease of reference; (2) Exhibit "C" herein is my improvised record of the November 21st oral argument of my appeal; and (3) Exhibit "D" herein is my November 30th letter to the Court to supplement the record pursuant to §600.11(f)(4) of the Court's rules.

to 'protect' the Commission and those complicitous in its corruption from the consequences of an adjudication based on the *uncontroverted* documented facts in the record and the *uncontroverted* law pertaining to those facts.

As such, the [Court's] decision – like the fraudulent decision of Justice Wetzel it affirmed – is a criminal act..." (Exhibit "B-1", at pp. 1-2, emphases in the original)

6. By reason thereof, my January 7th memorandum-notice calls upon the Attorney General and Commission to take steps to vacate the Court's decision for fraud. Additionally, it calls upon them to secure the criminal prosecution of the five-judge appellate panel, as well as disciplinary proceedings to effect their removal from the bench. To speed the process of removal, the memorandum-notice specifically identifies (at fn. 2) that it is being filed with the Commission, "pursuant to Judiciary Law §44.1, as a *facially-meritorious* judicial misconduct complaint against [the appellate panel members]"[2].

7. As highlighted by my memorandum-notice (Exhibit "B-1", pp. 14-15), the bald pretense in the decision's second sentence (Exhibit "A-2") that the

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[2] By letter dated January 11, 2002 (Exhibit "B-2"), the Commission acknowledged my memorandum-notice as a judicial misconduct complaint that "will be presented to the Commission, which will decide whether or not to inquire into it".

Hereinafter, any appellate panel member seeking reappointment or re-election to the bench -- or elevation to some higher judicial or other governmental position -- who is asked the question "to your knowledge, has any complaint...ever been made against you in connection with your service in a judicial office?", etc. – such as appears at question #30(a) and (b) of the Commission on Judicial Nomination's questionnaire for applicants to the Court of Appeals [A-74], the answer should be "yes" and "full details" should be supplied.

Presumably, the questionnaire used by Governor Pataki's judicial "screening" committees asks a similar question and/or his committees make similar oral inquiries of applicants. If so, any appellate panel member who is seeking to permanently fill the position of Presiding Justice of the Appellate Division, First Department (Exhibit "E-3), temporarily being filled by Justice Nardelli (Exhibit "E-2"), should immediately apprise the pertinent judicial "screening" committee of this *facially-meritorious* judicial misconduct complaint (Exhibit "B-1").

Commission has discretion "whether to investigate a complaint", for which it cites, *without discussion*, the Court's own appellate decision in *Michael Mantell v. Commission* is contrary to

> "HIGHER AUTHORITY: the New York Court of Appeals, whose decision in *Matter of Nicholson*, 50 NY2d 597, 610-611 (1980), long ago interpreted that the Commission has NO discretion but to investigate *facially-meritorious* complaints pursuant to Judiciary Law §44.1:
>
> > '...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law 44, subd 1), *Matter of Nicholson*, 50 NY2d 597, 610-611 (emphasis added).'"

8. This "HIGHER AUTHORITY" was prominently in the record before the Court. Likewise, the authoritative assertion of the Commission's *own* Administrator and Counsel, Gerald Stern, that Judiciary Law §44.1 "REQUIRES the Commission to investigate complaints that are valid on their face" – made in his published essay, "*Judicial Independence is Alive and Well*", in the New York Law Journal, 8/20/98, [A-59-60, emphasis added], which was part of my Verified Petition [A-29][3].

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[3] As pointed out at ¶34 of my October 15, 2001 reply affidavit in support of my August 17th motion, it was Mr. Stern's advocacy on behalf of the Commission that resulted in the Court of Appeals' *Nicholson* decision. Indeed, his Brief in the Court of Appeals and, prior thereto, his Brief in this Court (the *Nicholson* case reaching the Court of Appeals *via* the Appellate Division, First Department) each emphasized:

> "Unless the Commission determines that the complaint on its face lacks merit, the law requires that the Commission 'shall conduct an investigation of the complaint' (Jud. Law §44 [1]..." (emphasis in Mr. Stern's original Briefs).

9. My memorandum-notice also details (Exhibit "B-1", pp. 10-12, 14-15) that the *Mantell* appellate decision -- the ONLY case upon which this Court's decision *directly* rests -- is a judicial fraud, proven as such by my 1-page analysis of it, the accuracy of which was *undisputed* in the record before the Court.

10. This Court's decision (Exhibit "A") makes NO findings as to the accuracy of my *undisputed* 1-page analysis of the *Mantell* appellate decision[4]. NOR does it make any findings as to the accuracy of my *undisputed* 13-page analysis of Justice Lehner's underlying decision in *Mantell*, encompassed by that 1-page analysis. This *undisputed* 13-page analysis [A-321-334] particularizes the fraudulence of Justice Lehner's decision [A-299-307], including by discussion of the Court of Appeals' decision in *Nicholson* as to the Commission's mandatory investigative duty under Judiciary Law §44.1 [A-329].

11. Similarly, this Court's decision makes NO findings as to the accuracy of my *undisputed* 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-52-54], particularizing the fraudulence of that decision [A-189-194] on which Justice Wetzel relied in dismissing my Verified Petition [A-12]. Such *undisputed* 3-page analysis, part of my Verified Petition [A-26, 27], cites Point II of Doris Sassower's memorandum of law in her lawsuit[5], with its "legislative history

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[4] The 1-page analysis of the *Mantell* appellate decision is Exhibit "R" to my August 17th motion.

[5] A copy of that June 8, 1995 memorandum of law – and the whole case file of *Doris L. Sassower v. Commission* – was physically before this Court, having been furnished to the lower court in support of my July 28, 1999 omnibus motion [A-346].

and caselaw" [A-52]. Among that caselaw, the Court of Appeals' *Nicholson* decision as to the Commission's mandatory investigative duty under Judiciary Law §44.1.

12. The existence of these three *undisputed* analyses of the decisions of Justices Cahn, Lehner, and the *Mantell* appellate panel -- each embracing the Court of Appeals' *Nicholson* decision and prominently before this Court as dispositive of my rights -- are completely concealed by the Court's decision (Exhibit "A").

13. Likewise, the Court's decision makes NO findings as to the accuracy of my three "highlights" resting on my three analyses of the decisions of Justices Cahn, Lehner, and the *Mantell* appellate panel. These three "highlights" are pages 3-5, 5-8, 40-47 of my 66-page Critique of Respondent's Brief[6]. The record shows that the accuracy of these "highlights" was also *undisputed* in the record before the Court and that I repeatedly referred to them as dispositive of my rights, with the third "highlight" (pp. 40-47) being a refutation of the pretense in Point I of Respondent's Brief that I lack standing to sue the Commission. The Court adopts this very pretense in the third sentence of its decision (Exhibit "A-2") -- with NO findings as to the accuracy of my *undisputed* third "highlight", whose existence, like the existence of my *undisputed* first and second "highlights", is wholly concealed.

14. As chronicled by my memorandum-notice (Exhibit "B-1"), findings by the Court as to the accuracy of my three *undisputed* "highlights" and of my three *undisputed* analyses on which they are based would have revealed my entitlement to ALL the relief sought by my Appellant's Brief – as well as ALL the relief sought by my threshold August 17th motion.

15. My memorandum-notice (Exhibit "B-1", pp. 4-7) details that the decision's seventh and final sentence (Exhibit "A-2") knowingly falsifies the ACTUAL relief sought by my August 17th motion, which it then purports to deny – *without reasons or findings*. This ACTUAL relief was set forth in the motion's two particularized branches and was repeatedly reiterated by me, including in my November 21st oral argument before the Court (Exhibit "C", pp. 2-3). The motion's first branch was to:

> "specially assign[] this appeal to a panel of 'retired or retiring judge[s], willing to disavow future political and/or judicial appointment' in light of the disqualification of this Court's justices, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, for self-interest and bias, both actual and apparent, and, if...denied, for transfer of this appeal to the Appellate Division, Fourth Department. In either event, or if neither is granted, for the justices assigned to this appeal to make disclosure, pursuant to §100.3F of the Chief Administrator's Rules, of the facts pertaining to their personal and professional relationships with, and dependencies on, the persons and entities whose misconduct is the subject of this lawsuit or exposed thereby, as well as permission for a record to be made of the oral argument of this appeal, either by a court stenographer, and/or by audio or video recording."

The second branch was to strike the Attorney General's Respondent's Brief,

> "based on a finding that it is a 'fraud on the court', violative of 22 NYCRR §130-1.1 and 22 NYCRR §1200 *et seq.*, specifically, §§1200.3(a)(4), (5); and §1200.33(a)(5), with a further finding that the Attorney General and Commission are 'guilty' of 'deceit or collusion' 'with intent to deceive the court or any party' under Judiciary Law §487".

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[6] My 66-page Critique of Respondent's Brief is Exhibit "U" to my August 17th motion.

Based on such requested findings, the second branch also sought sanctions against the Attorney General and Commission, including disciplinary and criminal referral, as well as the Attorney General's disqualification from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules.

16. My memorandum-notice demonstrates (Exhibit "B-1", pp. 8-11) that the Court could NOT make a reasoned adjudication, with findings of fact and law, as to this threshold August 17th motion without *also* exposing:

(a) the "legal disqualification" of Justice Wetzel, pursuant to Judiciary Law §14 – thereby rendering his appealed-from decision [A-9-14] void;

(b) the series of fraudulent judicial decisions of which the Commission had been the beneficiary -- including Justice Wetzel's appealed-from decision; and,

(c) the fact that the Attorney General's fraudulent appellate advocacy before the Court replicated his similarly fraudulent advocacy in the lower court, which had been the subject of my July 28, 1999 omnibus motion, requesting, *inter alia*, the Attorney General's disqualification for violation of Executive Law §63.1 and multiple conflicts of interest, as well as disciplinary and criminal referral of the Commission and the Attorney General – a motion Justice Wetzel's appealed-from decision denied, *without reasons or findings*.

From this, the absolute merit of my appeal would have been even more obvious than it already was. Likewise, the explosive outcome of the Court's disqualifying itself pursuant to my August 17th motion. Any fair and impartial tribunal would not only be required to grant me ALL the relief sought by my Appellant's Brief and August 17th motion, but, faced with the overwhelming record of systemic judicial and governmental corruption presented by the appeal, would be bound by §§100.3D(1) and (2) of the Chief Administrator's Rules Governing Judicial Conduct to make appropriate referrals to initiate disciplinary and criminal investigations and

prosecutions. This would include requesting the Governor to appoint a Special Prosecutor, as expressly sought by my Notice of Petition [A-19] – albeit the Governor himself is directly implicated and complicitous in the corruption presented by this lawsuit, a fact particularized by my August 17th motion (¶¶15-31), just as it had been particularized in the record before the lower court [A-154-156, 165-166].

17. The extraordinary state of the record on my appeal – and the obligation of any fair and impartial tribunal reviewing it to make referrals to disciplinary and criminal authorities – was emphasized throughout my appellate submissions. It was further emphasized in my response to Justice Andrias' question to me at the November 21st oral argument (Exhibit "C", pp. 4-5) and in my November 30th letter to the Court for permission to supplement the record, pursuant to §600.11(f)(4) of its rules so as to clarify that response (Exhibit "D")[7].

18. My memorandum-notice (Exhibit "B-1") – the basis for criminal and disciplinary prosecutions against the five-judge appellate panel for corrupting the appellate process to cover up the systemic governmental corruption documented by my appeal – sets forth *no* new facts or legal argument not before the Court when it "overlooked or misapprehended" ALL of them in rendering its decision. The only exception is the inclusion of the subsequently-discovered facts appearing at footnote 11 (at pp. 8-9), bearing upon the disqualification for interest of three appellate panel members, Justice Andrias, Justice Ellerin, and Presiding Justice Nardelli, by reason of their dependencies on the Governor for re-appointment and elevation, and the fact,

[7] As noted at footnote 4 of my memorandum-notice (Exhibit "B-1", p. 5), the Court's decision makes NO disposition as to my November 30th letter (Exhibit "D").

appearing at footnote 15 (at p. 10), bearing upon the disqualification for interest of a fourth appellate panel member, Justice Mazzarelli, by reason of her participation on the *Mantell* appellate panel. The appellate panel members were ethically obligated to disclose these pertinent facts,[8] including at the oral argument when I expressly asked them to "make the disclosure requested by my August 17th motion" (Exhibit "C", p. 4). Indeed, in the context of ¶¶15-31, 49-67 of my August 17th motion, Justices Andrias, Ellerin, Nardelli, and Mazzarelli had NO DISCRETION but to recuse themselves by reason of these additional facts pertaining to their interest -- constituting a "legal disqualification" under Judiciary Law §14.

19. The fact-specific recitation in my August 17th motion, including as to the "appearance of this Court's bias", particularized at ¶¶68-74 of my moving affidavit and then supplemented by ¶¶31-32 of my October 15th reply affidavit, presented a multitude of disclosures that the appellate panel members were ethically required to make[9]. As illustrative, and as objected to at ¶73 of my August 17th

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[8] For the Court's convenience, the three Law Journal items, referred to in footnote 11 of my memorandum-notice are annexed hereto as Exhibits "E-1" – "E-3". Additionally, in substantiation of footnote 15 thereof, the *Mantell* appellate decision, as published by the New York Law Journal, is annexed as Exhibit "E-4".

[9] As pointed out by my memorandum-notice (Exhibit "B-1", p. 17), my Appellant's Brief identified (at p. 51) that "even where the Court had upheld a lower court's failure to recuse as a proper exercise of discretion, it had nonetheless 'recognized the salutary significance of 'full disclosure'". Of the three Appellate Division, First Department cases cited by my Appellant's Brief, Justice Nardelli participated in *Leventritt v. Eckstein*, 206 A.D.2d 313, 615 N.Y.S.2d 2 (1st Dept. 1994), which found "The record reveals the court had fully disclosed to all parties her personal/social relationships with respondents' counsels earlier on". The next case cited by my Appellant's Brief – mistakenly identified as *Fitzgerald v. Tamola* – was meant to be *Corsini v. Corsini*, 199 A.D.2d 103, 605 NYS2d 66 (1st Dept. 1993) [with which it shares a page at 605 NYS2d 67], where Justices Ellerin and Rubin, sitting on the appellate panel, found "The content of the ex parte communication with plaintiff was fully disclosed and placed upon the record by the trial court..."

moving affidavit, the Court's presumed "personal and professional relationships with now Appellate Division, Second Department Justice Stephen Crane"[10], toward whom, in June 1995, it had exhibited "blatant favoritism" by affirming "his lawless decision" in *Doris L. Sassower v. Kelly, Rode & Kelly, et al.* (S. Ct./NY Co. 120917-93), notwithstanding the good and meritorious appeal therefrom was "UNOPPOSED" (Exhibit "E-5"), thereafter, denying leave to appeal to the Court of Appeals (Exhibit "E-6"[11]). It is *without* identifying their relationships with Justice Crane or their membership on the *Kelly, Rode* appellate panel, that three of those very judges, Justices Rubin, Nardelli, and Mazzarelli, have sat on my appeal, participating in a decision which wholly conceals the preliminary issues raised by my Appellant's Brief relating to Justice Crane's unethical and violative conduct. These issues, embodied in the first of my "Questions Presented" (at p. 1) and my "Point I" (at pp. 39-42), concern Administrative Judge Crane's violation of "random selection" rules in "steering" my case to Justice Wetzel [A-122, 127], without affording me notice and opportunity to be heard and then wilfully failing to respond to my request for disclosure in connection therewith, including as to his "own disqualifying bias and self-interest" [A-291-293], in and of itself requiring reversal of Justice Wetzel's

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[10] As particularized (¶73), beyond the fact that Justice Crane had been Administrative Judge of the Civil Branch of Manhattan Supreme Court and, prior thereto, had held other judicial positions in proximate New York City Courts, he had "worked for 13 years for this Court as Chief Law Assistant and Senior Law Assistant." My August 17th motion demonstrated (¶¶20-48) that Justice Crane's powerful political friends and patrons – the Governor and Chief Judge among them -- had "protected" him from all consequences of his serious misconduct in this case and in the case of *Kelly, Rode, & Kelly.*

[11] The Court's denial of leave to appeal erroneously referred to the motion for such relief as having been made by "Plaintiff". It was not. The motion was made by the "Appellant" therein.

decision, *as a matter of law*. Indeed, the "Introduction" of my Appellant's Brief identified (at p. 3) that the seriousness of Administrative Judge Crane's misconduct warranted his demotion, if not removal from the bench – for which, my "Conclusion" (at p. 70) expressly requested that the Court "take appropriate action", pursuant to §100.3(D)(1) of the Chief Administrator's Rules Governing Judicial Conduct.

20. Manifest from the decision's total concealment and falsification of EVERY fact-specific, law-supported issue presented by my Appellant's Brief is the disqualification of the members of the appellate panel for interest and actual bias – for which, had they made the disclosure sought by my August 17th motion, they would have had to recuse themselves. The Court's unexplained failure to make *any* disclosure – coupled with its concealment of the very fact that I had requested disclosure -- evince its knowledge that disclosure would have revealed its disqualification. Likewise, the Court's actions prior to the decision[12] manifest its

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[12] These prior actions include the behind-the-scenes manipulations relative to my August 17th motion and the subsequent denial, *without reasons*, of my November 16th and November 19th interim relief applications, summarized at ¶23 herein. Likewise, the Court's plainly biased conduct at the November 21st oral argument, most overtly by permitting Assistant Solicitor General Fischer to argue before it, in face of a record establishing the fraudulence of her Respondent's Brief, and by wilfully failing to require her response to the three dispositive "highlights", the importance of which I expressly identified at the oral argument *at the expense of my rebuttal time* (Exhibit "C", p. 6). The ONLY explanation for the Court's tolerance of Ms. Fischer's feeble oral argument and failure to require her response to my three "highlights" (in fact, not asking her a single question, in contrast to all preceding cases where it peppered counsel with questions) is that the Court knew – from the record before it – that there was NO LEGITIMATE DEFENSE to the appeal and that Ms. Fischer could not respond to the "highlights" without conceding the facts dispositive of my rights. Indeed, the ONLY explanation for the Court's refusal to allow even a stenographic record of the oral argument – as requested by my August 17th motion and interim relief applications – is because it knew that such record would furnish further evidence of its self-interest and bias. My August 17th motion said as much (¶¶75-82) under the title heading, "This Court's Conduct at the Oral Argument of the Appeal May Furnish Additional Evidence of the Court's Disqualifying Self-Interest and Bias – as to which

disqualifying interest and actual bias – for which it was obligated to have completely distanced itself by transferring the appeal to the Appellate Division, Fourth Department, as requested by my threshold August 17th motion.

21. My memorandum-notice (Exhibit "B-1", pp. 16-17) exposes the Court's deceit in the fourth sentence of its decision (Exhibit "A-2") that a judge's ultimate ruling "has no relevance" to the "merits" of a recusal application. Indeed, appellate panel members participated in some of the very decisions cited by my Appellant's Brief (at p. 50) for the proposition that "abuse of discretion" in the denial of a recusal application is established where "the judge's 'bias or prejudice or unworthy motive' is 'shown to affect the result'"[13]. Thus, Justices Mazzarelli and Andrias participated in *Yannitelli v. D. Yannitelli & Sons Constr.*, 247 A.D.2d 271, 668 N.Y.S.2d 613 (1st Dept. 1996), recognizing that "abuse of discretion" is established by "point[ing] to an actual ruling which demonstrates bias", and Justices Nardelli and Rubin participated in *Schrager v. NY University*, 642 N.Y.S.2d 243 (1st Dept. 1996), recognizing that a judge abuses his discretion in denying recusal where "the record reveals that his bias affected the result". Clearly, the fraudulence of this Court's decision, as particularized herein and by my memorandum-notice (Exhibit

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Appellant is Entitled to a Stenographic/Audio/or Visual Record for Purposes of Appeal to the Court of Appeals." (at p. 42). Particularly pertinent, prescient, and precise was ¶78 therein:

> "The Court's hostility or non-response to my oral argument – and its willingness to allow the Attorney General to argue, based on Respondent's Brief – without demanding that he confront the demonstrated fraud permeating virtually every line thereof, as documented by the second branch of this motion, will foreshadow the kind of cover-up appellate decision that will follow."

[13] *See* also p. 44 of Exhibit "AA" to my October 15th reply affidavit in support of my August 17th motion.

"B-1"), proves the Court's purported denial of my August 17th recusal motion to be a gross "abuse of discretion". This, over and beyond the fact that the Court's disqualification for interest under Judiciary Law §14 is a non-discretionary "legal disqualification".

22. In view of the serious disciplinary and criminal consequences to the Court by its official misconduct on this appeal, the appellate panel should embrace the opportunity of this reargument motion to refute the accuracy of my 19-page memorandum-notice (Exhibit "B-1"). Such opportunity should be especially embraced by Justice Rubin, a member of the New York State Bar Association's Committee on Public Trust and Confidence in the Legal System (Exhibit "E-7"). Nothing could be more detrimental to public confidence than a decision such as this – and the panel should act promptly to stem the damage already done.

23. Needless to say, the Court's refutation must include denying, with specificity, the accuracy of my three *undisputed* analyses of the fraudulent decisions of Justices Cahn, Lehner, and the *Mantell* appellate panel and my three *undisputed* "highlights" resting on those analyses – as to which this Court's appellate decision (Exhibit "A") makes NO findings [¶¶9-14 *supra*]. Additionally, the Court must justify its conduct in regards to my *threshold* and clearly dispositive August 17th motion, *to wit*,

(a) an explanation as to why my August 17th motion, *fully-submitted* on October 15th, was not promptly directed to this *already-assigned* appellate panel by either the Clerk's Office or by the October 15th panel on which Justice Andrias sat as a member so that its *threshold* relief could be adjudicated *prior to* the November 21st oral argument;

(b) legal authority for the October 15th panel's *sua sponte* and *without notice*, adjourning of my *fully-submitted* August 17th motion to November 21st, thereby preventing the appellate panel from receiving and reviewing the motion in advance of the November 21st oral argument;

(c) legal authority for the appellate panel's proceeding with the November 21st oral argument without first adjudicating my August 17th motion – such authority having NOT been provided by the appellate panel's Presiding Justice Nardelli when, *without reasons or findings*, he denied my unopposed November 16th interim relief application, and NOT provided by then Appellate Division, First Department Presiding Justice Sullivan when, *without reasons or findings*, he denied my unopposed November 19th interim relief application, and NOT provided by the appellate panel, in response to my express request for such legal authority at the November 21st oral argument (Exhibit "C", p. 4), where, quoting treatise authority in the record [A-232], I stated,

> "As a general rule... once a challenged judge has... been made the target of a timely and sufficient disqualification motion, he immediately loses all jurisdiction in the matter except to grant the motion, and in some circumstances to make those orders necessary to effectuate the charge." (Exhibit "C", p. 3)

(d) an explanation for the falsification of the clear and unambiguous relief sought by my August 17th motion in the seventh and final sentence of the Court's decision;

(e) legal authority to justify the decision's purported denial, *without reasons or findings*, of the misidentified August 17th motion; and

(f) an explanation for the Court's failure to make any disclosure germane to my August 17th motion, such as of the facts set forth at footnotes 11 and 15 of my memorandum-notice (Exhibit "B-1", pp. 8-10) – and to recuse itself by reason of such facts.

24. Absent refutation of the record-based facts and law highlighted herein and in my 19-page memorandum-notice (Exhibit "B-1"), this Court's duty is to recall and vacate for fraud its December 18th decision & order (Exhibit "A"). Indeed, by reason of the Court's "legal disqualification" for interest under Judiciary Law §14, as

detailed at ¶¶8-67 of my August 17th motion and substantiated by the pertinent undisclosed facts in footnotes 11 and 15 of my memorandum-notice, the Court was without jurisdiction to do anything but disqualify itself.

25. That "proceedings before a judge who is, by statute, disqualified from acting, are void and of no effect" was articulated, in those very words, in *McCormick v. Walker*, 142 N.Y.S. 759, aff'd, 158 A.D. 54 (1st Dept. 1913) – the *first* case cited in the "Preliminary Statement" of my Appellant's Brief (at p. 36). Likewise, the *second* case cited by the "Preliminary Statement" of my Appellant's Brief (at p. 36), *Johnson v. Hornblass*, 93 A.D. 2d 732, 461 N.Y.S.2d 277 (1st Dept. 1983), articulated that disqualification pursuant to Judiciary Law §14 results in "lack of jurisdiction". These assertions reflect long-settled caselaw of the Court of Appeals, such as *Oakley v. Aspinwall*, 3 N.Y. 547 (1850), and *Wilcox v. Royal Arcanum*, 210 N.Y. 370, 377 (1914) ["In this state the statutory disqualification of a judge deprives him of jurisdiction"], and are echoed in the Appellate Division, First Department cases of *People v. Whitridge*, 129 N.Y.S. 300, 301 (1st Dept. 1911) ["If the justice was, in fact, disqualified to sit in the case, the whole proceeding before him was utterly void."], and *In Re Friedman*, 213 N.Y.S. 369, 374 (1st Dept. 1926) ["... having been thus disqualified to sit in the case, every proceeding before him from thenceforward was utterly void"].

26. Consequently, this Court's decision & order (Exhibit "A"), rendered by a tribunal disqualified for interest pursuant to Judiciary Law §14, is a nullity and must be recalled and vacated.

WHEREFORE, the rule of law must be restored by granting the relief sought in the accompanying Notice of Motion.

Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Sworn to before me this
17th day of January 2002

Notary Public

LAURA MARJI
Notary Public, State of New York
No. 01MA6049278
Qualified in Westchester County
Commission Expires Oct. 20, 2002

TABLE OF EXHIBITS

Exhibit "A-1":	Appellate Division, First Department's December 18, 2001 decision & order in *Elena Ruth Sassower v. Commission*
"A-2":	Appellate Division, First Department's December 18, 2001 decision & order, as printed in the December 20, 2001 New York Law Journal (with sentences numbered)
Exhibit "B-1":	Elena Sassower's January 7, 2001 memorandum-notice to Attorney General Spitzer and Commission on Judicial Conduct
"B-2":	Commission on Judicial Conduct's January 11, 2001 letter to Elena Sassower, acknowledging the memorandum-notice as a judicial misconduct complaint
Exhibit "C"	Elena Sassower's improvised record of the November 21, 2001 oral argument of the appeal
Exhibit "D":	Elena Sassower's November 30, 2001 letter to the appellate panel, requesting to supplement the record pursuant to §600.11(f)(4) of the Court's rules
Exhibit "E-1":	"*Pataki Names 22 Redesignated Appellate Judges*", NYLJ, December 28, 2001, pp. 1-2
"E-2":	Today's News: *Update*, NYLJ, December 31, 2001, p. 1
"E-3":	Today's News: *Update*, NYLJ, October 19, 2001, p. 1
"E-4":	Appellate Division, First Department's decision in *Michael Mantell v. Commission*, NYLJ, November 20, 2000
"E-5":	Appellate Division, First Department's June 6, 1995 order in *Doris Sassower v. Kelly, Rode &Kelly, et al.* (55104N)
"E-6":	Appellate Division, First Department's October 5, 1995 order in *Doris L. Sassower v. Kelly, Rode & Kelly, et al.* (M-3407)
"E-7":	"*State Bar Sets Panel on Public Confidence*", NYLJ, January 6, 2000