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.

REPLY AFFIDAVIT

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

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

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

1. This affidavit replies to the February 7, 2002 opposing "affirmation"[1] of Assistant Solicitor General Carol Fischer, on behalf of Respondent New York State Commission on Judicial Conduct ["Commission"]. As herein demonstrated, Ms.

[1] Ms. Fischer's "affirmation" is non-conforming with the requirement of CPLR §2106 that affirmations be "affirmed...to be true under the penalties of perjury". Ms. Fischer does NOT affirm her self-styled "affirmation" to be "true under the penalties of perjury". Rather, she "states as follows under penalty of perjury". Thus omitted is the operative phrase "affirmed...to be true". Without this, Ms. Fischer's "affirmation" is non-probative and meaningless since all she is stating "under penalty of perjury" is the content of her statement – not the truth thereof.

This omission is not inadvertent. As hereinafter shown, to the extent Ms. Fischer's "affirmation" says anything material, it is, when compared to the record, NOT true – and, by reason thereof, is known by Ms. Fischer to not be true.

Additionally, Ms. Fischer's "affirmation" fails to set forth the basis upon which it is made: whether on personal knowledge or upon information and belief, and if the latter, the source of the information and belief.

These two deficiencies repeat the identical deficiencies which I previously objected-to in connection with Ms. Fischer's "affirmation" in opposition to my August 17, 2001 motion. [*See* my October 15, 2001 reply affidavit: Exhibit "AA", pp. 5-7].

Fischer's non-probative and knowingly false, deceitful, and frivolous ten-paragraph "affirmation" replicates her prior litigation misconduct. Such prior litigation misconduct was exhaustively detailed and documented in two fact-specific, law-supported Critiques, both exhibits to my threshold August 17, 2001 motion[2] – as to which this Court has failed to make *any* findings.

2. This affidavit is also submitted in support of a request, herein made (*see* also "WHEREFORE" clause, p. 22, *infra*), for maximum costs and monetary sanctions, pursuant to 22 NYCRR §130-1.1, against Ms. Fischer and those complicitous in her misconduct, specifically, Attorney General Spitzer and Solicitor General Halligan *personally*, and the complicitous members and staff of the Commission, as well as disciplinary and criminal referral of them, pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct. This, based on their "substantial violations of the Code of Professional Responsibility", including DR 1-102(a)(2), (4), (5) [22 NYCRR §§1200.3(a)(2), (4),(5)], pertaining to "Misconduct"; DR 7-102(a)(1), (2), (5), (7), (8) [22 NYCRR §1200.33(a)(1), (2), (5), (7), (8)]; DR 1-104 [22 NYCRR §1200.5], pertaining to "Representing a Client within the Bounds of the Law"; and DR 1-103(a) [22 NYCRR §1200.4(a)], pertaining to "Responsibilities of a Partner or Supervisory Lawyer"; and their deceitful and collusive conduct, proscribed by Judiciary Law §487. Such litigation misconduct as

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[2] These two Critiques are: (1) my 66-page Critique of Ms. Fischer's fraudulent Respondent's Brief, annexed as Exhibit "U" to my August 17th motion; and (2) my 58-page Critique of her fraudulent opposition to my August 17th motion, annexed as Exhibit "AA" to my October 15th reply affidavit in support of my August 17th motion.

herein committed by Ms. Fischer further reinforces my showing in my August 17th motion of entitlement to the Attorney General's disqualification from representing the Commission for violation of Executive Law §63.1 and conflict of interest.

3. Notwithstanding Ms. Fischer's categorical assertions (at ¶2) that "*nothing* in [my reargument motion] demonstrates that the Court 'overlooked or misapprehended' *any* legal or factual aspect of this case, or that reargument would be warranted for *any* other reason", and that she is providing "[t]he Commission's response to *each* of [my] already-rejected arguments" (italics added), she does NOT deny or dispute the accuracy of ANY aspect of the very document identified by my January 17, 2002 moving affidavit (at ¶5) as demonstrating that 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."

That document is CJA's single-spaced 19-page January 7, 2002 memorandum-notice, containing my line-by-line analysis of the Court's decision [hereinafter "reargument analysis"]. Said reargument analysis, annexed as Exhibit "B-1" to my moving affidavit, is expressly incorporated therein by reference (at ¶5). Similarly, Ms. Fischer does NOT deny or dispute the accuracy of ANY aspect of the recitation in my 26-paragraph moving affidavit, drawn from that 19-page analysis.

4. Most significant of what Ms. Fischer does NOT deny or dispute is what is focally presented in my reargument analysis (at pp. 9-16) and in my moving affidavit (at ¶¶9-14, 23) as DISPOSITIVE of my entitlement to ALL the relief sought

by my Appellant's Brief AND my threshold August 17th motion, *to wit*, my *undisputed* 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission*, my *undisputed* 13-page analysis of Justice Lehner's decision in *Michael Mantell v. Commission*, my *undisputed* 1-page analysis of the *Mantell* appellate decision -- and my three *undisputed* "highlights" of my Critique of her Respondent's Brief, based on those three *undisputed* analyses. Indeed, as has been true throughout her advocacy before this Court, Ms. Fischer's "affirmation" nowhere even acknowledges the existence of my three analyses of relevant prior judicial decisions and my three Critique "highlights" of her Respondent's Brief based thereon.

5. This alone makes Ms. Fischer's opposition knowingly false, deceitful, and frivolous. However, by her defamatory characterizations and false insinuations in her ¶2 that I have not documented my "argu[ments]" as to "systemic judicial and governmental corruption" -- including my "label[ing]" of "every filing by the Attorney General, and every adverse decision, a 'fraud'" – these being, according to her, but "shrill rhetoric", Ms. Fischer compounds her assault on fundamental standards of professional responsibility.

6. From the three *undisputed* analyses and three *undisputed* Critique "highlights" whose existence she ignores, Ms. Fischer well knows that I have *proven* the fraudulence of FIVE judicial decisions of which the Commission has been the beneficiary, along with the Attorney General's litigation fraud in connection therewith. Moreover, from ¶¶15-48 of my August 17th motion, pivotally discussed in my reagument analysis (at pp. 8-9), Ms. Fischer well knows, beyond what she

previously well knew from my Appellant's Brief (pp. 3, 6, 13, 16-19, 27-28, 30, 34, 42-43, 46-48, 50) that the criminal ramifications of this case reach to this State's highest public officers, including the Governor – and that I have laden the record with the proof, *to wit*, my substantiating correspondence with them.

7. As for what Ms. Fischer purports to be "[t]he Commission's response to *each* of [my] already-rejected arguments" – which she presents as her ¶¶3-8 – these do NOT respond to my arguments, let alone "*each*" of my arguments. Indeed, to the extent that *any* of my arguments may be gleaned from Ms. Fischer's ¶¶3-8, they are so utterly misrepresented as to be wholly *non-responsive* to my actual arguments.

8. Examination of my 19-page analysis of the Court's decision shows that ***the most important of my arguments – from which ALL my other arguments flow*** – concerns the seventh and final sentence of the Court's decision. This is the sentence which, *without reasons or findings*, purports to deny my August 17th motion. Indeed, the *entirety* of my 19-page reargument analysis is constructed from the vantage point of the August 17th motion[3]. As for my affidavit in support of reargument, more than half (pp. 7-16: ¶¶15-26) relates to the Court's self-interested, legally-unjustified, and otherwise improper handling of the August 17th motion – as to which, additionally, my ¶23 itemized relevant particulars.

9. Yet, nowhere in Ms. Fischer's "affirmation", including her ¶¶3-8, does she address the seventh and final sentence of the Court's decision -- nor anything

[3] This is clear from the titles of ALL three of my three section headings therein and the text thereunder.

relating to the Court's handling of the August 17th motion. Indeed, to the extent Ms. Fischer even refers to my August 17th motion, which she does *only* through a mix of misstatement and mischaracterization[4], she fails to even acknowledge that the Court's decision has purported to deny it – and this, *without* reasons, *without* findings, and by *falsifying* the relief sought on the motion.

10. Ms. Fischer's failure to come forward with *any* justification for the decision's materially false and insupportable seventh and final sentence – including rebuttal of *any* of my arguments with respect thereto -- would be immediately obvious had she organized her ¶¶3-8 under headings comparable to those in my reargument analysis, which consecutively number the seven sentences of the Court's decision and address EACH of the numbered sentences[5].

11. This, however, would have exposed that Ms. Fischer has also *not* come forward with *any* justification for the decision's critical first sentence, shown to be materially misleading by my reargument analysis pertaining thereto (at pp. 13-14). As stated at page 12 of my reargument analysis, *without* rebuttal from Ms. Fischer, the decision's second and third sentences, with their "purported justification for dismissing my Verified Petition", spring from this materially misleading first

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[4] *See* the one and one half sentences in Ms. Fischer's ¶8. The first half-sentence refers to my purportedly having made "two motions seeking the recusal of the entire Appellate Division, First Department", both identified as having been filed "NOW". In the following sentence "NOW" becomes "filed on August 15, 2001" – a date which, presumably, is a typo. Ms. Fischer purports that this was the "first" of my appellate recusal motions – and that it was "over five hundred pages". She does not address its content, except to besmirch it with the characterization that it "flung accusations of criminal misconduct at virtually everyone connected with the New York State judicial system."

sentence. This includes obliterating my Verified Petition's six Claims for Relief [A-37-45], which Ms. Fischer does *not* dispute

> "rais[e] constitutional challenges to a variety of Commission rules and statutory provisions – thus sharply limiting the applicability of the *Mantell* appellate decision (even were it not a judicial fraud) and any defense based on lack of standing." (reargument analysis, p. 13).

12. Ms. Fischer's ¶¶3-4, under her heading "The Denial Of The Request For An Order of Mandamus", does *not* identify anything about my reargument analysis of the decision's second sentence (at pp. 14-15). Indeed, in noting that I "cited" Judiciary Law §44.1 and *Nicholson v. Commission*, 50 NY2d 597 (1980), Ms. Fischer points to ¶¶7-8 of my moving affidavit as the "cit[ing]" document, rather than my reargument analysis. She then falsely states that I "implie[d] something which I *never* did – and which the record shows I ***never*** would in view of *pages 6-7 of my Critique of her Respondent's Brief, encompassed by my second "highlight" thereof.* This second "highlight", identified by my reargument analysis of the decision's second sentence (at p. 14), makes evident that the Commission can have NO discretion as to levels of "investigation" which do *not* exist under the clear definition of 22 NYCRR §7000.1 and whose existence is *expressly disclaimed* by information supplied for publication by the Commission's own Administrator, *to wit*, there is

> "...only one class of investigation...once the Commission authorizes an investigation, there is a full formal investigation. There are no gradations, such as initial inquiry or preliminary investigation." (p. 7 of my Critique of Respondent's Brief).

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[5] *See*, also, p. 3 of my January 17th moving affidavit, providing a Table of Contents for my arguments relating to the seven numbered paragraphs of the Court's decision.

13. Ms. Fischer's assertion at ¶4 that this case is "controlled" by the *Mantell* appellate decision – *without* responding to my 1-page analysis showing that decision to be a fraud – and her citation to pages 3-5 and 14-15 of her Respondent's Brief as "discuss[ing] in full" the "relevant statutes and regulations, and the Commission's arguments concerning these issues" – *without* responding to the second and third "highlights" from my Critique of her Respondent's Brief, rebutting those very pages, is a shameless deceit. This is clear from my reargument analysis of the decision's second sentence (pp. 14-15) and third sentence (pp. 15-16), to which she does *not* respond.

14. As for Ms. Fischer's citation (¶4) to *Klostermann v. Cuomo*, 61 NY2d 525, 540 (1984) for the proposition that "while an officer may be directed by mandamus to perform a duty that involves an exercise of discretion, it may not specify how, in fact, he is to exercise that discretion", *Klostermann* reinforces my entitlement to mandamus relief. This is obvious from pages 45-47 of my Critique of her Respondent's Brief (part of my third "highlight"), reiterating why the specific facts pertaining to each of my TWO *facially-meritorious* judicial misconduct complaints entitle me to mandamus under the recognized interpretation of Judiciary Law §44.1. Characteristically, Ms. Fischer does NOT mention either of my TWO judicial misconduct complaints or any of the facts pertaining to them, detailed in the record before her, including in my Verified Petition's Second and Sixth Claims for Relief [A-38-40; A-45] and obscures the significance of her first-time concession that the Commission has a "mandate" of investigation under Judiciary Law §44.1 and

Nicholson by regurgitating, *now for the third time*, her falsehood about levels of investigation – exposed as a falsehood in *each* of my two Critiques supporting my August 17th motion for sanctions against her[6].

15. Ms. Fischer's ¶5, under her heading "Petitioner's Lack of Standing", does cite my reagument analysis of the decision's third sentence (at pp. 15-16). However, it responds to *none* of my arguments therein, substituting, instead, false and misleading claims about them. The first is that "petitioner, notably, does not try to demonstrate that she could, in fact prove that she has standing." That this is *not* true may be seen from my reargument analysis (p. 16) which *expressly* identifies the third "highlight" from my Critique of Respondent's Brief as providing "record references" and "legal authority" as to the "inapplicability and bad-faith of a defense based on lack of standing. "Notably", Ms. Fischer has *not* denied or disputed the accuracy of this third "highlight".

Ms. Fischer's second false and misleading claim on the standing issue is that my argument that Justice Wetzel did not base his decision on lack of standing is "irrelevant" because I admit[] that the Commission asserted lack of standing before the trial court and, therefore, never waived it. Contrary to Ms. Fischer's false inference, I made *no* argument having to do with waiver. Rather, my argument – to

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[6] In addition to pp. 6-7 of my Critique of her Respondent's Brief, annexed as Exhibit "U" to my August 17th motion, see pp. 20-21, 25-26, 34-35 of my Critique of her opposition to my August 17th motion, annexed as Exhibit "AA" to my October 15th reply affidavit. The second Critique points out (at pp. 22-23) that Ms. Fischer's opposition to my August 17th motion had misidentified the basis upon which my Verified Petition was seeking mandamus to remove the Commission's Chairman, Henry T. Berger – relief sought in my Notice of Petition [A-19] and reflected by my Fifth Claim for Relief [A-44-45].

which Ms. Fischer does *not* respond – is that the lack of standing defense is so bogus that Justices Wetzel and Lehner each rejected it, notwithstanding urged by the Commission and, further, that this Court's decision not only conceals that Justice Wetzel did *not* dismiss my proceeding on that ground, but does *not* substantiate my supposed lack of standing with *any* findings of fact and law[7].

16. Ms. Fischer's ¶6, under the heading "Justice Wetzel's Refusal To Recuse Himself", does *not* respond to my reargument analysis of the decision's fourth sentence (at pp. 16-17)– except by false and misleading claims.

Ms. Fischer begins by purporting, as if this is a failing, that I do "not offer any new material concerning the Court's affirmation of Justice Wetzel's decision not to recuse himself". Not only is Ms. Fischer presumed to know that reargument is not for purposes of presenting "new material", but my moving affidavit (¶18) expressly identified that the only new material presented by my reargument analysis was that in footnotes 11 and 15 pertaining to facts that members of the appellate panel were duty-bound to disclose and as to which I was entitled to their "legal disqualification" for interest under Judiciary Law §14.

Ms. Fischer then falsely pretends that my reargument analysis of the decision's fourth sentence (at pp. 16-17) "simply refers to [my] original appellate

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[7] This raises due process issues as "the linchpin of our constitutional and statutory design [is] intended to afford each litigant at least one appellate review of the facts (Cohen and Karger, Powers of the New York Court of Appeals §109, at 465 [rev ed])", *People v. Bleakley*, 69 NY2d 490, 494 (1987).

brief", when, in fact, it *also* refers to relevant pages from my Critique of her Respondent's Brief. Having so brazenly obliterated this Critique, Ms. Fischer then falsely claims that I have "never addressed", including in my "current motion", pages 17-19 of Respondent's Brief that Justice Wetzel's recusal was not required because my allegations of his interest were "unsupported speculation as to possible future events". That this is a brazen falsehood may be seen from pages 54-61 of my Critique, referenced by my reargument analysis of the decision's fourth sentence (at pp. 16-17).

17. Ms. Fischer's ¶¶7-8, under the heading "The Injunction Against Further Filings", does *not* even pretend to respond to a single one of my arguments. Indeed, Ms. Fischer does *not* identify a single one of my arguments – or even provide the pertinent record references for the arguments she has *not* identified – be it in my Appellant's Brief (at pp. 61-68), my Critique of her Respondent's Brief (at pp. 62-64), or my reargument analysis of the decision's fifth sentence (at pp. 17-19). The *only* record reference Ms. Fischer provides is *not* for any argument I make, but to pages 20-21 of her Respondent's Brief for the proposition that I have an "effective identity with the Center for Judicial Accountability, Inc.". To this, she fails to provide *any* record reference as to my response, which I had set forth at pages 62-63 of my Critique of her Respondent's Brief – *or even to identify that there was a response*.

18. Ms. Fischer's *own* argument on the injunction issue is a monstrous deceit and should, like all her other arguments, be an embarrassment to this Court,

which has heretofore put its imprimatur on her misconduct. I have previously demonstrated, with record references and legal authority, that there is NO factual or legal basis for Justice Wetzel's *sua sponte* imposition of a filing injunction against me and the non-party Center for Judicial Accountability, Inc. – and for this Court's affirmance thereof. Moreover, contrary to Ms. Fischer's false claim, Justice Wetzel did *not* make any "findings" with respect to the injunction – and I have so stated. What Justice Wetzel did was substitute defamatory, conclusory assertions whose factual falsity and legal insufficiency I resoundingly exposed in my Appellant's Brief (at pp. 61-68). Undeterred, Ms. Fischer repeats – now for the third time before this Court[8] -- the same already-discredited defamatory and conclusory claims – to which she now adds that my "actions during this appeal" "amply demonstrate why petitioner is the rare litigant against whom a court could justifiably enter a sua sponte injunction to prevent further filings without permission".

19. Ms. Fischer's examples (¶8) of my supposedly egregious actions before this Court are my "lengthy briefs and correspondence" – as to which she provides *no* specifying details -- and because I have "now filed two motions seeking the recusal of the entire Appellate Division, First Department" (emphasis in the original). Aside from the fact, as set forth in my Appellant's Brief (at p. 65), that "the right 'to escape a biased tribunal' is itself a due process right, *Holt v. Virginia*, 381 U.S. 131, 136

[8] The first time was at pages 20-22 of her Respondent's Brief – rebutted by pages 62-65 of my Critique thereof, annexed to my August 17th motion as Exhibit "U". The second time was at page 11 of her August 30, 2001memorandum of law opposing that August 17th motion – rebutted by page 54 of my Critique of her opposition, annexed as Exhibit "AA" to my October 15th reply affidavit in further support of my August 17th motion.

(1965), which cannot be punished absent a showing that there is something inappropriate about the language used" – and Ms. Fischer cites to NOTHING -- the record shows that I have filed but a single recusal motion – that of August 17th –which so overwhelmingly demonstrated my entitlement to special assignment of the appeal to "a panel of 'retired or retiring judge[s], willing to disavow future political and/or judicial appointment" and to disclosure by the members of the appellate panel "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" that the Court had to conceal, in the seventh and final sentence of its decision, that such relief had even been sought.

20. Conspicuously, Ms. Fischer does not identify that the "over five hundred pages" of my August 17th motion also demonstrated my entitlement to relief against her for her fraudulent appellate advocacy and against other culpable persons in the Attorney General's office and at the Commission, as well as the disqualification of the Attorney General for violation of Executive Law §63.1 and conflict of interest rules. This, by my 66-page Critique of her Respondent's Brief, my 58-page Critique of her opposition to my August 17th motion, and my "copious" correspondence with her superiors and her client relative to their supervisory duty to withdraw her fraudulent submissions, annexed to my August 17th moving affidavit and my October 15th reply affidavit. Indeed, Ms. Fischer nowhere identifies that it is her unrestrained litigation fraud before this Court, like the unrestrained litigation fraud of her predecessors in the lower court, that has obstructed the speedy resolution of this case

in which there is NO LEGITIMATE DEFENSE to the documentary proof of the Commission's violations of statutory and constitutional provisions and to any of the series of fraudulent judicial decisions of which it has been both beneficiary and accomplice.

21. Contrary to Ms. Fischer's claim (at ¶8) of my supposedly "vindictive behavior", it is my right to request criminal and disciplinary prosecutions against those who corrupt the judicial process, whatever their rank – including this Court's judges – when, as here, I have substantiated same with a 19-page analysis proving that their appellate decision "perverts the most basic adjudicative standards and obliterates anything resembling the rule of law." That Ms. Fischer has not, *in any respect*, denied or disputed the accuracy of this 19-page analysis only reinforces my right to seek criminal and disciplinary prosecutions and my entitlement to same from the state agency charged with enforcing judicial standards and the state's highest law enforcement officer.

22. Ms. Fischer's final two paragraphs, her ¶¶9-10, are false and misleading – beginning with the heading "New Disqualification Charges Concerning the Panel". My reargument motion does *not* make "new disqualification charges". Rather, it set forth facts which members of the appellate panel were duty-bound to have disclosed based on the first branch of my August 17th motion.

23. These facts, as they pertain to disqualification for interest, were identified in footnotes 11 and 15 of my reargument analysis. Based thereon, ¶18 of

my reargument motion – the only paragraph cited by Ms. Fischer's ¶9 -- expressly stated,

> "The appellate panel members were ethically obligated to disclose these pertinent facts,[fn] 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." (emphasis in the original).

24. Yet, Ms. Fischer's ¶¶9 and 10 omit ALL reference to the disclosure issue – an issue emphasized in ¶18 of my moving affidavit, as well as in ¶¶19-20, 23(f), and by my reargument analysis (pp. 4, 7, 17). The appellate panel's obligation of disclosure is thus conceded by her. This replicates her similar concession when she opposed my August 17th motion, *without* referencing the disclosure issue[9].

25. Ms. Fischer then confines herself to my contention as to the panel's disqualification, as to which she purports (at ¶9) that "little comment" is required. The "little comment" she then makes consists of two sentences whose false and misleading nature is revealed by my ¶18 to which she cites, but whose content she does *not* address.

26. In the first of these sentences, Ms. Fischer generalizes as to "all" my recusal motions. These she asserts "are based on an imagined conspiracy involving the Governor, and the presumed wish possessed by judges to protect the supposed conspiracy from exposure" (at ¶9). Aside from the fact that the record shows that

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[9] *See* my October 15th reply affidavit: Exhibit "AA", at pp. 29-30.

"conspiracy" is not how I have described the Governor's involvement, ¶¶15-31 of my August 17th motion, cited by my ¶18, makes clear that there is nothing "imagined" in the criminal ramifications of this case on the Governor – as a result of which judges "wish[ing]" to be redesignated or elevated by him have an interest in the proceeding. Indeed, the specificity and proof presented by my August 17th motion was reiterated by my second Critique (pp. 36-40), annexed as Exhibit "AA" to my October 15th reply affidavit, exposing her fraudulent opposition to the motion.

27. Footnote 11 of my reargument analysis fills in the particulars of the "wish" of three justices to remain on the bench and/or to ascend higher. This, based on information from the New York Law Journal showing that at the very time Justices Andrias and Ellerin sat on the appeal, they had an immediate dependency on the Governor for redesignation to their then expiring terms. Justice Andrias was also being "considered a contender" for elevation to the position of Presiding Justice of the Appellate Division, First Department because he and the Governor were law school classmates. Additionally, Justice Nardelli, by reason of seniority, was set to become the Appellate Division's Acting Presiding Justice until the Governor made some other appointment[10].

28. Ms. Fischer's second sentence of her "little comment" (at ¶9) is likewise false and misleading in purporting that I do "not specifically explain why

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[10] In fact, subsequent to the making of my January 17th reargument motion, the Law Journal reported that Justices Andrias and Nardelli were each candidates for the position of Presiding Justice, scheduled for interview by Governor Pataki's First Department Judicial Screening Committee (Exhibits "A-1" and "A-2").

participation in the Mantell decision would require recusal" but "presumably [I] believe[] that a Mantell panel judge would... want to conceal the alleged 'fraudulent' nature of the decision..." Aside from the fact that ¶¶49-67 of my August 17th motion – which my ¶18 identifies -- particularize the misconduct of the *Mantell* appellate panel, my cited footnote 15 could not have been more explicit as to the basis for Justice Mazzarelli's duty to have disclosed her membership on the *Mantell* appellate panel and disqualified herself from my appeal. This,

> "because of her clear self-interest that the Court NOT make findings as to the accuracy of my two analyses establishing the fraudulence of the *Mantell* appellate decision and Justice Lehner's underlying decision – findings essential to both my August 17th motion and my appeal" (emphasis in the original).

29. Tellingly, *neither* of Ms. Fischer's two sentences of "comment" denies or disputes my entitlement to the disqualification of the panel members for interest under Judiciary Law §14, based on the facts in footnotes 11 and 15 and the recitation at ¶¶15-31, 49-67 of my August 17th motion. These are, therefore, deemed conceded.

30. As emphasized by my reargument motion (¶¶24-26), the appellate panel's proscribed interest under Judiciary Law §14 deprives it of jurisdiction to do anything but recuse itself. Ms. Fischer also does *not* deny or dispute that the panel's decision is a nullity by reason of its "legal disqualification" for interest.

31. As for the final paragraph of Ms. Fischer's "affirmation", her ¶10, which pretends that because of my "inability to demonstrate that the Court misapplied any law or misapprehended any fact", I have not established my "ultimate conclusion" as set forth at ¶¶20-25 of my moving affidavit, this is a palpable untruth

in light of her failure to deny or dispute, *in any respect*, the accuracy of my reargument analysis and my affidavit in support of reargument. Those documents demonstrate, *without controversion*, that the decision is so utterly violative, factually and legally, as to manifest the Court's actual bias, for which its denial of my August 17th recusal motion was a flagrant "abuse of discretion". This, over and beyond, demonstrating, *without controversion*, the Court's "legal disqualification" for interest under Judiciary Law §14 – as to which it had NO discretion.

32. Insofar as this reply affidavit (¶2, *supra*) seeks sanctions, including disciplinary and criminal referral, not only against Ms. Fischer for her demonstrably fraudulent opposing "affirmation", but against her culpable superiors at the Attorney General's office and at the Commission, annexed hereto is my pertinent correspondence with Attorney General Spitzer -- copies of which were provided to the Commission and to Solicitor General Caitlin Halligan.

33. The first of this correspondence is my initial January 14, 2002 letter to Attorney General Spitzer, which I gave him, *in-hand*, on that date, with copies then delivered to his office and to the Commission on January 17, 2002 (Exhibit "B-1"), simultaneous with service of this January 17th reargument motion (Exhibits "B-2"). Such letter identified that unless he denied or disputed the accuracy of my 19-page analysis of this Court's decision, embodied in CJA's January 7, 2002 memorandum-

notice, his duty, pursuant to Executive Law §63.1, was to join in support of my reargument motion[11].

34. Thereafter, by letter dated February 12, 2002 (Exhibit "E-1"), with copies to Solicitor General Halligan (Exhibit "E-2") and the Commission (Exhibit "E-3") I notified Attorney General Spitzer that Ms. Fischer had wholly failed to controvert the accuracy of my 19-page analysis and reargument motion in her "knowingly false and deceitful" opposition herein[12]. I stated,

> "Once again, I call upon you, Solicitor General Halligan, and your conspiring client, to each meet your mandatory supervisory duties under the clear and unambiguous provisions of 22 NYCRR §1200.5 and 22 NYCRR §130-1.1, and to withdraw this fraudulent opposition. Absent this, I will be required to burden the Court with otherwise unnecessary reply papers, including a request for maximum sanctions against all of you, *personally*.
>
> As Ms. Fischer's instant litigation misconduct reinforces that there is NO LEGITIMATE OPPOSITION to my January 17, 2002 reargument motion, I reiterate what I set forth in my January 14, 2002 letter to you, which I gave you *in hand* on that date, *to wit*, that your duty, pursuant to Executive Law §63.1, is to repudiate your representation of the Commission and to join with me in support of reargument and, ultimately, in my efforts to secure fair and impartial review by the Court of Appeals." (emphases in the original).

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[11] My January 14th letter (Exhibit "B-1", p. 2) identified that my reargument motion would be joined with a request for leave to appeal. In fact, my motion for leave to appeal has been separately filed and is returnable on March 6th.

[12] Prior thereto, Ms. Fischer had requested from me a stipulation extending her time to file her "answering papers" (Exhibit "D-1"). In agreeing (Exhibit "D-2"), I expressed my "hope that the additional time will enable you and your superiors to better recognize that there is NO LEGITIMATE DEFENSE...and that the Attorney General's duty under Executive Law §63.1 is to disavow his representation of the Commission and join in support of the relief sought by my reargument motion".

35. Explicitly stated in my February 12th letter to Attorney General Spitzer (Exhibit "E-1") was that it supplemented a prior January 23rd letter to him (Exhibit "C-1"), pertaining to his duty, as well as Solicitor General Halligan's independent duty, to notify Governor Pataki's First Department Judicial Screening Committee of the unfitness of candidates being considered for appointment as Presiding Justice of the Appellate Division, First Department. Among these candidates, Justices Andrias and Nardelli, based on their demonstrably self-interested, biased, and lawless conduct on this appeal.

36. Enclosed with my January 22nd and February 12th letters to the Attorney General (Exhibits "C-1" and "E-1") were copies of my January 22nd and February 7th letters to the Chairman of the First Department Judicial Screening Committee (Exhibits "F" and "G"), constituting opposition to the candidacies, first of Justice Andrias and then of Justice Nardelli.

37. Justices Andrias and Nardelli may well be already aware of my opposition to their candidacies, if not *via* the First Department Judicial Screening Committee then *via* the Executive Director of Governor Pataki's Judicial Screening Committees, to whom I also sent copies of my January 22nd and February 7th letters (Exhibit "H-1" and "H-2")[13]. Certainly, Justices Andrias and Nardelli should be able

[13] Ordinarily, there would be no question but that the Governor's judicial screening apparatus would have notified Justices Andrias and Nardelli of questions as to their judicial fitness based on their appellate conduct herein. However, since the Governor's judicial screening apparatus is a hoax – a fact highlighted, *inter alia*, by ¶¶15-31of my August 17th motion and now again evidenced by the *non-response* of the First Department Judicial Screening Committee and the Governor's office to my January 22nd and February 7th letters (Exhibits "I-1" and "I-2") – there exists the possibility that these justices were never so advised.

to independently recognize the significance of footnote 2 of my January 17th moving affidavit, annexing a copy of the Commission's acknowledgment of my 19-page analysis of the Court's decision as a judicial complaint against the members of the appellate panel. This, because Judiciary Law §45.2 requires the Commission to provide the Governor with "any pending complaint against an applicant" – a fact of which they were presumably apprised in connection with their candidacy.

38. My opposition to the candidacies of Justices Andrias and Nardelli, based on their misconduct herein, will doubtlessly further exacerbate the Court's bias against me on this reargument motion – a bias which, throughout, has been extrajudicial in nature – as *nothing* in the record or in law can any way justify the Court's actions on this appeal. Beyond that, the Court's heretofore *uncontroverted* "legal disqualification" for interest under Judiciary Law §14 is now intensified and pertains to ALL five judges of the appellate panel. This, by reason of my filing of my *facially-meritorious* complaint against the panel members, based on their misconduct on this appeal, which as the record shows I did everything humanely possible to avert. Such complaint actualizes the first ground for the Court's disqualification for interest, particularized at ¶¶8-14 of my August 17th motion.

39. Now that the panel's five justices have, by their knowing and deliberate misconduct, brought upon themselves a *facially-meritorious* complaint, whose investigation should rightfully lead to their prosecution and removal from the bench, based on this Department's age-old case law, *Matter of Capshaw*, 258 AD 470, 485 (1940); *Matter of Droege*, 129 AD 866 (1909); and *Matter of Bolte*, 97 AD 551

(1904) – cited at the outset of my Appellant's Brief (at p. 4) -- they have an intense interest in adhering to their fraudulent decision as it obliterates the Commission's duty to investigate *facially-meritorious* judicial misconduct complaints, mandated by the plain language of Judiciary Law §44.1 and the Court of Appeals' interpretation in *Nicholson*, and because it prevents, on grounds of standing, a complainant whose *facially-meritorious* complaint the Commission has dismissed, *without investigation*, from obtaining judicial review. Nevertheless, their duty now – as previously – is to rise above their self-interest and give respect to the rule of law.

WHEREFORE, the relief requested by my Notice of Motion must be granted, including referral of this appeal to the Appellate Division, Fourth Department by reason of this Court's previously *uncontroverted* and now *indisputable* disqualification for interest, pursuant to Judiciary Law §14, depriving it of jurisdiction. Such referral must encompass my entitlement to sanctions and other relief against Assistant Solicitor General Fischer and her culpable superiors at the Attorney General's office and the Commission, based on her fraudulent opposition to this motion.

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Sworn to before me this
20th day of February 2002

Notary Public

ANTHONY DELLA VECCHIA
Notary Public, State of New York
No. 01DE5035676
Certificate Filed in Westchester County
Commission Expires 11-01-02

TABLE OF EXHIBITS

Exhibit "E-1":	Petitioner-Appellant's February 12, 2002 letter to Attorney General Spitzer
"E-2":	Petitioner-Appellant's February 12, 2002 letter to Solicitor General Halligan
"E-3":	Petitioner-Appellant's February 12, 2002 memo to Commission on Judicial Conduct
Exhibit "F":	Petitioner-Appellant's January 22, 2002 letter to James F. Gill, Chairman, First Department Judicial Screening Committee
Exhibit "G":	Petitioner-Appellant's February 7, 2002 letter to Chairman Gill
Exhibit "H-1":	Petitioner-Appellant's January 22, 2002 fax to Nan Weiner, Executive Director, Governor Pataki's Judicial Screening Committees
"H-2":	Petitioner-Appellant's February 7, 2002 letter to Ms. Weiner
"H-3":	Petitioner-Appellant's February 13, 2002 fax to Ms. Weiner
Exhibit "I-1":	Petitioner-Appellant's January 23, 2002 letter to Mr. Gill
"I-2":	Petitioner-Appellant's February 13, 2002 letter to Mr. Gill