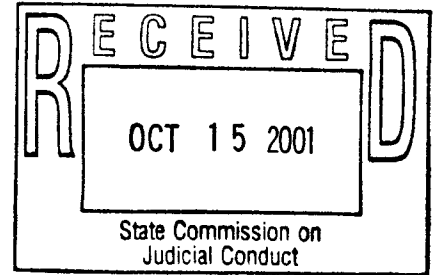


SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT



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

Petitioner-Appellant,

REPLY AFFIDAVIT

Ct/NY Co. # 99-108551

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.
----- x

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

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

1. This Affidavit replies to the August 30, 2001 opposing "Affirmation" and Memorandum of Law of Assistant Solicitor General Carol Fischer, whose non-probative and knowingly false, deceitful, and frivolous nature is resoundingly exposed by my *uncontroverted* 58-page September 17, 2001 Critique – annexed hereto as Exhibit "AA"¹.

2. Based on this *uncontroverted* September 17th Critique, constituting a virtual line-by-line analysis of Ms. Fischer's fraudulent opposition to my August 17, 2001 motion, and my correspondence with Ms. Fischer's superiors at the Attorney General's office and with Respondent New York State Commission on Judicial

¹ To prevent confusion with Exhibits "A" – "Z" annexed to my August 17, 2001 motion, exhibits annexed hereto will be identified by double letters, "AA" – "UU".

Conduct ["Commission"] relative to their obligation to withdraw that opposition – annexed hereto as Exhibits "BB" - "OO-2" -- this Affidavit is submitted in support of an application pursuant to 22 NYCRR §130-1.1 for maximum costs and sanctions against Ms. Fischer and culpable parties at the Attorney General's office and Commission, *personally*² – separate and apart from the application for §130-1.1 costs and sanctions against them, *personally*, in the second branch of my motion for their wilful failure to withdraw Ms. Fisher's fraudulent March 22, 2001 Respondent's Brief based on my 66-page May 3, 2001 Critique (Exhibit "U"). Among the *personally* culpable parties are Attorney General Eliot Spitzer, former Solicitor General Preeta D. Bansal, current Solicitor General Caitlin J. Halligan, Deputy Solicitor General Michael S. Beloholavek, and the Commission's Counsel and Administrator Gerald Stern.

3. Additionally, this Affidavit is submitted to reinforce my entitlement to the other relief requested by my motion's second branch and, in particular, to reinforce the absolute necessity that the Court discharge its mandatory disciplinary responsibilities, pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, by referring for disciplinary and criminal prosecution

² This should include "reasonable attorney's fees" -- if necessary pursuant to the Court's "inherent power" – as I deserve to have my valuable time compensated. The record herein demonstrates that in face of an Attorney General who has wilfully refused to discharge his duty to uphold the "interest(s) of the state", pursuant to Executive Law §63.1, I have assumed the role that he is supposed to fill as "the People's lawyer" in vindicating the state's "overriding interest in the integrity and impartiality of the judiciary" (*Nicholson v. Commission on Judicial Conduct*, 50 NY2d 597, 607 (1980), quoting from the concurring opinion of U.S. Supreme Court Justice Potter Stewart in *Landmark Communications v. Virginia*, 435 U.S. 829, 848 (1977)", cited in my January 10, 2001 letter to Attorney General Spitzer (Exhibit "T-1", p. 2).

Ms. Fischer, the above-named culpable parties, and such other persons at the Attorney General's office and at the Commission as the Court determines, *upon inquiry*, to be involved herein in continued "substantial violation of the Code of Professional Responsibility", including DR 1-102(a)(4),(5) [22 NYCRR §§1200.3(a)(4),(5)] and DR 7-102(a)(5) [22 NYCRR §1200.33(a)(5)], 22 NYCRR §130-1.1, and Judiciary Law §487 – the same provisions invoked by my motion's second branch – as well as in the on-going "substantial violation of the Code of Professional Responsibility", DR 1-104 [22 NYCRR §1200.5], DR 1-102(a)(2) [22 NYCRR §1200.3(a)(2)], and DR 1-103(a) [22 NYCRR §1200.4(a)]³. This, in addition to disqualifying the Attorney General from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules.

4. Only forceful action by the Court will protect the integrity of the appellate process from an Attorney General and Commission who, confronted with my fully-documented August 17th motion, dispositive of my entitlement to costs, sanctions, and disciplinary and criminal relief against them for wilful violations of fundamental standards of professional responsibility, have continued to wilfully violate these basic standards by repeating the very misconduct which is the subject of the motion.

5. Such misconduct – fraudulent court submissions and the wilful refusal of supervisory attorneys to discharge their mandatory supervisory responsibilities under DR 1-104 [22 NYCRR §1200.5] – would be intolerable if committed by private

³ The text of these provisions is annexed to my October 2, 2001 letter to Solicitor General Halligan (Exhibit "KK")

attorneys, paid by private clients. It is all the more so when it is committed by the Attorney General, our state's highest law enforcement officer – aided and abetted by the state agency whose duty is to enforce judicial standards – both supported by tax dollars of this state's hard-working citizens. That their misconduct is aimed at torpedoing this public interest lawsuit, whose purpose is to safeguard the public welfare and vindicate public rights, only compounds the affront to the citizens of this state – additionally warranting all measure of penalties available against them, including, disbarment. Certainly, disbarment would have the further benefit of disqualifying the culpable public officers from the positions they hold, thereby sparing taxpayers the necessity of formal removal proceedings.

6. With the exception of two non-lawyer members of the Commission, the culpable parties herein are all seasoned attorneys, fully familiar with fundamental litigation and professional norms. Indeed, Attorney General Spitzer touts his office's commitment to competence and professionalism. His "Message" (Exhibit "PP-1"), appearing on his website, identifies that the first priority of the first year of his administration was to "bring together a staff of legal professionals unquestioned for their credentials, integrity, and commitment to public service". His spokesman, justifying substantial salary increases to Attorney General Spitzer and "about two dozen aides in his office" in 1999, was quoted as saying, "These increases are helpful in attracting and retaining top-flight attorneys" (Exhibit "PP-2"). Most recently, in announcing the resignation of Ms. Bansal as Solicitor General and his appointment of Ms. Halligan – during the pendency of this motion – Attorney General Spitzer praised

Ms. Bansal as having done "a remarkable job in invigorating the office and renewing a reputation for excellence. I am absolutely thrilled at the work she did". Ms. Halligan then pledged to "continue the work the office has done in developing a high caliber appellate practice in the state and federal courts." (see Exhibit "KK": Ex. "A-1" thereto)

7. Annexed hereto are the biographic profiles and resumes of the attorneys in supervisory positions at the Attorney General's office directly liable for Ms. Fischer's fraudulent opposition to my August 17th motion by their wilful failure to discharge their supervisory responsibilities, upon *repeated*, fact-specific notice from me that such was required. With the possible exception of newly-installed Solicitor General Halligan, ALL are also directly liable for Ms. Fischer's fraudulent Respondent's Brief by their wilful failure to discharge their supervisory responsibilities, upon *repeated*, fact-specific notice from me that such was required:

Attorney General Spitzer (Exhibit "QQ-1"), a Harvard Law School graduate, who clerked for U.S. District Judge Robert Sweet and served as an Assistant District Attorney in Manhattan for six years, where he rose to Chief of the Labor Racketeering Unit.

Former Solicitor General Bansal (Exhibit "QQ-2")⁴, a *magna cum laude* Harvard Law School graduate, who clerked for U.S. Supreme Court Justice John Paul

⁴ See also the September 1, 1999 New York Times profile about then Solicitor General Bansal, "*Poised and Playful in the Legal Fastlane*", annexed to my June 7, 2001 letter to her (Exhibit "W"), as well as annexed to my October 2, 2001 letter to Solicitor General Halligan (Exhibit "KK").

Stevens and for Chief Judge James L. Oakes of the U.S. Court of Appeals for the Second Circuit, and who served in the Clinton Administration as Special Counsel in the Office of White House Counsel and at the Justice Department, where she was first Senior Counsel in the Office of Policy Development and then Counselor to the Assistant Attorney General (Antitrust Division).

Solicitor General Halligan (Exhibit "QQ-3")⁵, a *magna cum laude* graduate of Georgetown University Law School, who clerked for U.S. Supreme Court Justice Stephen G. Breyer and Judge Patricia M. Wald of the U.S. Court of Appeals for the D.C. Circuit.

Deputy Solicitor General Belohlavek (Exhibit "QQ-4"), a *cum laude* graduate of St. John's Law School, who, when he was hired by the Attorney General's office, identified himself on his resume as in private practice, since 1969, at a single law firm, where he was "senior attorney",

"experienced in all phases of litigation through trial, hearing and appeal, especially writing and arguing extensive numbers of appeals and substantive motions...*Managed substantial caseload with extensive supervisory responsibilities.*". (emphasis added)

8. There may be others in the supervisory chain at the Attorney General's office, however, I do not know who they are. Annexed hereto as Exhibit "RR-1" is the F.O.I.L. request I made on March 26, 2001 – shortly after receiving Ms. Fischer's Respondent's Brief. I requested:

⁵ See also the September 25, 2001 New York Law Journal article, "*Spitzer Names Halligan Solicitor General*", annexed to my October 2, 2001 letter to Solicitor General Halligan (Exhibit "KK").

“...any publicly-available documents relating to the handling of appeals by the Attorney General’s office, including documents as to procedures for ensuring the integrity of appellate submissions and supervisory oversight.”

The Attorney General’s confusing response (Exhibit “RR-2”) – not provided for three months – furnished only resumes and no documents relative to the Attorney General’s handling of appeals or supervisory oversight for ensuring their integrity⁶.

9. Thus, it may be that Solicitor General Halligan – although newly appointed to that office on September 24, 2001 – had supervisory involvement in this appeal prior thereto. This, because she had been First Deputy Solicitor General since January 2001—the very time my appeal was transferred to the Solicitor General’s office⁷. In such position Ms. Halligan was presumably situated between Deputy

⁶ The Attorney General also furnished no documents responding to my related December 9, 1999 F.O.I.L. request, reiterated repeatedly – including in my March 26, 2001 F.O.I.L. request -- for any 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 New York State Commission on Judicial Conduct”.

⁷ It is my belief that this appeal was transferred to the Solicitor General’s office because the Assistant Attorney General principally defending against the lawsuit in the lower court, Carolyn Cairns Olson, as well as others in Section “D” at the Attorney General’s office involved herein, wanted to get rid of it – knowing full well that there was NO legitimate defense to the appeal. (See, *inter alia*, my January 10, 2001 letter to Attorney General Spitzer (Exhibit “T-1”) – to which Ms. Olson was an indicated recipient).

That appeals such as this are generally defended by the same Assistant Attorneys General as defend them in the lower court may be seen, *inter alia*, from the fact that *Mantell v. Commission* (NY Co #108655/99) was defended on appeal to the Appellate Division, First Department by the same Assistant Attorney General as had defended the case in the lower court, *to wit*, Constantine Speres. Indeed, Mr. Speres also participated on the *Mantell* appeal at the Court of Appeals level – signing a January 11, 2001 Memorandum of Law in opposition to Mr. Mantell’s motion to that Court for leave to appeal.

Solicitor General Belohlavek and then Solicitor General Bansal on the hierarchical ladder.

10. Among the unknown persons in supervisory positions at the Attorney General's office whose influence on the defense of this lawsuit on appeal, as likewise in the lower court, may be presumed to have been particularly pernicious, are two from Attorney General Spitzer's top inner circle – Deputy Attorney General for State Counsel Richard Rifkin, formerly Executive Director of the New York State Ethics Commission (Exhibit “QQ-5”), and First Deputy Attorney General Michele Hirschman, formerly Chief of the Public Corruption Unit for the U.S. Attorney for the Southern District of New York (Exhibit “QQ-6”). The reason for this is that in their prior positions, they each engaged in official misconduct in covering up what occurred in *Doris L. Sassower v. Commission* (NY Co. #109141/95), including Justice Cahn's fraudulent dismissal decision – exposed by this appeal. This is particularized at ¶¶24-53 of my July 28, 1999 omnibus motion and substantiated by two of the free-standing file folders which support the omnibus motion – one containing the lower court record in *Doris L. Sassower v. Commission* [A-346] and the other containing correspondence pertaining to the prior official misconduct of Mr. Rifkin and Ms. Hirschman in connection therewith [A-347].

Such fact-specific, document-supported presentation was to establish my entitlement to the first branch of my omnibus motion for “the disqualification of the Attorney General from representing Respondent for non-compliance with Executive Law §63.1 and for multiple conflicts of interest” [A-195]. As highlighted

by my Appellant's Brief (at p. 35), Justice Wetzel denied the July 28, 1999 omnibus motion "*without reasons or factual findings*".

11. As for Assistant Solicitor General Fischer, whose fraudulent court submissions those in supervisory positions refused to withdraw, her resume (Exhibit "QQ-7") shows that she is a *cum laude* graduate of Cornell Law School and that, before joining the Attorney General's office, she was, since 1987, a "litigation associate" at a single firm with:

"Primary responsibility for numerous appeals in both State and Federal court, including those involving the correct application of summary judgment standards [and] the disqualification of counsel due to conflicts of interest... Handled Article 78 proceedings..."

12. As for the Commission, the biographic profiles of the Commission's members, as they currently appear on the Commission's website, are annexed hereto (Exhibit "SS-1"), with the biographic profiles of the Commission's attorney-staff, from the Commission's 2001 Annual Report also annexed (Exhibit "SS-2"). It is my position – and reflected by my September 21, 2001 letter to the Commission (Exhibit "HH")-- that

"...there is no reason why a fully-informed, knowledgeable client like the Commission – all but two of whose members are lawyers and which is staffed with lawyers – should not be held to have supervisory responsibilities over its demonstrably misbehaving attorney. Certainly, 22 NYCRR §1200.3(a)(1), proscribing a lawyer or law firm from 'circumvent[ing] a disciplinary rule through the actions of another', would make the fully-informed lawyer members and staff of the Commission liable for ALL the Commission's violative conduct in this proceeding – including the wilful refusal

of Deputy Solicitor General Belohlavek, Solicitor General Bansal, and Attorney General Spitzer to discharge their mandatory supervisory responsibilities under 22 NYCRR §1200.5." (Exhibit "HH", p. 3)

13. Plainly, there is more than ample legal competence at the Attorney General's office and at the Commission to have recognized – *even without benefit of my May 3rd and September 17th Critiques* – that Ms. Fischer's two submissions to this Court were sanctionable deceptions. All that was necessary was simple comparison of her Respondent's Brief with my Appellant's Brief and Appendix and simple comparison of her August 30th "Affirmation" and Memorandum of Law with my August 17th motion. Indeed, my September 4, 2001 memo to Attorney General Spitzer and Solicitor General Bansal (Exhibit "BB"), first putting them on notice of their mandatory supervisory duty to withdraw Ms. Fischer's opposition to my motion, stated that by making such comparison:

"you [can] verify for yourselves – as is your duty upon notice – that just as Ms. Fischer's Respondent's Brief was, '*from beginning to end*, [] based on knowing and deliberate falsification, distortion, and concealment of the material facts and law', so, likewise, her August 30, 2001 Affirmation and Memorandum of Law opposing my motion" (Exhibit "BB", p. 2).

14. Nevertheless, Deputy Solicitor General Belohlavek – an indicated recipient of my September 4th memo (Exhibit "BB") -- whether acting on his own or at the behest of his superiors -- opted NOT to undertake such simple comparison. Instead, much as he had last April, when, upon notice from me that Ms. Fischer's Brief was sanctionable and had to be withdrawn, he requested that I provide him with

"something in writing"⁸, so he responded by a September 6, 2001 fax (Exhibit "DD") inviting me to provide a critique, as my September 4th memo had offered to do "*should that be necessary*" (Exhibit "BB", p. 2, emphasis in the original).

15. As reflected by my September 7, 2001 letter to Deputy Solicitor General Belohlavek (Exhibit "EE"), my response included the following:

"I TRUST such fax is not some cruel joke – designed to have me undertake the laborious work of preparing a fact-specific, law-supported critique *only* so that you can then send me a letter, declining, *without reasons*, to withdraw Ms. Fischer's August 30th Affirmation and Memorandum of Law in opposition to my motion. This is what you did by your June 14th letter, responding to my 66-page May 3rd Critique of Ms. Fischer's Respondent's Brief, wherein, *without reasons*, you blithely stated 'we have no intention of withdrawing Ms. Fischer's brief'. That letter is now Exhibit 'X-1' to my August 17th motion." (emphases in the original)

16. The correspondence annexed hereto establishes, beyond question, that "a cruel joke" was precisely what Mr. Belohlavek played on me – much as he had played such "cruel joke" on me in connection with my May 3rd Critique of Ms. Fischer's Respondent's Brief (Exhibit "U"). Thus, after I worked diligently and in good faith to provide him with a critique of Ms. Fischer's opposing "Affirmation" and Memorandum of Law, and arranged for extensions of time so that he, Attorney General Spitzer, and Solicitor General Bansal would have ample opportunity to review it and meet with me to resolve how we could work together to vindicate the transcendent issues at stake in this appeal (Exhibits "GG", "HH", "II"), what I got in

⁸ This is recited in the "Introduction" to my May 3rd Critique (Exhibit "U", p. 1). My exchange of correspondence with Mr. Belohlavek in April and May is annexed to my June 7th

return was a single-sentence October 10, 2001 letter, signed by Mr. Belohlavek (Exhibit "NN"), sent to me a day beyond the generous October 9, 2001 time frame I had set (Exhibits "GG-1", p. 2; "KK", pp. 7). In full, Mr. Belohlavek's letter reads:

"This is to notify you that we will not be withdrawing Ms. Fisher's opposition to your August 17th motion."

17. Comparison of Mr. Belohlavek's October 10th letter (Exhibit "NN") with his complained-about June 14th letter (Exhibit "X-1") makes the June 14th letter look good by comparison. At least that earlier letter thanked me for my "extensive critique of Ms. Fischer's brief", which it purported had been reviewed. By contrast, Mr. Belohlavek's October 10th letter extends no such thanks, makes no claim that my Critique of Ms. Fischer's opposition had been reviewed, and fails even to acknowledge the Critique's existence.

18. Tellingly, Mr. Belohlavek has not responded to my follow-up October 11, 2001 letter to him (Exhibit "OO-1"), asking why he put me to the burden of preparing the Critique if he wasn't going to address it, and challenging him to identify the respects in which he believed – *if he did* – that my September 17th Critique had not demonstrated his obligation to withdraw Ms. Fischer's opposition. Such letter also asked him to identify

"who the 'we' are who made the supervisory decision not to withdraw Ms. Fischer's opposition to my motion so that there is no doubt as to whether you are acting independently or at the direction of Attorney General Spitzer and/or Solicitor General Halligan."

letter to Solicitor General Bansal (Exhibit "W").

In that connection, my October 11th letter noted that he had not furnished me with a letter signed by the Attorney General and Solicitor General, attesting to their personal review of my August 17th motion and September 17th Critique – as I had expressly requested in my September 17, 2001 and September 21, 2001 letters to him (Exhibits “FF-1” and “GG-1”) in the event Ms. Fischer’s opposition to my motion was not withdrawn.

My October 11th letter also asked Mr. Belohlavek to confirm that prior to signing his one-sentence October 10th letter (Exhibit “NN”), he was aware of my informational requests, set forth in my letters to Solicitor General Halligan, dated October 2, 2001 and October 4, 2001 (Exhibits “KK” and “LL”), and recapitulated in the first paragraph of my October 9, 2001 letter to her (Exhibit “MM-1”) as follows:

“Following up my October 2nd and October 4th letters to you, this is to remind you I am expecting a response by the end of the day to whether you will be withdrawing Assistant Solicitor General Carol Fischer’s opposition to my August 17th motion – and, if not, a statement signed by you and Attorney General Spitzer, setting forth the reasons, with specific reference to the three dispositive ‘highlights’ identified by my September 17th Critique (at p. 11). Additionally, this is to remind you that I am expecting your response to whether the abrupt resignation of your predecessor, Solicitor General Bansal, was related to my motion and, specifically, to any disagreement between her and Attorney General Spitzer as to the appropriate response thereto – as well as confirmation that the dispositive documents on my motion – including my May 3rd Critique of Ms. Fischer’s Respondent’s Brief– annexed as Exhibit “U” to the motion – and my September 17th Critique of Ms.

Fischer's opposition – have been furnished to the Commission members^{fn. 1}.”

19. Mr. Belohlavek's non-response to this October 11th letter (Exhibit “OO-1”) is all the more significant as I identified therein that I was simultaneously calling upon Attorney General Spitzer and Solicitor General Halligan to exercise their mandatory supervisory responsibilities over him for his “bad-faith conduct, violative of [his] own mandatory supervisory responsibilities”. This can only mean that Mr. Belohlavek does not fear their supervisory disapproval – most likely because his misconduct is at their behest.

20. Reinforcing this is the fact that neither Attorney General Spitzer nor Solicitor General Halligan have responded to my October 11, 2001 memo (Exhibit “OO-2”), putting them on notice of their mandatory supervisory responsibilities in connection with Deputy Solicitor General Belohlavek's bad-faith one-sentence October 10th letter (Exhibit “NN”). They have not retracted Mr. Belohlavek's October 10th letter and withdrawn Ms. Fischer's fraudulent opposition papers based on my August 17th motion and September 17th Critique, as I requested them to do. Nor have they provided me, as requested, with a statement, signed by them, containing the information summarized in the first paragraph of my October 9th letter (Exhibit “MM-1”), hereinabove quoted. This, notwithstanding my October 11th

^{fn. 1} “I am also expecting confirmation that copies of my October 2nd letter to you and such related documents as my September 17th Critique and September 21st letter to the Commission have been provided to former Solicitor General Bansal.”

memo identified that I wished to annex same to my reply papers for the Court's consideration (Exhibit "OO") – such statement being plainly germane to the motion.

21. This three-fold non-response by Deputy Solicitor General Belohlavek, Attorney General Spitzer, and Solicitor General Halligan replays the non-response I received to my June 22, 2001 letter to Deputy Solicitor General Belohlavek (Exhibit "X-2"), protesting his June 14th letter declining, *without* reasons, to withdraw Ms. Fischer's Respondent's Brief (Exhibit "X-1"). The three-fold non-response of Deputy Solicitor General Belohlavek, Attorney General Spitzer, and Solicitor General Bansal to that June 22nd letter was confirmed by me – prior to filing my August 17th motion – in an August 13, 2001 memo addressed to Attorney General Spitzer, Solicitor General Bansal, and Deputy Solicitor General Belohlavek (Exhibit "Z-1").

22. This arrogant behavior by supervisory attorneys in the Attorney General's office, wilfully failing to address the fact-specific, law-supported May 3rd and September 17th Critiques, which I expressly provided them so as to obviate sanctions applications and the consequent burden on myself and the Court, cannot be tolerated when, as *cursory examination of the Critiques by persons of the most limited legal competence* can readily discern, Ms. Fischer's Respondent's Brief and opposition to my motion are fashioned on wilful and deliberate falsification, distortion and omission, constituting nothing less than "frauds on the court".

23. Unless the Attorney General's office has a "standard operating procedure" of interposing fraudulent court submissions in *all* cases where it has no legitimate defense, there are plainly pernicious influences at work in the Attorney

General's office relating to *this* case, preventing it from discharging its fundamental professional responsibilities, not to mention upholding the "interest(s) of the state", required by Executive Law §63.1 – there being "no state interest... served by fraud" (See Exhibit "T-1", p. 2: my January 10, 2001 letter to Attorney General Spitzer).

24. These pernicious influences are multiple conflicts of interest, detailed before the lower court in my July 28, 1999 omnibus motion with a meticulousness comparable to that of my subject Critiques (Exhibits "U" and "AA"). These conflicts of interest have resulted not only in the Attorney General's litigation misconduct in the lower court and on this appeal – but in Attorney General Spitzer's wilful failure and that of his supervisory personnel to discharge mandatory supervisory responsibilities, upon repeated notice from me – throughout the course of the proceedings in the lower court, as well as here on appeal.

25. Indeed, the Attorney General's wholesale disregard for standards of professional responsibility on this appeal simply replays his conduct in the lower court. Then, as now, his response to my fully-documented omnibus motion for sanctions upon him, *personally*, and for his referral for disciplinary and criminal prosecution, was not acknowledgement of his wrongdoing and apologies to me and to the Court, but, rather, further misconduct rivaling that for which the omnibus motion sought relief. This is chronicled by my Appellant's Brief, which seeks the Court's referral of the culpable attorneys of the Commission and at the Attorney General's office "to disciplinary and law enforcement agencies", pursuant to §100.3(D)(2) of the Chief Administrator's Rules Governing Judicial Conduct.

26. As pointed out by my January 10, 2001 letter to Attorney General Spitzer (Exhibit "T-1"), my appeal establishes my entitlement to his disqualification and to sanctions and disciplinary and criminal referral of him. This gives him a further "profound self-interest in the outcome of the appeal, severely compromising [his] ability to chart a course consistent with 'the interest of the state'".

27. By April 18, 2001 letter to Attorney General Spitzer (Exhibit "T-2"), which I gave him, *in hand*, on that date⁹, I called upon him:

"to identify what steps you took, pursuant to my January 10, 2001 letter, to evaluate your obligations pursuant to Executive Law §63.1, as well as your disqualification by reason of conflicts-of-interest. Your violation of Executive Law §63.1 and disqualifying self-interest is flagrantly manifested by the Respondent's Brief – and will be the subject of a formal motion unless it is withdrawn."

28. Attorney General Spitzer has wilfully failed to answer this key question – just as he and his supervisory staff have wilfully failed to answer ALL my other legitimate questions pertinent to this motion. As answers are critical to the proper adjudication of this motion, the Court should direct that same be provided – if necessary, by issuance of an Order to Show Cause.

29. The Court should also direct answers from the Commission, including as to its non-response to that portion of my January 10, 2001 letter as relates to the Attorney General representing the Commission on this appeal (Exhibit "T-1", p. 3). As set forth therein:

⁹ This is recited by my May 3, 2001 letter to Mr. Spitzer (Exhibit "T-3"), transmitting to him a copy of my 66-page Critique of Ms. Fischer's Respondent's Brief.

"By copy of this letter to the Commission, I request that it undertake its own defense, as it is well capable of doing. There has been no claim that the Commission 'requires the services of attorney or counsel', pursuant to Executive Law §63.1. That it does not is obvious from the fact that all but two of its 11 commissioners are lawyers and it has ample lawyers on staff. Moreover, it is the Commission – not the Attorney General's office – which has the expertise to address the issues presented by the appeal. These issues involve judicial disqualification and judicial misconduct, which are uniquely within the Commission's purview."

30. As reflected by my September 21, 2001 letter to Mr. Stern and his response thereto (Exhibits "HH" and "JJ"), he has refused to confirm that upon my hand-delivery to the Commission's office of my January 10, 2001 letter, he timely provided it to the Commission members – or that he has provided the Commissioners with any of the other documents germane to this motion seeking financial sanctions and disciplinary and criminal relief against them *personally*. The Attorney General's office has also wilfully failed to provide me with this information, in face of the notice I gave of Mr. Stern's refusal to furnish same (Exhibits "LL", "MM-1", "OO").

31. Most recently – and with knowledge of the October 15, 2001 return date for this motion -- Mr. Stern has wilfully failed to respond to my October 9, 2001 letter to him (Exhibit "MM-2") requesting information

"plainly relevant to my request for special assignment of the appeal or transfer to the Appellate Division, Fourth Department and for disclosure, based, *inter alia*, on the appearance that the Appellate Division, First Department is compromised by 'relationships with, and dependencies on, the persons and entities whose misconduct is the subject of this lawsuit or exposed thereby'",

to wit, the dates of his employment as "Director of Administration of the Courts, First Judicial Department" and of his service as Executive Director of the Appellate Division, First Department's "Judiciary Relations Committee", the names of the Committee's members, and:

"whether, now Appellate Division, Second Department Justice Stephen Crane – whose judicial misconduct as Administrative Judge is a threshold issue on the appeal^{fn. 1} and was the subject of a *facially-meritorious* March 3, 2000 judicial misconduct complaint^{fn. 2} -- was ever part of your Appellate Division, First Department investigative staff. As set forth at ¶73 of my affidavit in support of my motion, Justice Crane worked at the Appellate Division, First Department for 13 years, from 1966-1979, as Senior Law Assistant and Chief Law Assistant. Inasmuch as the Appellate Division, First Department is a small place, you and Justice Crane presumably were not only professional colleagues, but developed ties of friendship with each other -- as likewise with Appellate Division, First Department justices." (Exhibit "MM-2", at p. 2)

32. It is essential that Mr. Stern be required to come forth with such information, pertinent to adjudication of this motion, as likewise, to respond to my request for information as to:

"publicly-available records of the Appellate Division, First Department's Judiciary Relations Committee – especially its written procedures setting forth the

^{fn. 1} "See my Appellant's Brief: Question 1 of my "Questions Presented" (at p. 1) and Point I of my 'Argument' (at pp. 39-41)".

^{fn. 2} "My *facially-meritorious* March 3, 2001 judicial misconduct complaint against Administrative Judge Crane is Exhibit "M-1" to my affidavit in support of my August 17th motion. The Commission's unlawful dismissal of that complaint, *without* investigation, *without* reasons, and, *without* determination, or even disclosure, of the conflict of interest issues involved, is Exhibit "M-2" thereto.

standard for investigation based on *facial merit* – [which] would appear to be quite relevant to the appeal...” (Exhibit “MM-2”, at p. 3)

33. It cannot be too strongly emphasized that Mr. Stern, an expert in matters of judicial disqualification and disclosure, with relevant evidentiary facts as to both the first and second branches of my motion, has *not* come forward with an affidavit to substantiate Ms. Fischer’s opposition – the fraudulence of which he, *better than anyone else*, knows of his own personal knowledge.

34. Indeed, while Ms. Fischer has been foisting on the Appellate Division, First Department the material deceit that the Commission has “discretion” to investigate *facially-meritorious* complaints, Mr. Stern knows that more than two decades ago, in a brief he filed with the Appellate Division, First Department in *Matter of Nicholson* (Exhibit “TT”), he argued the contrary:

“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]...)” (Brief, p. 26 emphasis in the original),

and that, thereafter, he repeated this very sentence in his Brief to the Court of Appeals – whose subsequent decision, 50 NY2d 597 (1980), pertinently stated:

“... the commission *must* investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subd. 1)...” at 346-7 (emphasis added).

35. Consequently, Mr. Stern well knows, *independent* of my 13-page analysis thereof [A-321-334], that Justice Lehner’s decision in *Mantell v. Commission*

[A-299-307], purporting that the Commission has "discretion" under Judiciary Law §44.1 whether to investigate *facially-meritorious* judicial misconduct complaints, is a judicial fraud built on Justice Lehner's *sua sponte* pretense that judicial misconduct complaints received from outside sources are subject to the same governing law as complaints filed by the Commission's Administrator. Mr. Stern also well knows that the Appellate Division, First Department's affirmance of Justice Lehner's decision (Exhibit "B-1")-- on a record before it containing my 13-page analysis thereof [A-321-334] -- is yet another judicial fraud.

36. Additionally, while Ms. Fischer has been foisting on the Appellate Division, First Department the material deceit that there are levels of "investigation" short of "full-scale", "full-fledged" and "comprehensive", Mr. Stern well knows that he provided contrary information for publication in American Judicature Society's Practices and Procedures of State Judicial Conduct Organizations, *to wit*, that 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."

He further knows, *independent* of my 3-page analysis thereof [A-52-54], that Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-189-194], purporting that "initial review and inquiry" is part of "investigation" is Justice Cahn's *sua sponte* pretense, belied by the definitions section of the Commission's rules, 22 NYCRR §7000.1(i) and (j), to conceal that Judiciary Law §44.1 and 22 NYCRR §7000.3 are irreconcilable.

37. As highlighted by my September 17th Critique (Exhibit "AA", pp. 10-12), my *uncontroverted* 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-52-54], my *uncontroverted* 13-page analysis of Justice Lehner's decision in *Mantell v. Commission* [A-321-334], and my *uncontroverted* 1-page analysis of the Appellate Division, First Department's affirmance in *Mantell* (Exhibit "R")

"establish 'in one fell swoop', [my] entitlement to the granting of BOTH the first and second branches of [my] motion. [See, *inter alia*, pp. 37-39, 54-55 *infra* [of September 17th Critique].]" (Exhibit "AA", pp. 10-11, emphasis in the original)

Likewise, the three "highlights" from my May 3rd Critique, resting on these three *uncontroverted* analyses -- "similarly establish [my] entitlement to the granting of BOTH the first and second branches of [my] motion." (Exhibit "AA", p. 11, emphasis in the original). These "highlights", summarized in my Reply Brief (at p. 5), in my August 17th motion (at ¶¶89, 92), and twice in my September 17th Critique (Exhibit "AA", pp. 11, 54-55) are:

- (a) Point I of my May 3rd Critique (at pp. 3-5) showing that Ms. Fischer's Respondent's Brief conceals that Justice Wetzel's dismissal of my Verified Petition is based exclusively on decisions whose fraudulence was evidentiarily established by the record before him: my *uncontroverted* 3-page analysis Justice Cahn's decision [A-52-54] and my *uncontroverted* 13-page analysis of Justice Lehner's decision [A-321-334] -- the accuracy of which *uncontroverted* analyses Ms. Fischer's Respondent's Brief does not deny or dispute;
- (b) Point II of my May 3rd Critique (at pp. 5-11) showing that Ms. Fischer's Respondent's Brief is fashioned on knowingly false propositions about the Commission, derived from the

decisions of Justices Cahn and Lehner, without identifying these decisions as its source – and that the propositions are rebutted by my *uncontroverted* analyses of these decisions and the *uncontroverted* evidence in the record of my proceeding;

- (c) Point III(D)(1) of my May 3rd Critique (at pp. 40-47) showing that Ms. Fischer's Respondent's Brief relies on the Court's appellate decision in *Mantell* to support inflated claims that I lack "standing" to sue the Commission – concealing not only the different facts of my case, making the *Mantell* appellate decision inapplicable, but the fraudulence of the *Mantell* appellate decision, as highlighted by my *uncontroverted* 1-page analysis – the accuracy of which Ms. Fischer's Respondent's Brief does not deny or dispute.

38. As reflected by my September 21st letter to the Commission (Exhibit "HH", p. 3), I specifically called on Mr. Stern and the Commission members to respond to these "highlights". Mr. Stern's response, by his September 26th letter (Exhibit "JJ"), was to decline, stating, "The Commission is represented by counsel".

By an October 4th letter to Attorney General Halligan (Exhibit "LL"), I noted that:

"Mr. Stern's failure to advise that he is instructing the Commission's counsel to respond, on its behalf, to the three 'highlights' presented in my September 21st letter (at p. 2) bespeaks his knowledge that the 'highlights' cannot be addressed without conceding my entitlement to the granting of the motion – and, by extension, to the granting of my unopposed appeal by a fair and impartial tribunal. If you disagree, you should demonstrate it by confronting these 'highlights'. This is, moreover, what my October 2nd letter to you (at p. 7) asks you to do in the event you do not withdraw Ms. Fischer's opposition to my motion, based on my September 17th Critique thereof." (Exhibit "LL", at p. 2)

39. I have received no response from Solicitor General Halligan – nor from anyone else. As these three "highlights" are dispositive of my motion in its entirety,

as well as of my underlying appeal, the Attorney General's office – and Commission – must be directed to respond thereto. Nothing is more fundamental to my rights herein – and to the rights of the public that I have been championing.

40. Finally, concealed by the mass of material omission and false and misleading blanket assertions that fill Ms. Fischer's "Affirmation" and Memorandum of Law – exposed by my September 17th Critique (Exhibit "AA")—is the fact that key grounds for ALL the relief sought by the three branches of my August 17th motion are wholly UNOPPOSED by her. These are summarized by page 56 of my September 17th Critique as follows:

“As to the first branch of Appellant's motion, this [unopposed] relief is for: (1) the Court's disqualification based on “apparent bias”, pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct; (2) disclosure by the justices assigned to this appeal, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, 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; and (3) the public's right to a record of the oral argument of the appeal, either by a court stenographer and/or by audio or video recording.

As to the second and third branches of Appellant's motion, this relief is for all the relief sought by the second branch, pursuant to 22 NYCRR §130-1.1.”

41. Notwithstanding Ms. Fischer does not deny or dispute the public's right to a record – and the assertion of that right by the nearly 400 petition signatures of New York citizens annexed to my motion (Exhibit “S”) -- herein annexed are an

additional 180 petition signatures of New York citizens, plus 40 petition signatures from citizens of other states (Exhibit "UU").

42. In conclusion, I refer the Court to the words I spoke at the very outset of this litigation, at a June 14, 1999 conference. They are even truer today than they were then:

"An issue in this litigation, threshold issue, is the integrity of the judicial process and whether the Attorney General, our highest legal officer, is going to be held to fundamental, rudimentary ethical standards of conduct."
[A-150, ln. 15-19]

WHEREFORE, it is respectfully prayed that the relief requested by the Notice of Motion be granted in full, as well as the further relief sought herein at ¶¶ 2 and 3, together with such other and further relief as may be just and proper so that fundamental standards of professional responsibility and the rule of law may be vindicated herein.


ELENA RUTH SASSOWER

Sworn to before me this
15th day of October 2001


Notary Public

Holly Hebenick
Notary Public, State of New York
No. 01HA5036781
Qualified in Westchester County
Commission Expires December 12, 2004

TABLE OF EXHIBITS

- Exhibit "AA":** Elena Sassower's September 17, 2001 Critique of Assistant Solicitor General Carol Fischer's August 30, 2001 "Affirmation" and Memorandum of Law
- Exhibit "BB":** Elena Sassower's September 4, 2001 memo to Attorney General Eliot Spitzer and Solicitor General Preeta D. Bansal
- Exhibit "CC-1":** Elena Sassower's September 5, 2001 memo to Attorney General Spitzer and Solicitor General Bansal
- "CC-2":** Ms. Fischer's September 5, 2001 letter to Elena Sassower
- Exhibit "DD":** Deputy Solicitor General Michael S. Belohlavek's September 6, 2001 letter to Elena Sassower
- Exhibit "EE":** Elena Sassower's September 7, 2001 letter to Deputy Solicitor General Belohlavek
- Exhibit "FF-1":** Elena Sassower's September 17, 2001 letter to Deputy Solicitor General Belohlavek, sent by express mail
- "FF-2":** Elena Sassower's September 17, 2001 letter to Ron Uzenski, Motion Clerk, Appellate Division, First Department
- Exhibit "GG-1":** Elena Sassower's September 21, 2001 letter to Deputy Solicitor General Belohlavek
- "GG-2":** Elena Sassower's September 21, 2001 letter to Ron Uzenski, Motion Clerk, Appellate Division, First Department
- Exhibit "HH":** Elena Sassower's September 21, 2001 letter to NYS Commission on Judicial Conduct

- Exhibit "II-1":** Assistant Solicitor General Fischer's September 25, 2001 e-mail to Elena Sassower (11:21 a.m.)
- "II-2":** Elena Sassower's September 26, 2001 e-mail to Assistant Solicitor General Fischer (1:29 p.m.)
- "II-3":** Elena Sassower's September 26, 2001 e-mail to Assistant Solicitor General Fischer (2:00 p.m.)
- Exhibit "JJ":** September 26, 2001 letter from Gerald Stern, Administrator and Counsel, NYS Commission on Judicial Conduct, to Elena Sassower
- Exhibit "KK":** Elena Sassower's October 2, 2001 letter to Solicitor General Caitlin J. Halligan
- Exhibit "LL":** Elena Sassower's October 4, 2001 letter to Solicitor General Halligan
- Exhibit "MM-1":** Elena Sassower's October 9, 2001 letter to Solicitor General Halligan
- "MM-2":** Elena Sassower's October 9, 2001 letter to NYS Commission on Judicial Conduct
- Exhibit "NN":** Deputy Solicitor General Belohlavek's October 10, 2001 letter to Elena Sassower
- Exhibit "OO-1":** Elena Sassower's October 11, 2001 letter to Deputy Solicitor General Belohlavek
- Exhibit "OO-2":** Elena Sassower's October 11, 2001 memo to Attorney General Spitzer and Solicitor General Halligan

- Exhibit "PP-1": "Message from Attorney General Eliot Spitzer" (downloaded from website: 10/12/01)
- "PP-2": news item on salary increases for Attorney General Spitzer and top staff, New York Law Journal, April 12, 1999
- Exhibit "QQ-1": Biographic profile of Eliot Spitzer (downloaded from website: 10/12/01)
- "QQ-2": Resume of Preeta D. Bansal (obtained from Attorney General's office in response to F.O.I.L. request)
- "QQ-3": Resume of Caitlin J. Halligan (sent by Attorney General's office to New York Law Journal for September 25, 2001 news story)
- "QQ-4": Resume of Michael S. Belohlavek (obtained from Attorney General's office in response to F.O.I.L. request)
- "QQ-5": Resume of Richard Rifkin (obtained from Attorney General's office in response to F.O.I.L. request)
- "QQ-6": Resume of Michele Hirshman (obtained from Attorney General's office in response to F.O.I.L. request)
- "QQ-7": Resume of Carol Fischer (obtained from Attorney General's office in response to F.O.I.L. request)
- Exhibit "RR-1": Elena Sassower's March 26, 2001 F.O.I.L. request to Attorney General
- "RR-2": Attorney General's June 26, 2001 response to March 26, 2001 F.O.I.L. request
- Exhibit "SS-1": Biographic profiles of members of the New York State Commission on Judicial Conduct (downloaded from website: 10/12/01)
- "SS-2": Biographic profiles of staff of the New York State Commission on Judicial Conduct (from Annual Report: 2001)

Exhibit "TT-1": Commission on Judicial Conduct's brief in *Nicholson*, submitted to the Appellate Division, First Department: coverpage and page 26

Exhibit "UU" Petition signatures in support of Elena Sassower's application for a record of the oral argument of her appeal