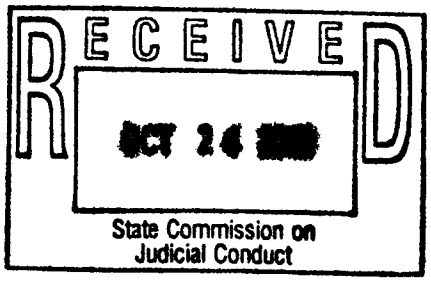
CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: judgewatch@aol.com
Web site: www.judgewatch.org

Elena Ruth Sassower, Coordinator



BY FEDERAL EXPRESS MAIL

October 23, 2000

Appellate Division, First Department
27 Madison Avenue, at 25th Street
New York, New York 10010

ATT: Catherine O'Hagen Wolfe, Clerk

RE: *MICHAEL MANTELL v. NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT*
Cal # 2000-3833; S.Ct. NY Co. #99-108655

Dear Ms. Wolfe:

The letter follows up my extensive phone conversation this morning with Deputy Clerk, David Spokony, who stated that I should put my requests in writing to you. As he advised that there was no available fax number for me to fax this letter so that you could receive it yet today, it is being express mailed for morning delivery tomorrow. I trust, however, that you are already familiar with its content, as I requested that Mr. Spokony discuss it with you.

I am the movant in a motion in the above-entitled appeal of Michael Mantell, scheduled for oral argument tomorrow, October 24th. Said motion, fully submitted on October 6th, seeks, *inter alia*, to postpone oral argument so that, in the interests of justice and judicial economy, it can be heard together with oral argument of the soon-to-be-perfected appeal in which I am the *pro se* petitioner, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551), by reason of the common issues presented by the two appeals -- as to which the second branch of my motion also requests consolidation.

I respectfully refer you to the motion itself for the particulars thereof. This includes the first and foremost branch of my motion, requesting that the Court grant me intervention or *amicus curiae* status so as to accept for consideration on Mr.

Ex "B-2"

Mantell's appeal my September 21, 2000 moving Affidavit

> "setting forth essential facts, based on direct, personal knowledge, in order to protect the Court against the fraud being perpetrated on it and the *pro se* Petitioner, Michael Mantell, by the Attorney General of the State of New York, herein representing Respondent, the New York State Commission on Judicial Conduct."

Each day I have eagerly awaited notice of the Court's disposition of this essential motion -- sure that it would arrive in the mail. On Friday, October 20th, with no notice of disposition having arrived, I telephoned the Clerk's Office. It was then, at 4:50 p.m., that I learned that the Court had adjourned my motion to October 24th and that *no* notice thereof had been sent[1].

I do not know whether, in so adjourning my motion to the date of oral argument of Mr. Mantell's appeal, the Court intended to simultaneously entertain oral argument of the motion. However, I take this opportunity to *expressly* request to be heard in support of my motion, including on the relief sought in the motion's third branch -- entitlement to which is inextricably bound to the Court's determination of the motion's first branch that the Attorney General and Commission have committed fraud upon the Court and Mr. Mantell.

As reflected by my September 21, 2000 moving Affidavit and particularized by my October 5, 2000 Reply Affidavit and Memorandum of Law, I am directly affected by the Court's disposition of Mr. Mantell's appeal. By reasons thereof, and of its direct effect on the rights of the otherwise unprotected public, whose interests my motion also seek to uphold[2], I also *expressly* request that a court stenographer be present to record the oral argument.

To my great astonishment, Deputy Clerk Spokony told me that there is "no precedent" for having a court stenographer present to record oral argument – which is likewise what I was told earlier in the day by Motion Clerk Ron Uzenski. I was further informed that that the Appellate Division, First Department does not electronically tape oral arguments.

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[1] I have today learned that on October 6th, the date my motion was fully-submitted, the bench consisted of Justices Rosenberger, Nardelli, Ellerin, Lerner, and Friedman.

[2] *See, inter alia*, my September 21, 2000 moving Affidavit, ¶¶5-13, 53; my October 5, 2000 Reply Affidavit, ¶26; and my October 5, 2000 Memorandum of Law, at pp. 9-11, 13-14.

As I discussed with both Messrs. Spokony and Uzenski, the Second Circuit Court of Appeals has an electronic taping system that records oral arguments and sells copies for a minimal fee. Additionally, court stenographers are permitted to be present and record the oral arguments so long as the necessary arrangements to secure them are made by interested parties.

I do not understand why a comparable practice should not exist in the Appellate Division, First Department. Neither Messrs. Spokony nor Uzenski indicated that there was any bar to such practice – let alone any bar to my instant request for the presence of a court stenographer. Consequently, by this letter, I not only respectfully ask that the Appellate Division, First Department grant my instant application for a court stengrapher, but that it take steps to implement, on an on-going basis, a practice comparable to the one existing in the Second Circuit Court of Appeals[3] so that there will be an available "record" of its oral arguments. Indeed, it is my understanding that this Court is a "court of record", being a superior court, reviewing the determinations of inferior courts, and one whose "acts and judicial proceedings are enrolled or recorded for perpetual memory and testimony, and which [has] power to fine or imprison for contempt", Black's Law Dictionary. (see enclosed pages 458-9)

The "record" of oral arguments should be available to interested parties. Certainly, a party appealing an adverse determination to the New York Court of Appeals should be entitled to present that reviewing tribunal with the transcript of the oral argument before the Appellate Division, First Department -- should he deem it relevant. I certainly regard the transcript of the oral argument of Mr. Mantell's appeal as relevant – not only to his appeal, but to my own, related appeal. While I cannot speak for Mr. Mantell's intention to appeal to the Court of Appeals, in the event of an adverse determination, I intend to appeal an adverse determination of my appeal to the Court of Appeals – and to include, as an essential part of the "lower court record", the transcripts of the oral argument of Mr. Mantell's appeal and of my own.

Much as I believe that the Court of Appeals is entitled to a "full record", so my appeal to this Court presents a "full record". Contained in my "record" are the transcripts of all three court appearances I made before Supreme Court/New York County – transcripts which I paid for, after arranging for the presence of court

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[3] I do not know what practices prevail in the other Appellate Divisions. However, I am told by good-government activist, Robert L. Schulz, that the Appellate Division, Third Department granted a media request to videotape the oral argument of an important public interest lawsuit which he had brought.

stenographers. Likewise, contained is a physically-incorporated copy of the file in Mr. Mantell's proceeding – as to which there were no court appearances.

I respectfully submit that the appellate process will only be enhanced by my request that a court stenographer be present at tomorrow's oral argument. As demonstrated by my September 21, 2000 moving Affidavit and my October 5, 2000 Reply Affidavit and Memorandum of Law, the *written* appellate advocacy of Assistant Attorney General Constantine Speres has been fashioned on knowing and deliberate fraud and deceit. Consequently, the transcript produced by a court stenographer will serve to memorialize whether his *oral* appellate advocacy is any different and, if not, to further substantiate entitlement to the third branch of my motion. This includes entitlement to increased sanctions and costs pursuant to Part 130-1.1 of the Chief Administrator's Rules, permitting additional monetary impositions for "any single occurrence of frivolous conduct".

With the expectation that the Appellate Division, First Department will grant my reasonable request for a court stenographer, I have arranged with Geeta Sundrani, the Chief Executive Officer of Hudson Reporting & Video, Inc., to have a stenographer present tomorrow at 2:00 p.m. to stenographically record the oral argument. She can be reached, toll free, at 1-877-648-3766 or 1-800-310-1769[4].

Thank you.

Yours for a quality judiciary,

Elena Ruth Sassower

ELENA RUTH SASSOWER, Movant

Enclosure
cc: See next page

[4] Such information was left with Mr. Spokony's secretary at approximately 4:00 p.m., after my repeated phone messages for him, beginning shortly after our 11:00 a.m. conversation, were unreturned.

cc: Michael Mantell, Appellant-Petitioner *Pro Se*
[By Fax: 212-997-5070]
Attorney General Eliot Spitzer, Counsel to Respondent-Respondent
[By Fax: 212-416-8942:
ATT: David Nocenti, Counsel to Attorney General Spitzer; Peter Pope, Chief, Public Integrity Unit; William Casey, Chief Investigator, Public Corruption Unit]
[By Fax: 212-416-6075:
ATT: Assistant Attorney General Constantine Speres]
NYS Commission on Judicial Conduct, Respondent-Respondent
[By Fax: 212-949-8864:
ATT: Gerald Stern, Administrator & Counsel]
Chairman Salisbury and Commission members

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places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings. Ex parte Gardner, 22 Nev. 280, 39 P. 570; Hertzen v. Hertzen, 104 Or. 423, 208 P. 580, 582.

A "court" consists of persons officially assembled at a time and place appointed by law for the administration of justice. Bland v. Kennamer (C. C. A.) 6 F.(2d) 130, 131.

The place where justice is judicially administered. Co. Litt. 58*a*; 3 Bl. Comm. 23. Railroad Co. v. Harden, 113 Ga. 456, 38 S. E. 950; Summers v. Kramer, 271 Pa. 189, 114 A. 525, 527; Finkle v. Superior Court of California in and for San Bernardino County, 71 Cal. App. 97, 234 P. 432, 433; Hobart v. Hobart, 45 Iowa, 501.

The judge, or the body of judges, presiding over a court.

The words "court" and "judge," or "judges," are frequently used in statutes as synonymous. When used with reference to orders made by the court or judges, they are to be so understood. State v. Caywood, 96 Iowa, 367, 65 N. W. 385; Michigan Cent. R. Co. v. Northern Ind. R. Co., 3 Ind. 239; In re Parker, 208 N. Y. S. 556, 558, 212 App. Div. 169; Gray v. Bank of Moundville, 214 Ala. 260, 107 So. 804, 805; People v. Gilbert, 227 Mich. 538, 198 N. W. 971, 972; Robertson v. Derrick, 113 Ark. 40, 166 S. W. 936; State v. Anderson, 114 Kan. 297, 217 P. 327, 330. But see Moritz v. Luzerne County, 283 Pa. 349, 129 A. 85, 86; Tuttle v. Hutchison, 173 Iowa, 503, 151 N. W. 845, 846; Lamb v. Harrison, 91 Fla. 927, 108 So. 671, 674; City of Moline v. Chicago, B. & Q. R. Co., 262 Ill. 52, 104 N. E. 204, 206.

The word "court" is often employed in statutes otherwise than in its strict technical sense, and is applied to various tribunals not judicial in their character; State v. Howat, 107 Kan. 423, 191 P. 585, 589; for example, in New Jersey, the "court of pardons"; In re Court of Pardons, 97 N. J. Eq. 555, 129 A. 624, 625.

Classification

Courts may be classified and divided according to several methods, the following being the more usual:

Courts of record and *courts not of record;* the former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher (C. C.) 24 F. 481; Ex parte Thistleton, 52 Cal. 225; Thomas v. Robinson, 3 Wend. (N. Y.) 268; Erwin v. U. S. (D. C.) 37 F. 488, 2 L. R. A. 229; Woodman v. Somerset County, 37 Me. 29; Heininger v. Davis, 96 Ohio St. 205, 117 N. E. 229, 231.

A "court of record" is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial. Jones v. Jones, 188 Mo. App. 220, 175 S. W. 227, 229; Ex parte Gladhill, 8 Metc. (Mass.) 171, per Shaw, C. J. See, also, Ledwith v. Rosalsky, 244 N. Y. 406, 155 N. E. 688, 689.

A "court of record" is one the history of whose proceedings is perpetuated in writing by some duly authorized person. Tourtelot v. Booker (Tex. Civ. App.) 160 S. W. 293, 297; Naro v. State, 212 Ala. 5, 101 So. 666, 667; Newman v. Basch, 152 N. Y. S. 456, 459, 89 Misc. Rep. 622; 3 Bla. Comm. 24.

Courts may be at the same time of record for some purposes and not of record for others. Wheaton v. Fellows, 23 Wend. (N. Y.) 376; Lester v. Redmond, 6 Hill (N. Y.) 590; Ex parte Gladhill, 8 Metc. (Mass.) 168.

Superior and *inferior* courts; the former being courts of general original jurisdiction in the first instance, and which exercise a control or supervision over a system of lower courts, either by appeal, error, or *certiorari;* the latter being courts of small or restricted jurisdiction, and subject to the review or correction of higher courts. Sometimes the former term is used to denote a particular group or system of courts of high powers, and all others are called "inferior courts."

To constitute a court a superior court as to any class of actions, within the common-law meaning of that term, its jurisdiction of such actions must be unconditional, so that the only thing requisite to enable the court to take cognizance of them is the acquisition of jurisdiction of the persons of the parties. Simons v. De Bare, 4 Bosw. (N. Y.) 547.

An inferior court is a court whose judgments or decrees can be reviewed, on appeal or writ of error, by a higher tribunal, whether that tribunal be the circuit or supreme court. Nugent v. State, 18 Ala. 521.

Civil and *criminal* courts; the former being such as are established for the adjudication of controversies between subject and subject, or the ascertainment, enforcement, and redress of private rights; the latter, such as are charged with the administration of the criminal laws, and the punishment of wrongs to the public.

Equity courts and *law* courts; the former being such as possess the jurisdiction of a chancellor, apply the rules and principles of chancery law, and follow the procedure in equity; the latter, such as have no equitable powers, but administer justice according to the rules and practice of the common law.

As to the division of courts according to their *jurisdiction*, see Jurisdiction.

As to several names or kinds of courts not specifically described in the titles immediately following, see Arches Court, Appellate, Circuit Courts, Consistory Courts, County, Customary Court Baron, Ecclesiastical Courts, Federal Courts, Forest Courts, High Commission Court, Instance Court, Justice Court,

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As to **court-hand, court-house, court-lands, court rolls, courtyard,** see those titles in their alphabetical order *infra.*

In General

—Court above, court below. In appellate practice, the "court above" is the one to which a cause is removed for review, whether by appeal, writ of error, or certiorari; while the "court below" is the one from which the case is removed. Going v. Schnell, 6 Ohio Dec. 933; Rev. St. Tex. 1895, art. 1386 (Vernon's Ann. Rev. Civ. St. art. 2252).

—Court in bank. A meeting of all the judges of a court, usually for the purpose of hearing arguments on demurrers, points reserved, motions for new trial, etc., as distinguished from sessions of the same court presided over by a single judge or justice.

—Court of competent jurisdiction. One having power and authority of law at the time of acting to do the particular act. **Ex parte** Plaistridge, 68 Okl. 256, 173 P. 646, 647. One having jurisdiction under the state Constitution and laws to determine the question in controversy. Texas Employers' Ins. Ass'n v. Nunamaker (Tex. Civ. App.) 267 S. W. 749, 751. A court for the administration of justice as established by the Constitution or statute. Bradley v. Town of Bloomfield, 85 N. J. Law, 506, 89 A. 1009.

—Court of limited jurisdiction. When a court of general jurisdiction proceeds under a special statute, it is a "court of limited jurisdiction" for the purpose of that proceeding, and its jurisdiction must affirmatively appear. Osage Oil & Refining Co. v. Interstate Pipe Co., 124 Okl. 7, 253 P. 66, 71.

—De facto court. One established, organized, and exercising its judicial functions under authority of a statute apparently valid, though such statute may be in fact unconstitutional and may be afterwards so adjudged; or a court established and acting under the authority of a *de facto* government. 1 Bl. Judgm. § 173; Burt v. Railroad Co., 31 Minn. 472, 18 N. W. 285; In re Manning, 139 U. S. 504, 11 S. Ct. 624, 35 L. Ed. 264; Gildemeister v. Lindsay, 212 Mich. 299, 180 N. W. 633, 635.

—Full court. A session of a court, which is attended by all the judges or justices composing it.

—Spiritual courts. In English law. The ecclesiastical courts, or courts Christian. See 3 Bl. Comm. 61.

COURT-BARON. In English law. A court which, although not one of record, is incident to every manor, and cannot be severed therefrom. It was ordained for the maintenance of the services and duties stipulated for by lords of manors, and for the purpose of determining actions of a personal nature, where the debt or damage was under forty shillings. Wharton; 1 Poll. & Maitl. Hist. E. L. 580.

Customary court-baron is one appertaining entirely to copyholders. 3 Bl. Comm. 33.

Freeholders' court-baron is one held before the freeholders who owe suit and service to the manor. It is the court-baron proper.

Coke (1st Inst. 58 a) speaks of the Court Baron as being of the two natures just indicated. Blackstone (3 Comm. 33) says that, though in their nature distinct, they are frequently confounded together. Later writers doubt if there were two courts; 1 Poll. & Maitl. Hist. E. L. 580.

COURT CHRISTIAN. The ecclesiastical courts in England are often so called, as distinguished from the civil courts. 1 Bl. Comm. 83; 3 Bl. Comm. 64; 3 Steph. Comm. 430.

COURT FOR CONSIDERATION OF CROWN CASES RESERVED. A court established by St. 11 & 12 Vict. c. 78, composed of such of the judges of the superior courts of Westminster as were able to attend, for the consideration of questions of law reserved by any judge in a court of oyer and terminer, gaol delivery, or quarter sessions, before which a prisoner had been found guilty by verdict. Such question is stated in the form of a special case. Mozley & Whiteley; 4 Steph. Comm. 442. The trial judge was empowered to "state a case" for the opinion of that court. He could not be compelled to do so, and only a question of law could be raised. If the court considered that the point had been wrongly decided at the trial, the conviction would be quashed. By Act of 1907, the Court of Criminal Appeal was created and the Court for Crown Cases Reserved was abolished.

COURT FOR DIVORCE AND MATRIMONIAL CAUSES. This court was established by St. 20 & 21 Vict. c. 85, which transferred to it all jurisdiction then exercisable by any ecclesiastical court in England, in matters matrimonial, and also gave it new powers. The court consisted of the lord chancellor, the three chiefs, and three senior puisne judges of the common-law courts, and the judge ordinary, who together constituted, and still constitute, the "full court." The judge ordinary heard almost all matters in the first instance. By the judicature act, 1873, § 3, the jurisdiction of the court was transferred to the supreme court of judicature. Sweet.

COURT FOR THE CORRECTION OF ERRORS. The style of a court having jurisdiction for review, by appeal or writ of error. The name was formerly used in New York and South Carolina.