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June 4, 2001

Via Facsimile

Ms. Elena Ruth Sassower
P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Re: *Elena Ruth Sassower v. Commission on Judicial Conduct*, New York Co. Clerk's No. 99/108551

Dear Ms. Sassower:

I write in response to your recent correspondence with this office, both with me and with other members of the Office of the Attorney General.

By way of preface, let me state that these comments are not meant as a reflection on the obvious sincerity with which you have advanced this lawsuit. They are directed to the legal issues raised by your suit, and to your assertion that our office is required to withdraw the brief it has filed in opposition to your appeal in this matter.

First, we do not agree that our defense of this action is, in any sense, inappropriate or incorrect. Our view of both the facts and the law diverge significantly from yours. To mention only one example, we note that you refer (in your April 18, 2001 letter to Attorney General Eliot Spitzer) to the First Department, Appellate Division's holding in Mantell v. Comm'n on Judicial Conduct, 715 N.Y.S.2d 316 (1st Dep't 2000), as "bogus" and a "one-sentence add-on." The brevity of Mantell has, of course, has no bearing on its legitimacy. We also not that the denial of your motion to intervene in Mantell does not allow you to claim that you are in some way not bound by Mantell's holding. (As you will recall, under New York law a litigant cannot intervene as of right in another lawsuit simply because the second lawsuit involves common questions of law or fact, and therefore might affect other lawsuits in which the would-be intervener is already involved (see CPLR §§ 1012 , 1013)).

Ex "V"

Second, we cannot discuss with you communications among the attorneys of this office regarding this case, as such communications naturally involve the transmission of privileged information, and often the creation of material covered by the work-product privilege. Your demand for an accounting of what role various attorneys have played in reviewing and supervising this matter would inevitably involve violations of these privileges.

Finally, concerning the sanctions motion you have asserted you will make if we do not withdraw our brief, I must note that such a motion would be not only groundless but extremely wasteful. By attempting to move for sanctions now, before the case is fully submitted and scheduled for argument, you would be, in effect, attempting to argue the merits of the case to the Appellate Division twice, first via the sanctions motion (to which we would, of course, have the opportunity to respond) and second via the main appeal. I would strongly encourage you to avoid such an unnecessary imposition on the Appellate Division's limited resources.

Very truly yours,

Carol Fischer

Carol Fischer
Assistant Solicitor General