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 FAX: 212-416-8962 (9 pages)
CERTIFIED MAIL/RRR: 7000-1670-0007-4965-0152

June 7, 2001

Solicitor General Preeta D. Bansal
Office of New York State Attorney General Eliot Spitzer
120 Broadway
New York, New York 10271

RE: Your mandatory supervisory duty to address your staff's *readily-verifiable* official misconduct in connection with the Respondent's Brief in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* (NY Co. #108551/99), to be argued in the Appellate Division, First Department, September 2001 Term

Dear Solicitor General Bansal:

This is to reinforce my telephone message, left on your voice mail on Tuesday, June 5th, at approximately 9:30 a.m. Pursuant to 22 NYCRR §1200.5, "Responsibilities of a Partner or Supervisory Lawyer" [DR 1-104 of the Code of Professional Responsibility] (Exhibit "A-1"), you have a mandatory duty to exercise supervision over your staff by addressing the *readily-verifiable* evidence of their official misconduct.

On March 23rd, Assistant Solicitor General Carol Fischer served me with a Respondent's Brief in the above-entitled appeal, which, from beginning to end, was based on knowing and deliberate falsification, distortion, and omission of the material facts and law. Such Respondent's Brief was signed by Ms. Fischer, with the name of Deputy Solicitor General Michael Belohlavek appearing on its cover and signature page. Immediately, I telephoned Mr. Belohlavek, who has direct supervisory responsibility over Ms. Fischer, as well as Ms. Fischer herself, notifying them that unless the Respondent's Brief was withdrawn I would have no alternative but to make a sanctions motion under 22 NYCRR §130-1.1.

Ex "W"

Ms. Fischer just ignored my objections to her Respondent's Brief, which I particularized in our phone conversation. Mr. Belohlavek, however, requested that I provide him "something in writing". So there would be sufficient time for me to prepare such written presentation – and for him and, if necessary, for you, to review it and reach a decision about withdrawing Ms. Fischer's Respondent's Brief -- Mr. Belohlavek consented to my request for a stipulation extending my time to file my Reply Brief. Such stipulation was for two months – a period equivalent to the extension of time I had given to the Attorney General's office for preparation of the Respondent's Brief. This is reflected by an exchange of correspondence (Exhibit "B-1", "B-2", "B-3a"). My further correspondence with Mr. Belohlavek apprised him of my progress in completing the written presentation (Exhibit "B-9", "B-10", "B-11") – in accord with an informal timetable I set up, which included a period of several weeks for you to review it (Exhibit "B-3a").

On May 3rd, I hand-delivered my 66-page critique of Ms. Fischer's Respondent's Brief – the coverpage of which expressly stated that it was being

> "PRESENTED TO THOSE CHARGED WITH SUPERVISORY RESPONSIBILITIES IN THE OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL
>
> TO ASSIST THEM IN MEETING THEIR PROFESSIONAL AND ETHICAL OBLIGATIONS, *inter alia*, BY WITHDRAWING THE RESPONDENT'S BRIEF"

A copy of this coverpage is enclosed (Exhibit "C"). Also enclosed is the three-page "Introduction" to the critique, providing a definition of "fraud" and "fraud on the court", and the final page "Conclusion" as to the duty of those "charged with supervisory responsibilities at the Office of the New York State Attorney General – such as Mr. Belohlavek – and, beyond him, [yourself], and, ultimately, Attorney General Eliot Spitzer" under "mandatory provisions of DR-104 of New York's Disciplinary Rules of the Code of Professional Responsibility [22 NYCRR §1200.5] [to] 'take reasonable remedial action'" – the "most minimal" being, "withdrawing the Respondent's Brief – to prevent fraud upon the court" (Exhibit "C", p. 66).

Further enclosed is a copy of my May 3rd coverletter to Mr. Belohlavek (Exhibit "D"), transmitting the critique to him. The coverletter *expressly* requested that following Mr. Belohlavek's review, he forward the critique to you, as you bear "ultimate supervisory responsibility for the workproduct of the Solicitor General's

office". It also asked him to advise you of my "request to speak with [you] personally about the Respondent's Brief and [your] professional obligations in connection therewith."

Following delivery of the critique on May 3rd, I heard nothing from Mr. Belohlavek or yourself. Finally, on the morning of May 30th, I phoned Mr. Belohlavek. Apparent therefrom was that Mr. Belohlavek had abdicated his supervisory responsibilities over Ms. Fischer. Instead of reviewing the critique himself, consistent with his obligations as Ms. Fischer's direct superior, he had delegated review of the critique to Ms. Fischer. Essentially, he had put her in charge of the decision as to whether her Respondent's Brief would be withdrawn. Although I objected to the propriety of such arrangement and asked Mr. Belohlavek whether, as requested by my May 3rd coverletter, he had provided you with the critique, he was extremely evasive.

With reluctance, I then telephoned Ms. Fischer -- but only because Mr. Belohlavek instructed me to do so. On her voice mail I left a message that Mr. Belohlavek had told me to speak to her to ascertain the status of her review of the critique. By late the following day, May 31st, with no return call from Ms. Fischer, I telephoned again. In response to my inquiry as to whether she had any questions about any aspect of the critique, Ms. Fischer told me she had none. In response to my inquiry as to whether her Respondent's Brief would be withdrawn, as I would otherwise need to begin working on my sanctions motion, Ms. Fischer stated I would have an answer by Monday, June 4th.

Late in the day on Monday June 4th, I received a faxed letter (Exhibit "E") which, without directly saying so, declined to withdraw the Respondent's Brief. It was not signed by Mr. Belohlavek as Ms. Fischer's direct supervisor, or by you as the ultimate supervisory authority in the Solicitor General's office. Rather, it was signed by Ms. Fischer herself. Anticipating my objection to her "signature role" in what was supposed to be supervisory review by Mr. Belohlavek and yourself, aided by my critique, as well as my anticipated question as to whether each of you had reviewed my critique, Ms. Fischer's letter purports that I would not be entitled to an answer to "[my] demand for an accounting of what role various attorneys have played in reviewing and supervising this matter" as this "would inevitably involve violations" of "privileged information".

Conspicuously, Ms. Fischer's June 4th letter (Exhibit "E") makes NO acknowledgement of the existence of my critique – or of any review thereof, *be it by herself or anyone else*. Instead, it baldly pretends, "we do not agree that our defense of this action is,

in any sense, inappropriate or incorrect. Our view of both the facts and law diverge significantly from yours." This *without* addressing *any* aspect of the critique's detailed showing that her Respondent's Brief, in virtually each and every sentence, is fashioned on wilful falsification, distortion, and concealment, both of fact and law.

The "only one example" of the supposed deficiency of my claims in the June 4th letter underscores Ms. Fischer's unabashed dishonesty. As Ms. Fischer expressly identifies such "example" as taken from my April 18, 2001 letter to Attorney General Spitzer, a copy of that letter is enclosed (Exhibit "F-2") so that you can *readily* verify how Ms. Fischer has ignored ALL its serious content, except for the final paragraph on its second page which she has distorted beyond recognition.

As examination of my April 18th letter shows (Exhibit "F-2", p. 2), my objection to the Appellate Division, First Department's decision in *Michael Mantell v. New York State Commission on Judicial Conduct*, 715 NYS2d 316 (1st Dept. 2000), had NOTHING to do with its "brevity", as Ms. Fischer falsely makes it appear (Exhibit "E", p. 1). Rather, my objection was to that appellate decision's *fraudulence*, as summarized by my analysis, contained in CJA's December 1, 2000 notice to the Attorney General to take steps to vacate it for fraud (Exhibit "G"). Tellingly, Ms. Fischer does *not* deny or dispute the accuracy of that analysis – let alone the accuracy of what my critique has to say about the fraudulent *Mantell* appellate decision, and Ms. Fischer's advocacy based thereon, as set forth at pages 40-47 of the critique.

Nor have I contended, *contrary to Ms. Fischer's false inference*, that the Appellate Division, First Department's denial of my motion to intervene in *Mantell* "allow[s] [me] to claim that [I am] in some way not bound by Mantell's holding" (Exhibit "E", p. 1). This may be seen from the fact that such argument *nowhere* appears in my April 18th letter -- or in the pertinent pages 40-47 of my critique. As for Ms. Fischer's additional sentence, which she places in parenthesis, that "under New York law a litigant cannot intervene 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 intervenor is already involved (see CPLR §§1012, 1013)" – by which, assumedly, she is trying to justify both the Appellate Division, First Department's denial, *without reasons*, of my intervention motion and the Attorney General's opposition to that motion -- the indefensibility of both is evident from the most cursory examination of my intervention motion, and, in particular, by examination of my October 5, 2000 memorandum of law, with its discussion of CPLR §§1012, 1013, and, most importantly, §7802(d) governing permissive intervention in an Article 78 proceeding – such as Mr. Mantell's.

Finally, as to Ms. Fischer's attempt to dissuade me from making a sanctions motion by claiming it would be "groundless" (Exhibit "E", p. 2), the brazenness of this further deceit by Ms. Fischer is evident from her complete failure to deny or dispute *any* aspect of my critique with its fact-specific showing that her Respondent's Brief is not only sanctionable under 22 NYCRR §130-1.1, but, over and again, meets the definition of "fraud on the court"[1].

The court has a right not to be imposed upon by Ms. Fischer's fraudulent Respondent's Brief – and it is you, as Ms. Fischer's ultimate superior in the Solicitor General's office, who would be "unnecessar[il]y impos[ing] on the Appellate Division's limited resources" by not withdrawing it so as to dispense with my having to make a sanctions motion to preserve the integrity of the appellate process, defiled by Ms. Fischer. There is nothing "wasteful" about such motion, which, like a motion to disqualify the Attorney General for violation of Executive Law §63.1 and multiple conflicts of interest, is "threshold" to the Court's adjudication of the "merits" of the appeal.

As Ms. Fischer's June 4th letter notes that the Attorney General will have "an opportunity to respond" to my sanctions motion (Exhibit "E", p. 2), she surely recognizes that any response would have to controvert the critique – the obvious centerpiece to such motion. Consequently, if based upon your review of the critique, you cannot controvert it -- and Ms. Fischer has been unable to do so after more than four weeks – your duty under ethical rules of professional responsibility is to withdraw her Respondent's Brief. To do otherwise, would make you *personally* liable, pursuant to 22 NYCRR §1200.5(d) [Exhibit "A-1"], for the misconduct my critique documents. Indeed, in my May 31st phone conversation with Ms. Fischer, I expressly stated that any sanctions motion I was obliged to make would be against you, *personally*, as well as against Attorney General Spitzer, *personally*.

Mr. Spitzer has his own copy of the critique, delivered to him under a separate May 3rd letter (Exhibit "F-3"). Based on that letter, as well my May 3rd letter to Mr. Belohlavek (Exhibit "D") – a copy of which was also delivered for him at that time – Mr. Spitzer had an affirmative responsibility to candidly discuss this case with you.

---

[1] *See*, Matter *of Friedman*, 609 NYS2d 576, 587 (AD 1st Dept. 1994):

> "in *Matter of Schildhaus*, 23 A.D.2d 152, 259 NYS2d 631, we held: "An attorney is to be held strictly accountable for his statements or conduct which reasonably could have the effect of deceiving or misleading the court in the action to be taken in a matter pending before it. The court is entitled to rely upon the accuracy of any statement of a relevant fact unequivocally made by an attorney in the course of a judicial proceeding'".

This, so that you could understand that his ability to instruct you to meet your ethical duty by withdrawing the Respondent's Brief is severely compromised by his multiple conflicts of interests. These conflicts of interest are particularized in the lower court record, most dramatically by my July 28, 1999 omnibus motion for Mr. Spitzer's disqualification and for sanctions against him, *personally* [A-195-197][2] – a copy of which was provided to his counsel, David Nocenti, under an August 6, 1999 coverletter[3]. Among these disqualifying conflicts is that presented by Mr. Spitzer's relationship with Respondent's Chairman, Henry T. Berger, "a prominent Election Law lawyer who helped establish [Mr. Spitzer's] narrow election victory – so close that it could not be determined without an unprecedented post-election ballot counting"[4].

Tellingly, there has been NO response from Mr. Spitzer to my May 3rd letter to him (Exhibit "F-3) or to my April 18th letter (Exhibit "F-2"), whose closing paragraph reads:

> "By this letter, I call upon you 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."

A copy of my January 10, 2001 letter to Mr. Spitzer – to which I also received no response from him[5] -- is enclosed for your review (Exhibit "F-1").

---

[2] As to Ms. Spitzer's own conflicts of interest, *see*, *inter alia*, ¶¶8, 40-53 of my affidavit in support of my July 28, 1999 omnibus motion.

[3] My August 6, 1999 coverletter is Exhibit "A" to my September 24, 1999 reply affidavit in support of my omnibus motion. Discussion of the letter and Mr. Spitzer's duty with respect thereto under applicable codes of professional responsibility appears at pages 3-11 of my September 24, 1999 reply memorandum of law.

[4] *See* ¶51 of my affidavit in support of my July 28, 1999 omnibus motion, with its record reference.

[5] As reflected by my enclosed May 8, 2001 letter to William Cullen, a "confidential investigator" in the Attorney General's office (Exhibit "H"), I did receive a rather inexplicable telephone call from him on that date, asking me to explain what my January 10th letter was about. I have not heard from Mr. Cullen since.

I ask that you confirm that you will now be giving this matter your *personal* supervisory review. Further, inasmuch as the stipulation between myself and Ms. Fischer (Exhibit "B-8"), arranged with Mr. Belohlavek (Exhibit "B-1", "B-2", "B-3"), requires me to reply to Ms. Fischer's Respondent's Brief by June 27th, I ask your consent to a stipulation extending my time to reply to August 17th. That way I will not be burdened with the necessity of preparing a Reply Brief and sanctions motion – while you are yet reviewing whether, based on my critique, you have a professional obligation to withdraw the Respondent's Brief. There is no prejudice by such extension, as the appeal is not calendared for argument in the Appellate Division, First Department until its September Term, and August 17th is, in fact, the date by which reply briefs for appeals heard in that Term must be filed. Such stipulation would, additionally, give you time to make a decision as to your larger obligations to disavow your representation of Respondent, pursuant to Executive Law §63.1, and to support my appeal, based on full examination of the lower court record – as well as of the record of my motion to intervene and for other relief in the *Mantell* appeal -- which the transcending public importance of this case not only warrants, but demands.

Of course, the "linchpin" of my appeal – on which the fundamental rights of the People of this State rest – are my analyses of the three fraudulent judicial decisions of which Respondent, your client, has been the beneficiary. The dispositive nature of these analyses: of Justice Cahn's decision in *Doris L. Sassower v. Commission*, of Justice Lehner's decision in *Mantell v. Commission*, and of the Appellate Division, First Department's decision in *Mantell*, is highlighted by my April 18th letter to Mr. Spitzer (Exhibit "F-2", p. 2), and reinforced by my critique[6]. This, in addition to my correspondence with Ms. Belohlavek and Ms. Fischer (Exhibit "B-1", "B-3a", "B-9"). In view of your extraordinary intellectual gifts, reflected by the September 1, 1999 New York Times profile of you, "*Poised and Playful in the Legal Fast Lane*" (Exhibit "A-2"), it should take you no more than a few hours to confirm the accuracy of these analyses, both factually and legally. I would be pleased to answer any questions or otherwise assist you.

Please let me know of your intentions, *without delay*, as I must otherwise immediately begin work on my Reply Brief and sanctions motion.

Yours for a quality judiciary,

Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

---

[6] *See* pages 3-11; 40-48.

Enclosures

cc: New York State Attorney General Eliot Spitzer
Deputy Solicitor General Michael Belohlavek
Assistant Solicitor General Carol Fischer

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
...r name and address on the reverse ...ve can return the card to you.
...is card to the back of the mailpiece, ...e front if space permits.

...ddressed to:
...itor General
...eeta D. Bansel
...f Attorney General
... Broadway
... NY 10271

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery JUN 11 2001
C. Signature X J. Williams ☐ Agent ☐ Addressee
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

102595-00-M-0952

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

NEW YORK, NY 10271

Postage	$ 2.23	UNIT ID: 0137
Certified Fee	1.90	Postmark Here
Return Receipt Fee (Endorsement Required)	1.50	
Restricted Delivery Fee (Endorsement Required)		Clerk: KJDD6H
Total Postage & Fees	$ 5.63	06/07/01

Sent To Solicitor General Bansel
Office of NYS Attorney General
Street, Apt. No.; or PO Box No. 120 Broadway
City, State, ZIP+4 NY NY 10271

PS Form 3800, May 2000 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

...items 1, 2, and 3. Also complete ...Restricted Delivery is desired.
...name and address on the reverse ...e can return the card to you.
...s card to the back of the mailpiece, ...front if space permits.

...ressed to:
...ey General
... Eliot Spitzer
... Broadway
... 25th floor
... NY
... 10271

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery 6-12-01
C. Signature X J Williams ☐ Agent ☐ Addressee
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

...ber (Copy from service label) ...99 3400 0017 1832 4495

...1, July 1999 Domestic Return Receipt

102595-00-M-0952

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

NEW YORK, NY 10271

Postage	$ 3.50	UNIT ID: 0136
Certified Fee	1.90	Postmark Here
Return Receipt Fee (Endorsement Required)	1.50	
Restricted Delivery Fee (Endorsement Required)		Clerk: KCBSYW
Total Postage & Fees	$ 6.90	06/08/01

Recipient's Name (Please Print Clearly) (to be completed by mailer) Attorney General Eliot Spitzer
Street, Apt. No., or PO Box No. 120 Broadway 25th floor
City, State, ZIP+4 NY NY 10271

PS Form 3800, February 2000 See Reverse for Instructions

Inventory of Exhibits to Elena Ruth Sassower's June 7, 2001 Letter to Solicitor General Preeta D. Bansal

Exhibit "A-1": 22 NYCRR §1200.5 [DR-104] "Responsibilities of a Partner or Supervisory Lawyer"

"A-2": "*Poised and Playful in the Legal Fast Lane*", NYT, 9/1/99

Exhibit "B-1": April 4, 2001 ltr of ERS to Belohlavek
"B-2": April 4, 2001 ltr of Fischer to ERS
"B-3a": April 6, 2001 ltr of ERS to Fischer
"B-3b": April 6, 2001 ltr of Fischer to ERS
"B-4": April 13, 2001 ltr of ERS to Fischer
"B-5": April 18, 2001 ltr of Fischer to ERS
"B-6": April 19, 2001 ltr of ERS to Fischer
"B-7": April 19, 2001 ltr of Fischer to ERS
"B-8": Appellate Division, First Department's file stamped copy of April 6, 2001 stipulation
"B-9": April 23, 2001 ltr of ERS to Belohlavek
"B-10": May 1, 2001 ltr of ERS to Belohlavek
"B-11": May 2, 2001 ltr of ERS to Belohlavek

Exhibit "C": coverpage of critique, pp. 1-3, "Introduction", and p. 66, "Conclusion"

Exhibit "D": May 3, 2001 ltr of ERS to Belohlavek

Exhibit "E": June 4, 2001 ltr of Fischer to ERS

Exhibit "F-1": January 10, 2001 ltr of ERS to Spitzer
"F-2": April 18, 2001 ltr of ERS to Spitzer
"F-3": May 3, 2001 ltr of ERS to Spitzer

Exhibit "G": CJA's December 1, 2000 memorandum-notice to Spitzer and the Commission, with copy of the Appellate Division, First Department's decision in *Mantell*, as printed in the New York Law Journal

Exhibit "H": May 8, 2001 ltr of ERS to Cullen