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

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

**INTERIM RELIEF APPLICATION**

Petitioner-Appellant,

**S.Ct/NY Co. #108551/99**

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

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PLEASE TAKE NOTICE that upon the annexed Affidavit of Petitioner-Appellant *Pro Se* ELENA RUTH SASSOWER, sworn to on November 16, 2001, the exhibits annexed thereto, and upon all the papers and proceedings heretofor had, ELENA RUTH SASSOWER will move this Court at 27 Madison Avenue, New York, New York 10010 on Friday, November 16, 2001 at 3:15 p.m. for an order:

1. Adjourning oral argument of this appeal, presently calendared for 10:00 a.m., Wednesday, November 21, 2001 (#00-5434), pending adjudication of Petitioner-Appellant's threshold August 17, 2001 motion (M-4755) for an order:

> "1. Specially assigning this appeal to a panel of 'retired or retiring judge[s], willing to disavow future political and/or judicial appointment' in light of the disqualification of this Court's justices, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, for self-interest and bias, both actual and apparent, and, if that is denied, for transfer of this appeal to the Appellate

Division, Fourth Department. In either event, or if neither is granted, for the justices assigned to this appeal to make disclosure, pursuant to §100.3F of the Chief Administrator's Rules, 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, as well as permission for a record to be made of the oral argument of this appeal, either by a court stenographer, and/or by audio or video recording.

2. Striking Respondent's Brief, filed by the New York State Attorney General, on behalf of Respondent-Respondent, New York State Commission on Judicial Conduct, based on a finding that it is a 'fraud on the court', violative of 22 NYCRR §130-1.1 and 22 NYCRR §1200 *et seq.*, specifically, §§1200.3(a)(4), (5); and §1200.33(a)(5), with a further finding that the Attorney General and Commission are 'guilty' of 'deceit or collusion' 'with intent to deceive the court or any party' under Judiciary Law §487, and, based thereon, for an order: (a) imposing maximum monetary sanctions and costs on the Attorney General's office and Commission, pursuant to 22 NYCRR §130-1.1, including against Attorney General Eliot Spitzer and Solicitor General Preeta D. Bansal, *personally*; (b) referring the Attorney General and Commission for disciplinary and criminal investigation and prosecution, along with culpable staff members, consistent with this Court's mandatory 'Disciplinary Responsibilities' under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct; and (c) disqualifying the Attorney General from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules.

3. Granting such other and further relief as may be just and proper.";

2. Granting the additional relief specifically requested by ¶2 of Petitioner-Appellant's October 15, 2001 reply affidavit on her motion, for a separate award of maximum costs and sanctions, pursuant to 22 NYCRR §130-1.1, against culpable

parties in the Attorney General's office and the Commission, *personally*, based on their "non-probative and knowingly false, deceitful, and frivolous" opposition to the motion;

3. Granting such other and further relief as may be just and proper, including, if the foregoing is denied, permission for a record to be made of the oral argument of this appeal, either by a court stenographer, and/or by audio or video recording – this Court being a "court of record" pursuant to Article VI, §1b of the New York State Constitution and Judiciary Law §2.

November 16, 2001

Yours, etc.

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*
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TO: ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorney for Respondent-Respondent
New York State Commission on Judicial Conduct
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(212) 416-8020
BY FAX: 212-416-8962 ATT: Deputy Solicitor General Belohlavek

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT
Respondent-Respondent
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(212) 949-8860
BY FAX: 212-949-8864

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

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

Petitioner-Appellant,

**AFFIDAVIT**

S.Ct/NY Co. # 99-108551

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

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

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

1. I am the *pro se* Petitioner-Appellant in the above-captioned appeal, fully familiar with all the facts, papers, and proceedings heretofore had herein.

2. This affidavit is submitted in support of an interim relief application for adjournment of the oral argument of this appeal, presently calendared for 10:00 a.m. on Wednesday, November 21, 2001 (#00-5434), pending adjudication of my threshold August 17, 2001 motion (M-4755), including the further relief sought at ¶2 of my October 15, 2001 reply affidavit on the motion.

3. Pursuant to this Court's rule 600.2(a)(3) for motions, a copy of my March 23, 2000 Notice of Appeal is annexed hereto (Exhibit "A"), together with my March 23, 2000 Pre-Argument Statement and the appealed-from January 31, 2000 Decision,

Order & Judgment of Acting Supreme Court Justice William A. Wetzel. All these documents are already in my Appellant's Appendix [A-1-14].

4. At the outset, this interim relief application is UNOPPOSED. Annexed hereto as Exhibit "B" is the November 15, 2001 letter I received from Assistant Solicitor General Carol Fischer, stating, "we do not oppose your request to the Court".

5. As Ms. Fischer's letter reflects (Exhibit "B"), the Attorney General's office had previously received from me two letters regarding this intended interim relief application. These letters, dated November 13, 2001 and November 15, 2001, annexed hereto as Exhibits "C" and "D", set forth the pertinent facts germane to this application, as well as citation to legal authority as to the threshold nature of recusal (Exhibit "C", p. 7). In the interest of judicial economy, I refer the Court to the content of these letters, which I incorporate herein by reference.

6. Suffice it to say that my November 13th letter (Exhibit "C"), which was addressed to Presiding Justice Sullivan and to the yet-unidentified members of the appellate panel assigned to my appeal[1], expressed my belief that the manner in which my August 17th motion was handled is legally insupportable and a reflection of the Court's disqualification for which I sought to have the appeal specially assigned or transferred to the Appellate Division, Fourth Department.

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[1] I hand-delivered five copies of the November 13th letter to the Clerk's Motion Clerk, Ron Uzenski, at approximately 3:30 p.m. on that date, together with an original. To the original, Mr. Uzenski affixed a copy of the faxed receipts of my transmittal of the letter to the Attorney General's office and to the Commission.

7. The August 17th motion, *fully-submitted* on October 15th, did NOT go to the appellate panel, which had already been assigned to the appeal prior to October 15th. Instead, it went to the panel sitting on that October 15th "return date", four of whose five judges were *expressly* identified by my motion as disqualified (Exhibit "C", pp. 3-4). This October 15th panel did *not* recuse itself nor make *any* disclosure pertinent thereto. Instead, the October 15th panel retained the *fully-submitted* motion *for more than three weeks*, before *sua sponte*, *without notice*, and *without reasons*, "adjourning" it to a new "return date" of November 21st. In connection therewith, it sent the motion papers back down to the Clerk's Office – where, on November 13th, I was able to inspect them upon delivering my letter to the Court[2].

8. As pointed out by my November 13, 2001 letter (Exhibit "C"):

> "while the ultimate result of such "adjournment" is to transfer the motion to the panel sitting on the new 'return date', in this case to the appellate panel, what it actual does is DELAY the appellate panel's receipt of the motion to the November 21st 'return date', which has not as yet arrived." (at p. 4)

9. My November 13th letter noted that there was NO necessity for the October 15th panel to "adjourn" the *fully-submitted* motion, as it clearly had authority to refer the motion *directly* to the appellate panel for adjudication in advance of the November 21st oral argument.

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[2] It was unsettling to see my 3-page August 17th notice of motion, 50-page moving affidavit, inventory of exhibits and Exhibit "A" thereto completely loose. Missing were Exhibits "B-1" – "Q", to which all these pages had been fastened when the motion was filed on August 17th. Likewise missing was my free-standing second compendium of Exhibits "R" – "Z-4" to the motion. Because Mr. Uzenski stated he did not know their whereabouts, I am providing the Court with a duplicate set of these documents. The subsequent submissions on the motion,

10. The November 13th letter, therefore, stated:

> "Absent legal authority for the October 15th panel's prejudicial actions, whose consequence has been to deprive me of the appellate panel's adjudication of my timely and sufficient recusal motion -- *which may not even yet be accessible to the appellate panel by virtue of the November 21st 'return date'* -- and absent legal authority for the appellate panel to proceed in face of such unadjudicated threshold motion, with its *uncontroverted* showing in its second branch that the Attorney General's Respondent's Brief must be "stricken" as a "fraud on the court" and the Attorney General disqualified, I request that the November 21st oral argument be postponed pending adjudication of the motion." (Exhibit "C", p. 6, emphasis in the original)

11. My subsequent November 15th letter (Exhibit "D"), addressed to Attorney General Spitzer and Solicitor General Halligan, notified them that because there had been no response from the Court to my November 13th letter (Exhibit "C"), I would be seeking the relief sought therein by this interim relief application. I stated,

> "Therefore, please advise, *without delay*, whether you will consent thereto and, if not, whether you will send a representative to meet me at the Clerk's Office at 2 p.m. tomorrow to oppose it. In view of the ample legal resources of the Attorney General's Office and Commission, such representative should be prepared to justify such opposition with legal authority." (Exhibit "D", underlining added)

12. I believe it fair to say that the REAL reason the Attorney General has NOT opposed my interim relief application is NOT "as an accommodation to [me]", as Ms. Fischer claims in her November 15th letter (Exhibit "B"). Rather, it is because any representative sent to the Clerk's Office would not be able to concoct a basis for opposition -- *let alone substantiate it with legal authority.*

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consisting of Deputy Solicitor General Fischer's August 30th opposing "affirmation" and memorandum of law and my October 15th reply affidavit, were intact.

13. As highlighted by my November 13th letter (Exhibit "C"), the "threshold" nature of my August 17th motion is obvious from the relief it seeks – and Ms. Fischer does NOT deny this.

14. That Ms. Fischer, in consenting to the interim relief application, should nonetheless, pretend that my August 17th motion "is without merit" (Exhibit "B") is a unpardonable deceit, *readily-verifiable* as such from the most cursory examination of the motion – and, in particular, my *uncontroverted* 58-page September 17th Critique, annexed as Exhibit "AA" to my October 15th reply affidavit. Indeed, this *uncontroverted* Critique proves that it is *her* opposition to my motion that "is without merit" and that her superiors, including Attorney General Spitzer and Deputy Solicitor General Halligan *personally*, were obliged under 22 NYCRR §1200.5 [DR 1-104 of New York's Disciplinary Rules of the Code of Professional Responsibility] and under 22 NYCRR §130-1.1 to withdraw it as a "fraud on the court".

15. It is the refusal of the Attorney General and Solicitor General to discharge their mandatory supervisory responsibilities by withdrawing Ms. Fischer's fraudulent opposition to the motion that is the basis for the further relief sought (at ¶2) by my October 15th reply affidavit against them, Ms. Fischer, and other culpable parties, including those at the Commission.

16. As ¶3 of my October 15th reply affidavit highlights, Ms. Fischer's fraudulent opposition to my motion and the refusal of her superiors to withdraw it replays the misconduct which is the subject of the second branch of my August 17th

motion: her fraudulent Respondent's Brief, proven as such by my *uncontroverted* 66-page May 3rd Critique (Exhibit "U" to the motion), which her superiors also refused to withdraw. Such repeated misconduct:

> "reinforce(s) my entitlement to the other relief requested by my motion's second branch and, in particular,... reinforce(s) 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 Ms. Fischer, [the Attorney General, the Solicitor General] 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)]. This, in addition to disqualifying the Attorney General from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules." (October 15, 2001 reply affidavit, emphasis in the original)

17. Upon receipt of each of these two *uncontroverted* Critiques, the 66-page May 3rd Critique and then the 58-page September 17th Critique, Ms. Fischer's superiors at the Attorney General's office were obligated to have terminated her as wholly lacking in the honesty and ethical fitness required by New York's Code of Professional Responsibility. Instead, they have continued to employ her and to involve her on this appeal. Indeed, although ***neither*** my November 13th and November 15th letters was addressed or sent to Ms. Fischer (Exhibit "C" and "D"), it is she who responds (Exhibit "B") – and with unabated deceit. This suggests that it is

Ms. Fischer who the Attorney General's office will be sending to argue against the appeal on November 21st and that her deceit will be no less unabashed.

18. Based on these two *uncontroverted* Critiques, which are encompassed by the August 17th motion, no self-respecting tribunal can allow Ms. Fischer to appear before it, *except* in response to an Order to Show Cause inquiring into the identities of those complicitous in her two fraudulent court submissions: her Respondent's Brief and opposition to the August 17th motion. Further, based on my extensive correspondence with Ms. Fischer's superiors at the Attorney General's office and with the Commission – correspondence annexed to my August 17th motion and October 15th reply affidavit as exhibits -- no self-respecting tribunal could accept oral argument from them. By their knowledge and consent to Ms. Fischer's brazen appellate fraud, they have forfeited any right to present oral argument. This is over and above the fact that, as to the Attorney General, he must be disqualified for his wilful violation of Executive Law §63.1 and conflict of interest rules, demonstrated by my August 17th motion and October 15th reply affidavit.

19. For the Court to allow the November 21st oral argument to proceed under these circumstances, where my August 17th motion to strike Ms. Fischer's fraudulent Respondent's Brief and to disqualify the Attorney General, ***fully submitted*** over a month ago, is not even before the appellate panel because of the prejudicial actions of the October 15th panel, whose disqualification should have been immediately obvious to it, would make a mockery of proper procedure and underscore the Court's disqualification -- the subject of the first branch of the August 17th motion.

20. It must be emphasized that by virtue of the October 15th panel's prejudicial "adjournment" of my August 17th motion to the November 21st "return date", the appellate panel cannot even prepare properly for the oral argument of this appeal. Such preparation necessarily requires review of the appellate briefs. However, my 6-page Reply Brief, filed on August 17th (Exhibit "E"), expressly rests on, and incorporates by reference (at p. 5), my simultaneously-filed August 17th motion. The reason, set forth in the opening paragraph of my Reply Brief, is that:

> "The *only* reply appropriate to the New York State Commission on Judicial Conduct's Respondent's Brief, submitted by its attorney, the New York State Attorney General, is a motion to strike it, to sanction the Commission and the Attorney General, to refer them for disciplinary and criminal investigation and prosecution, and to disqualify the Attorney General for violation of Executive Law §63.1 and conflict of interest rules. This, because Respondent's Brief, *from beginning to end*, is based on knowing and deliberate falsification, distortion, and concealment of the material facts and law – and because the Commission and Attorney General, *directly and incontrovertibly*, know this to be so, but have failed and refused to withdraw it." (Exhibit "E", p. 1, emphases in the original)

21. Consequently, when the October 15th panel "adjourned" the "return date" of my August 17th motion to November 21st, it effectively precluded the appellate panel from reviewing the motion *even* as a reply to Ms. Fischer's fraudulent Respondent's Brief. This includes Exhibit "U" to the August 17th motion -- my *uncontroverted* 66-page May 3rd Critique of Ms. Fischer's Respondent's Brief. The appellate panel thus cannot prepare itself nor be prepared for the November 21st oral argument, let alone be the "hot bench" that the Court's Motion Clerk, Ron Uzenski, purports (Exhibit "C", fn. 2).

22. If, notwithstanding the foregoing, the Court does not grant this unopposed interim relief application for adjournment of the November 21st oral argument pending adjudication of my threshold August 17th motion, I specifically request that the Court set forth its reasons – including by providing the legal authority requested by my November 13th letter (Exhibit "C", p. 6), quoted at ¶10 herein – and which the Attorney General and Commission, with all their ample legal resources, have not come forth to supply.

23. According to an item featured on the front page of the November 14th New York Law Journal (Exhibit "F-1"):

> "In a per curiam opinion [*Daniel Nadle v. L.O. Realty Corp.*, 5077N], the Appellate Division, First Department, yesterday emphasized its 'insistence' that lower courts substantiate their rulings on motions with written reasoning."[3]

24. In the November 13th appellate decision in *Nadle*, the Court took "this opportunity to explain the basis for our insistence on the inclusion of the reasoning underlying a ruling", stating,

> "In addition to the potential benefits to the litigants, the inclusion of the court's reasoning is necessary from a societal standpoint, in order to assure the public that judicial decision making is reasoned rather than arbitrary." (Exhibit "F-2).

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[3] In the *per curiam* decision in *Morales v. Living Space Design*, 278 A.D.2d 48, 717 NYS 2d 179 (December 12, 2000), cited in *Nadle*, this Court (Sullivan, P.J., Rosenberger, Nardelli, Tom, and Lerner, JJ.) used the "opportunity to note our disapproval of disposing of a motion such as this without any explanation or stated reason". This was the month following this Court's November 16, 2000 *per curiam* decision in *Mantell* (Williams, P.J., Mazzarelli, Lerner, Buckley, and Friedman, JJ.), which, *without any explanation or stated reason*, denied, in a single sentence, my "[m]otion seeking leave to intervene and for other related relief". (*See* Exhibit "B-1" to my August 17th motion). That my motion in the *Mantell* appeal was of such nature as to warrant "explanation or stated reason" from the Court if it was to be denied is evident from the most cursory examination of the papers on that motion and, in particular, my October 5, 2000 memorandum of law. [*See* ¶¶49-67 of my August 17th motion herein].

25. The same holds true on the appellate level, where there is also a "societal standpoint" in assuring the public that "judicial decision making is reasoned rather than arbitrary". Moreover, this Court is also subject to appellate review – and the Court of Appeals, to which this appeal is headed in the event of an adverse determination, has a right to know the basis of the Court's reasoning if it refuses to respect the clearly threshold nature of my substantiated August 17th motion pertaining to the integrity of the appellate process.

26. Obviously, if this Court turns its back on the integrity of the appellate process – at issue on the threshold August 17th motion – it can hardly be expected to uphold the integrity of the judicial process – at issue in the appeal. As evident from cursory review of my Appellant's Brief, my appeal is centered on the threshold issues of Justice Wetzel's wrongful denial of my application for his disqualification/disclosure and his wrongful denial of my omnibus motion to disqualify the Attorney General and for sanctions against him and the Commission – for which, on appeal, I seek disciplinary and criminal referral against Justice Wetzel, the Attorney General, and Commission, pursuant to §§100.3(D)(1) and (2) of the Chief Administrator's Rules Governing Judicial Conduct (Brief, p. 70).

27. Finally, the manifestations that this Court is not a fair and impartial tribunal – including the appellate panel's failure to *sua sponte* adjourn the November 21st oral argument, as requested by my November 13th letter to it (Exhibit "C") – thereby needlessly burdening me with this interim relief application, reinforces the

necessity that there be a "record" of the oral argument, as set forth at ¶¶75-87 of my August 17th motion. This is especially so if the Court denies the adjournment sought herein. Moreover, such "record" will memorialize that just as Ms. Fischer's two written submissions to this Court were, in every respect, "fraud(s) on the court", so her oral advocacy is similarly fraudulent. Indeed, it cannot be otherwise – as there is NO legitimate defense to this appeal – a fact demonstrated by my *uncontroverted* 66-page May 3rd Critique (Exhibit "U" to my August 17th motion) and reinforced by my *uncontroverted* 58-page September 17th Critique (Exhibit "AA" to my October 15th reply affidavit).

28. In addition to the nearly 400 petition signatures annexed as Exhibit "S" to my August 17th motion and the 180 additional petition signatures annexed as Exhibit "UU" to my October 15th reply affidavit, another 30 petition signatures are annexed hereto as Exhibit "G", so as to further demonstrate the public's interest that there be a "record" of this transcendingly important public interest proceeding, which so profoundly affects their rights – in addition to my own.

WHEREFORE, it is respectfully prayed that the Court grant the relief sought in my accompanying notice for this interim relief application.

Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Sworn to before me this
16th day of November 2001

Notary Public

MIRIAM J. MIKAIL
Notary Public, State of New York
No. 41-4930930
Qualified in Orange County
Commission Expires MAY 9, 2002