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BY HAND

November 19, 2001

Presiding Justice Joseph Sullivan
Appellate Division, First Department
27 Madison Avenue, 25th Street
New York, New York 10010

RE: Petitioner-Appellant's *Unopposed* Interim Relief Application to adjourn the November 21st oral argument: *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. #108551/99) and, if that is denied, for permission for a "record" to be made "either by a court stenographer, and/or by audio or video recording"

Dear Presiding Justice Sullivan:

At approximately 3:30 p.m. on Friday, November 16th, I was advised by the Court's Attorney, Ms. Holmes, that you had already left for the day and that she could not present my *unopposed* Interim Relief Application to you until today.

Because of the importance of this Application -- seeking an adjournment of the November 21st oral argument in my above-captioned appeal pending the appellate panel's adjudication of my underlying August 17th motion, *inter alia*, to disqualify the Court and specially assign the appeal to "a panel of 'retired or retiring judge[s], willing to disavow future political and or judicial appointment" or transfer it to the Fourth Judicial Department[1] and, additionally, to strike the Attorney General's

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[1] *See, inter alia*, the New York State Constitution, Article VI, §4(h):

"A justice of the appellate division of the supreme court in any department may be temporarily designated by the presiding justice of his department to the appellate division in another judicial department upon agreement by the presiding justices of the appellate division of the departments concerned."

Respondent's Brief as a "fraud on the court" and to disqualify the Attorney General from representing the Commission, I have made yet another trip from White Plains so as to be on hand to present oral argument in support of this plainly threshold relief, as likewise my request, also part of my August 17th motion, for permission for a "record" to be made of oral argument of the appeal "either by a court stenographer, and/or by audio or video recording"[2].

I respectfully request the opportunity to present oral argument in support of my Interim Relief Application and/or to respond to your questions about the *unadjudicated* August 17th motion, whose purpose is to safeguard the integrity of the appellate process.

While I do not know whether you yourself are a member of the appellate panel assigned to my appeal, there is no question but that you have important supervisory responsibilities, as this Court's Presiding Justice, relative to the shocking – and, I believe, legally insupportable fashion – in which my clearly threshold August 17th motion was handled after being *fully submitted* on the October 15th "return date". Such handling is particularized by my November 13th letter addressed to you and the members of the appellate panel – which is Exhibit "C" to my Interim Relief Application. Additionally, it is critical that you clarify the manner in which my November 13th letter was itself handled, as I believe that the original and five copies that I hand-delivered on that date to the Court's Clerk, Ron Uzenski, for distribution to you and the appellate panel members may, in fact, never, have been distributed.

I say this because on Friday, November 16th, after providing Ms. Holmes with my Interim Relief Application, I examined the papers relating to my August 17th motion, *still* in the Clerk's office. Among these papers were the original and five

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And Article VI, §4(i):

> "In the event that the disqualification, absence or inability to act of justices in any appellate division prevents there being a quorum of justices qualified to hear an appeal, the justices qualified to hear the appeal may transfer it to the appellate division in another department for hearing and determination. In the event that the justices in any appellate division qualified to hear an appeal are equally divided, said justices may transfer the appeal to the appellate division in another department for hearing and determination."

[2] Pursuant to Article VI, §1b of the New York State Constitution and Judiciary Law §2, this Court is a "court of record.

copies of the November 13th letter I had delivered for the justices three days earlier. Four of the copies were completely uncreased and in untouched-by-human-hands condition[3]. The fifth had only a very slight crease beneath the staple on the first page and a short pen line in the left margin. As for the original November 13th letter, the first two pages were crushed, as if from being manhandled, as opposed to read. Indeed, as for the letter's remaining pages, they were in untouched-by-human-hands condition. Certainly, the possibility that these letters were never distributed would explain why, when I telephoned Mr. Uzenski at 2:00 p.m. on Thursday, November 15th, as recited in my letter to the Attorney General of that date -- which is Exhibit "D" to my Interim Relief Application -- he told me that there had been no response from the Court to the request in my November 13th letter for it *sua sponte* adjournment of the November 21st oral argument in my appeal pending adjudication of my August 17th motion. This non-response has resulted in my having been burdened with the necessity of bringing this otherwise needless Interim Relief Application.

Despite the appropriateness of your being selected to receive this Interim Relief Application, by a process which Mr. Uzenski has claimed is part of "the internal workings of the Court" about which I am not entitled to information, I am constrained to point out that the underlying August 17th motion recites specific facts pertinent to your disqualification for interest and apparent bias under Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct. These appear at ¶¶11, 15, 28, 73 of my August 17th affidavit.

I trust you will be particularly sensitive to the threshold importance of judicial impartiality[4], as you were on the appellate panel that decided *Johnson v. Hornblass*, 461 NYS2d 277 (A.D. 1st Dept 1983) – a case quoted at the outset of the "Argument" of my Appellant's Brief (at p. 36) for the bedrock principle of judicial impartiality:

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[3] These four letters are enclosed in the envelope, annexed hereto, for your inspection as to their pristine condition.

[4] "The first ideal in the administration of justice is that a judge must necessarily be free from all bias and partiality.", *Oakley v. Aspinwall*, 3 NY 547 (1850). "A judge's ability to be impartial goes to the heart of proper decision-making." *Matter of Sardino*, 58 NY2d 286, 290-91), cited in the Commission's 2000 Annual Report (at p. 102) in *Matter of Bender*.

> "...judicial proceedings should never be conducted save in a manner and under circumstances that reflect complete impartiality. Not only must there be no partiality in fact, even the appearance of partiality is to be avoided." *Johnson v. Hornblass*, 93 A.D.2d 732, 461 N.Y.S.2d 277, 279 (1st Dept. 1983).

I submit there would be a profound "appearance of partiality" – not to mention "partiality in fact" – were the appellate panel to disregard the threshold nature of my August 17th motion, fully submitted five weeks ago, and, with knowledge of the prejudicial conduct of the October 15th panel in connection therewith, proceed with oral argument. Indeed, inasmuch as my August 17th motion details not just "partiality" but "interest" proscribed by Judiciary Law §14, the appellate panel would be proceeding *without* jurisdiction. *Johnson v. Hornblass* itself recognizes that where the disqualification is pursuant to Judiciary Law §14, there is no jurisdiction. *See*, also, *Oakley v. Aspinwall*, 3 NY 547 (1850).

As you were the Presiding Justice in the just decided appeal of *Nadle v. L.O. Realty Corp.* – annexed as Exhibit "F-2" to my Interim Relief Application – I hope you will share my view, set forth at ¶25 therein, that, in the event my *unopposed* Interim Relief Application is denied, only "the inclusion of the court's reasoning" will "assure the public that the judicial decision is reasoned not arbitrary", as likewise the Court of Appeals, to which this case will be headed in the event of an adverse determination. Obviously, providing a reasoned basis for denial is all the more critical in light of the facts as to your own interest and bias, set forth in my August 17th motion. Such "reasoning" should include legal authority to justify the manner in which my *fully-submitted* August 17th motion was handled, as well as legal authority for the appellate panel's proceeding with oral argument of the appeal without first adjudicating my threshold motion.

In the event of such denial, I request that you at least ensure that the members of the appellate panel have individually examined the August 17th motion and familiarized themselves with its content. Plainly, each member must search his own conscience and make his *own* decision regarding the particulars relating to his *own* disqualification. Certainly, it is each individual member who knows the facts that would be his duty to disclose pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct.

Aside from the treatise authority quoted in my Appellant's Brief (at p. 38) that:

> "The judge is ordinarily obliged to disclose to the parties those facts that would be relevant to the parties and their counsel in considering whether to file a disqualification motion" Flamm, Richard E., Judicial Disqualification: Recusal and Disqualification of Judges, p. 578, Little, Brown & Co., 1996,

it must be noted that since 1998, the Commission's Annual Reports ~~has~~ have highlighted that "Conflicts of Interests" have been the basis for its issuance of confidential "Letters of Dismissal and Caution" – and that:

> "All judges are required by the Rules to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned."[5]

Needless to say, in the event oral argument proceeds on November 21st, I will expect that the panel members would make the disclosure requested by my motion. As I have only 15 minutes for my oral argument, it would be highly prejudicial if I had to spent precious time detailing for panel members unfamiliar with the motion the various grounds of disqualification it sets forth from which their disclosure obligations arise.

As I understand from Ms. Holmes that the Court has a scheduled conference today, I respectfully submit that the conference would afford an excellent opportunity to verify if – and to what extent – the appellate panel members have reviewed my August 17th motion, including my October 15th reply affidavit, as well as my November 13th letter preceding this Interim Relief Application.

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[5] For cases in which the Commission's imposition of discipline was sustained by the Court of Appeals, *see, Matter of Roberts*, 91 NY2d 93 (1997), and *Matter of Murphy*, 82 NY2d 491 (1993), cited by this Court in *B & R Children's Overalls Co. v. New York Job Development Authority*, 257 AD2d 368 (1999). *Also, Matter of Fabrizio*, 65 NY2d 275 (1985). Additionally, as to the Court's duty to make disclosure, *see, Oakley v. Aspinwall, supra*, at 551, "Nor ought [the judge] to wait to be put in mind of his disability, but should himself suggest it and withdraw..."

Thank you.

Yours for a quality judiciary,

Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

P.S. As I have corrected typographical and other non-substantive errors in my Interim Relief Application, which I will be handing up to the Court today, this corrected, superseding copy Application is being faxed herewith to the indicated recipients.

The only significant change is at ¶3 of my Notice (at p. 3) to reflect that this Court is a "court of record", pursuant to Article VI, §1b of the New York State Constitution and Judiciary Law §2. Such change was prompted by the fact that on Friday, November 16th, Ms. Holmes denied that this Court was a "court of record" – replicating the position of this Court's Clerk, Catherine O'Hagan Wolfe, with whom I spoke more than a year ago, following Justice Milton L. Williams' denial of my request that the oral argument in *Mantell v. Commission* be stenographically recorded.

Enclosure
cc: New York State Attorney General
ATT: Deputy Solicitor General Belohlavek
[By Fax: 212-416-8962: 20 pages]
New York State Commission on Judicial Conduct
[By Fax: 212-949-8864: 20 pages]