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Elena Ruth Sassower, Coordinator

BY HAND

November 30, 2001

Appellate Division, First Department
27 Madison Avenue, 25th Street
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ATT: Justices Eugene L. Nardelli, Angela M. Mazzarelli, Richard T. Andrias, Betty Weinberg Ellerin, and Israel Rubin: Justices assigned to the appellate panel in the appeal of *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)

RE: Request to Supplement the Record Pursuant to §600.11(f)(4) of this Court's Rules

Dear Appellate Panel Members:

Pursuant to §600.11(f)(4) of the rules of this Court – and without prejudice to my threshold objection to this Court's disqualification for interest and bias, particularized by my *unadjudicated* August 17th motion and reinforced by the Court's conduct in connection with the November 21st oral argument of the above-entitled appeal -- this is to request permission to supplement the record so as to clarify my response to Justice Andrias' question to me at the oral argument.

Inasmuch as this panel's Presiding Justice Nardelli and this Court's Presiding Justice Sullivan each denied my Interim Relief Applications for permission for a record of the oral argument by a court stenographer and/or by audio/visual taping[1], I cannot precisely state what Justice Andrias' question was – nor my response thereto. However, to the best of my recollection, Justice Andrias asked whether the Governor's conflict of

[1] As identified by the Interim Relief Applications, the Appellate Divisions are courts of record, pursuant to the New York State Constitution, Article VI, §1b and Judiciary law §2, and §29.2 of the Rules of the Chief Judge specifically authorize audio/visual taping of appellate proceedings.

interest did not interfere with appointment of a Special Prosecutor. Presumably, Justice Andrias was referring to item 7 of the Notice to my Verified Petition [A-19], seeking a court order and judgment:

> "requesting the Governor to appoint a Special Prosecutor to investigate Respondent's complicity in judicial corruption by powerful, politically-connected judges by, *inter alia*, its pattern and practice of dismissing facially-meritorious judicial misconduct complaints against them, without investigation or reasons".

Such request is, additionally, quoted *verbatim* at page 11 of my Appellant's Brief – where it follows, as well as precedes, my recitation of the criminal ramifications of this case on Governor Pataki (at pp. 3, 6, 13, 17-18, 23, 27-30, 34, 42-44, 46-48, 50) – creating the conflict of interest to which Justice Andrias referred. Of course, as Justice Andrias was the *only* member of this appellate panel who was *also* a member of the October 15th panel to whom my August 17th motion for the Court's disqualification was submitted on its October 15th return date, his question may have been prompted by his acquaintance with the recitation that appears at ¶¶15-31 of my August 17th moving affidavit, the first paragraph of which refers to him directly.

Implied by my response to Justice Andrias, but perhaps not sufficiently explicit, was that the Governor's conflict of interest has NO EFFECT on my entitlement to a court order requesting the Governor to appoint a Special Prosecutor. Such entitlement derives from state of the record of my proceeding. Indeed, the bulk of my response to Justice Andrias was my description of the state of the record, encompassing the physically-incorporated copies of the records in *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission*. As I identified, the *readily-verifiable* record establishes, unambiguously, an *identical* pattern in these three Article 78 challenges to the Commission, all brought in Supreme Court/New York County, *to wit*, the Commission had NO legitimate defense, it was defended by fraudulent defense tactics of its attorney, the New York State Attorney General, and it was rewarded by fraudulent judicial decisions, without which it would *not* have survived.

In asserting the public's transcendent right to a Commission that is more than a façade – one that protects it against miscreant judges by investigating *facially-meritorious* complaints against them -- I expressly identified that Judiciary Law §44.1 requires the Commission to investigate *facially-meritorious* complaints and that the Commission's

self-promulgated rule 22 NYCRR §7000.3 is facially irreconcilable with such statutory provision. The record of my Article 78 proceeding details the mandatory investigative duty imposed by Judiciary Law §44.1– and the Commission's non-conforming 22 NYCRR §7000.3 – including by my *uncontroverted* 3-page analysis of the fraudulent decision of Justice Herman Cahn in *Doris L. Sassower v. Commission* [A-52-54] and by my *uncontroverted* 13-page analysis of Justice Edward Lehner's fraudulent decision in *Mantell v. Commission* [A-321-334]. As these are the two decisions on which Justice Wetzel *exclusively* rests his dismissal of my Verified Petition's Six Claims for Relief [A-12-13], I urged the panel to use the appearance of the Attorney General's representative at the oral argument to require her to confront my accurate and dispositive analyses of these two decisions – constituting the first of the three "highlights" set forth at page 5 of my Reply Brief.

Obviously, a court order requesting that Governor Pataki appoint a Special Prosecutor to investigate the Commission's corruption, including its corruption of the judicial process to defeat three separate Article 78 proceedings, would carry more weight, by far, than the requests that CJA has been making to the Governor since 1996 – and would garner substantial media publicity. Plainly, too, it is the Governor's duty to rise above his own conflicts of interest so as to uphold the Constitution and law he swears an oath to serve. This is the duty of every public officer – including those who sit on the bench. The stellar example of judges rising above their own substantial individual and collective conflicts of interest to request the Governor to appoint a Special Prosecutor could not but have a powerful impact, if not directly on this Governor, then on a public which will be deciding in 2002 whether to re-elect him to another four-year term.

Of course, based on the record, the panel may well conclude that the criminal ramifications of this case on Governor Pataki and his upper-echelon associates are so severe as to make his appointment of a Special Prosecutor a virtual impossibility. If so, the panel's duty, consistent with its mandatory disciplinary responsibilities under §§100.3D(1) and (2) of the Chief Administrator's Rules Governing Judicial Conduct, expressly invoked by my August 17th motion (Notice, ¶2) and the Conclusion to my Appellant's Brief (at p. 70), is to make comparable requests to other public officials for an official investigation. Among these other public officials are the heads of New York's other two branches of government, *to wit*, legislative leaders of New York's State Senate and Assembly and New York's

Chief Judge Judith Kaye[2]. It would also include such other public officers and agencies as the Proposed Intervenors in this proceeding, *to wit*, the New York State Attorney General, the United States Attorney, the New York District Attorney, and the New York State Ethics Commission [A-16-17]– as to which item 8 of my Notice of Verified Petition expressly requests referral for "appropriate criminal and disciplinary investigation" [A-19]. Although the record shows that all suffer from disabling conflicts of interest and are themselves criminally implicated in the systemic governmental corruption exposed herein by virtue of their nonfeasance and, in the case of the Attorney General, by his malfeasance and misfeasance, this, too, should have NO EFFECT on the panel's duty to make appropriate recommendations to them for an official investigation by an independent body. For lack of any other independent body, the record reflects my view that such investigation should be under the auspices of the Public Integrity Section of the U.S. Justice Department's Criminal Division [A-225]. The panel can also make its own referral to the Public Integrity Section, consistent with my request for "other and further relief"[3].

As there is no stenographic transcript of the November 21st oral argument that can be certified, annexed hereto is the written statement from which I read at the oral argument, annotated to reflect the best of my recollection as to the panel's comments to me and my responses (Exhibit "A"). Unfortunately, I took no notes of the statement made by Assistant Solicitor General Carol Fischer, from which to reconstruct the shameful little she said – all of it conclusory and legally insupportable. Suffice it to say, the entirety of her statement, which I do not believe filled the five minutes she reserved, is rebutted by the three "highlights" identified at page 5 of my Reply Brief – whose significance I reiterated in the last two minutes of my 15-minute oral argument. Based on that final two-minute presentation – for which I sacrificed my reserved "rebuttal" time – the panel had reason to know that had it called upon Ms. Fischer to respond to those "highlights" – as I urged it to do – the frivolous and deceitful nature of her presentation would have been resoundingly exposed. To the best of my recollection, the panel allowed Ms.

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[2] The Chief Judge's authority to investigate or initiate an investigation is particularized by pages 7-13 of my April 18, 2000 letter to her, annexed as Exhibit "L-2" to my August 17th motion

[3] My Notice of Verified Petition [A-20], the Conclusion to my Appellant's Brief (at p. 70), and my August 17th Notice of Motion (at ¶3) all request "such other and further relief" as the Court may deem just and proper.

Fischer to speak without asking her a single question – let alone grilling her as to these three dispositive "highlights" or rebuking her for her grossly inadequate presentation.

Finally, annexed hereto (Exhibit "B") are the additional petitions signed by citizens supporting my request to the Court for a record of the oral argument – petitions which I so-identified during my oral argument.

Thank you.

Yours for a quality judiciary,

Elena Ruth Sassower

ELENA RUTH SASSOWER, Coordinator
Petitioner-Appellant *Pro Se*

cc: Assistant Solicitor General Carol Fischer
Office of the New York State Attorney General
New York State Commission on Judicial Conduct