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Elena Ruth Sassower, Coordinator

BY HAND

November 13, 2001

Appellate Division, First Department
27 Madison Avenue, 25th Street
New York, New York 10010

ATT: Presiding Justice Joseph Sullivan and members of the appellate panel assigned to 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: Adjournment of the November 21, 2001 oral argument pending adjudication of Petitioner-Appellant's *threshold* August 17, 2001 motion (M-4755)

Dear Presiding Justice Sullivan and Appellate Panel Members:

I am the Petitioner-Appellant in the above-entitled appeal and write this letter, as a courtesy to the appellate panel, to enable it to *sua sponte* adjourn the November 21, 2001 oral argument pending adjudication of my threshold August 17th motion. Absent same, I will have no alternative but to make an "interim relief application" for such relief at 2 p.m. Friday, November 16th.

The threshold nature of my August 17th motion is evident from the relief it sought:

> "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

Ex "C"

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."

Originally, my August 17th motion for the aforesaid relief was "returnable" on Monday, September 10th. However, to enable the Attorney General to evaluate his mandatory supervisory responsibilities under 22 NYCRR §1200.5 [DR 1-104 of New York's

Disciplinary Rules of the Code of Professional Responsibility] and under NYCRR §130-1.1 to withdraw his opposition to my motion, the parties agreed to put over the "return date" to Monday, September 17th. This then had to be adjourned three times when the attack on the World Trade Towers on September 11th resulted in a two-week closure of the Attorney General's 120 Broadway office and subsequent pile-up of work for his staff. Consequently, the mutually agreed-to September 17th "return date" was adjourned to Monday, September 24th, then to Monday, October 1st, and, finally, to Monday, October 15th. This is reflected by correspondence I sent to the Court's Motion Clerk, Ron Uzenski – correspondence thereafter annexed as Exhibits "BB" –"GG-2" to my October 15, 2001 reply affidavit.

This October 15th reply affidavit, filed on the October 15th "return date" of the motion, followed the Attorney General's one-sentence October 10th letter to me, declining to withdraw his opposition to my August 17th motion[1]. Such reply not only demonstrated my entitlement to ALL the relief sought by my motion, but to additional sanctions and disciplinary and criminal relief against the Attorney General and Commission, based on their "non-probative and knowingly false, deceitful, and frivolous" opposition to my motion, as demonstrated by my *uncontroverted* fact-specific, law-supported 58-page September 17th Critique thereof – annexed as Exhibit "AA" to my reply affidavit.

By October 15th, the date on which my motion was fully submitted and "went up", my appeal had been calendared for oral argument on November 21st, with an appellate panel already assigned, though not disclosed. I logically assumed that my motion "went up" to this already assigned appellate panel. That was not the case, however. It "went up", instead, to the panel sitting on October 15th, *to wit*, Milton L. Williams, as Presiding Justice, and Justices Richard T. Andreas, Richard Wallach, Alfred D. Lerner, and David B. Saxe.

Although my moving affidavit explicitly identifies grounds for disqualification of *four* of the five members of the October 15th panel -- the disqualification of Presiding Justice Williams based upon his abusive and intemperate conduct toward me as Presiding Justice at the oral argument of the appeal in *Mantell v. Commission*, an appeal thereafter "thrown" by a fraudulent *per curium* appellate decision (¶¶4, 49-67); the disqualification of Justice Lerner, based on his complicity as a panel member in the appeal of *Mantell v. Commission* (¶¶4, 49-67); the

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[1] This one-sentence letter is Exhibit "NN" to my October 15th reply affidavit.

disqualification of Justice Andreas, based on his demonstrated interest in obtaining gubernatorial appointment to the New York Court of Appeals (¶15, fn. 6); and the disqualification of Justice Saxe, based on the fact that he is a beneficiary of the Commission's unlawful dismissal of *facially-meritorious* judicial misconduct complaints filed against him, filed by my father, George Sassower (¶¶ 10-11) -- the October 15th panel neither recused itself nor made any disclosure pertinent thereto. Instead, it made an adjudication so prejudicial as to reinforce its disqualification -- and, by extension, the Court's. Indeed, in view of the fact that five of the Court's 15 members sat on the October 15th panel – some of whom may also be members of the appellate panel, whose composition the Court does not release until 3:00 p.m. the day before oral argument -- and who, in any event, likely discussed this unprecedented motion seeking to recuse the Court with the Court's other justices, or, at least with Presiding Justice Sullivan, the bad-faith of the October 15th panel may be imputed to the entire Court.

Thus, on or about Wednesday, November 7th, *after retaining the motion for more than three weeks*, the October 15th panel, *sua sponte* and *without notice to me*, "adjourned" the "return date" of the motion to November 21st. Upon information and belief, in conjunction with this new "return date", the October 15th panel sent the voluminous papers in my fully-submitted motion back down to the Clerk's Office[2].

I do not believe that there is legal authority for a court to take an already submitted motion and to *sua sponte*, *without notice*, and *without reasons* "adjourn" it to a new "return date". Moreover, 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 actually does is DELAY the appellate panel's receipt of the motion to the November 21st "return date", which has not as yet arrived. Certainly, if the October 15th panel wanted the appellate panel to receive the motion *before*

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[2] In my November 8th phone conversation with Court Clerk Esther Brower and my immediately following phone conversation with Motion Clerk Ron Uzenski, both indicated that the motion papers were in the Clerk's Office. However, as I began to discuss with Mr. Uzenski the threshold significance of the motion, *including the fact that it is incorporated by reference in my Reply Brief* (at p. 5) *and, therefore, an essential part of the appellate panel's pre-argument preparation*, he attempted to "cover" for the Court, first by purporting that what came down to the Clerk's Office was the "jacket" of the motion with only a single paper inside, and then, when I pressed him as to the whereabouts of the physical file, by telling me that the information was part of the "internal workings of the Court" to which I was not entitled and by repeating to me, even when such was not responsive, that "it's a hot bench".

November 21st so that it could be adjudicated *in advance of the oral argument*, NO ADJOURNMENT WAS NECESSARY. All that the October 15th panel had to do was to refer the motion to the appellate panel, before whom it clearly belonged from the outset. Clearly, a motion panel has authority to directly refer an already-submitted motion to the appellate panel assigned to the appeal to which the motion relates – in contrast to "adjourning" the already-submitted motion to a new "return date" on which that appellate panel sits.

It certainly did not require more than cursory examination of my fully-submitted motion for the October 15th panel to recognize that my request for permission for me to make a record of the oral argument, "either by a court stenographer, and/or by audio or video recording", had to be determined BEFORE the November 21st oral argument. Obviously, I would need to know in advance of November 21st whether such request would be granted since I would have to make prior arrangements to retain the services of a court stenographer and/or audio/video personnel, whose *bona fides*, assumedly, the appellate panel would also want to approve.

Nor did it require more than cursory examination, which assuredly did not take three weeks, for the October 15th panel to recognize that my fully-submitted motion was not only *threshold* to any substantive adjudication of the appeal, but dispositive of my right to ALL the relief requested, as well as to the additional relief requested by my October 15th reply affidavit (¶¶2,3). As such, the October 15th panel knew that the appellate panel needed to review and decide the motion expeditiously. Otherwise, the appellate panel would be wasting its time and resources on an appeal from which, upon receipt of the motion, it would have no choice but to disqualify itself. Clearly, too, the appellate panel would be wasting its time in devoting itself unduly to the Attorney General's Respondent's Brief as part of its pre-argument preparation, when Exhibit "U" to my moving affidavit established that such Respondent's Brief had to be stricken as a "fraud on the court", with the Attorney General disqualified from representing the Commission. It is hard to imagine that the October 15th panel did not share such critical information with the appellate panel so that it could guide itself accordingly, consistent with the goals of conserving the Court's limited resources.

My moving affidavit itself asserted that adjudication of the motion had to precede oral argument and used the already detailed example (at ¶¶4, 49-67) of what had occurred in *Mantell*, where my threshold "[m]otion seeking leave to intervene and

for other related relief" had been "adjourned" by the Court, without notice to me, to the October 24, 2000 date of oral argument therein as an example of what might otherwise ensue:

> "75. Like adjudication of the first branch of my motion for special assignment/transfer of this proceeding, adjudication of the second branch, *inter alia*, to strike Respondent's Brief as a 'fraud on the court' and, based thereon, to disqualify the Attorney General for violation of Executive Law §63.1 and conflict of interest rules necessarily precedes oral argument of the appeal. For it to be otherwise would mean that I would argue my appeal before a self-interested, biased Court, with the Attorney General orally arguing against the appeal based on his fraudulent Respondent's Brief. In other words, it would be as if I had never made this motion."
>
> 76. Were the Court to ignore the threshold nature of this motion would be further confirmatory of its disqualifying actual and apparent self-interest and bias. Surely, it would raise suspicion that the Court was planning to dispose of the motion in the same way as it disposed of my threshold motion in the *Mantell* appeal, *to wit*, by deferring the motion and then denying it, *without reasons*, in one sentence tacked on to a summary affirmance of the appealed-from decision."

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 that the November 21st oral argument be postponed pending adjudication of the motion[3].

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[3] In a telephone conversation with Mr. Uzenski on Friday, November 9th, Mr. Uzenski, who has been this Court's Motion Clerk for 5 years, and has worked in this Court for more than 20 years, stated that he "assumed" that the Court had received other motions for its recusal, but that he had "no idea" as to the Court's practice in connection therewith. Specifically, he claimed that he did not know whether the Court had rendered decisions on these recusal motions *before* proceeding with oral argument.

I would point out that the Appendix to my Appellant's Brief includes pertinent pages from the 1996 treatise, Judicial Disqualification: Recusal and Disqualification of Judges, by Richard E. Flamm [A-232-239], including the following:

> "As a general rule,... once a challenged judge has recused himself, been disqualified, *or been made the target of a timely and sufficient disqualification motion*, he immediately loses all jurisdiction in the matter except to grant the motion and in some circumstances to make those orders necessary to effectuate the charge." (emphasis added) [A-232]

> "[w]hen a judge presumes to take substantive action in a case... *after he should have recused himself but did not*, any such action is often considered a nullity and any orders issued by such a judge are considered absolutely void for want of jurisdiction." (emphasis added) [A-234-235]

As highlighted by pages 28-48 and 56 of my 58-page September 17th Critique of the Attorney General's opposition – annexed as Exhibit "AA" to my October 15th reply affidavit -- the Attorney General does NOT oppose the showing in my August 17th motion as to the Court's disqualification for "apparent bias"[4] and fashions his opposition to my showing as to the Court's disqualification for "interest" and for "actual bias" on NO LAW and flagrant falsification, distortion, and concealment of the substantiated factual allegations of my motion. This, as likewise, the fact that the Attorney General does NOT oppose that portion of my motion as seeks disclosure by the panel members assigned to the appeal, is all the more significant as his client herein is none other than the New York State Commission on Judicial Conduct with its "unparalleled expertise as to the standards for judicial disqualification and disclosure, with myriad of caselaw examples at its disposal, including its own caselaw." (*See* Exhibit "AA" of my October 15th reply affidavit, p. 29).

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[4] Adding to the "appearance of bias", summarized at pages 31-32 of my 58-page September 17th Critique (Exhibit "AA" to my October 15th reply affidavit), is the subsequently-learned fact, recited at pages 18-20 of my reply affidavit, that Gerald Stern, the Commission's Administrator and Counsel, was "Director of Administration of the Courts First Judicial Department" and served as the Executive Director of its "Judiciary Relations Committee". To date, Mr. Stern has refused to respond to my pertinent inquiries relative thereto, directed to him by an October 9, 2001 letter (Exhibit "MM-2"), except by an October 12, 2001 letter from the Commission's records access officer, stating that the Commission does not have the records of the Judiciary Relations Committee in its files. For purposes of completeness, a copy of that October 12, 2001 letter is annexed hereto.

Nor does the Attorney General counter the examples from the caselaw of this Court as to the "bedrock principle" of judicial impartiality with which the "Preliminary Statement" to my Appellant's Brief (at pp. 36-39) opens. He also does not deny or dispute my assertion therein that:

> "Adjudication of a recusal application should be guided by the same legal and evidentiary principles as govern adjudication of other motions. If the application sets forth specific supporting facts, the judge, as any adversary, must respond to those specific facts. To leave unanswered the 'reasonable questions' raised by such application would undermine its very purpose of ensuring the appearance, as well as the actuality of the judge's impartiality." (Br. at p. 38).

Certainly, a court's ethical obligation to meaningfully respond to a fact-specific recusal application is an essential cornerstone to "promoting public trust and confidence in the legal system" – for which Chief Judge Kaye has set up a Committee to Promote Public Trust and Confidence in the Legal System, as, likewise, the New York State Bar Association.

I will telephone the Clerk's Office at 2 p.m. on Thursday, November 15th to ascertain whether the appellate panel has *sua sponte* adjourned the November 21st oral argument pending adjudication of my August 17th motion. In the event it does not do so, I will present this letter as an "interim relief application" for same at 2 p.m. on Friday, November 16th.

By copy of this letter to the Attorney General, I request that he advise as to whether he will consent to such "interim relief application", absent which he should send a representative to meet me in the Clerk's Office at 2 p.m. on Friday, November 16th.

Thank you.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosure
cc: *See* next page

cc: Ron Uzenski, Motion Clerk, Appellate Division, First Department
Deputy Solicitor General Michael S. Belohlavek [By Fax: 212-416-8962]
Office of the New York State Attorney General
New York State Commission on Judicial Conduct [By Fax: 212-949-8864]

rec'd 10/19/01

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October 12, 2001

Ms. Elena Sassower
Center for Judicial Accountability
P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Dear Ms. Sassower:

As the records access officer, I am responding to your letter dated October 9, 2001, addressed to Gerald Stern, asking whether the Commission has in its files the records of the Judiciary Relations Committee.

The Commission's files do not contain these records.

Very truly yours,

Jean M. Savanyu

Jean M. Savanyu

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RE: Sassower v. Commissin

FROM: ELENA RUTH SASSOWER, Coordinator

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MESSAGE:

Encrased is my Letter of today's date to the Appellate Divisin, 1st Dept.

The last paragraph of page 8 asks for exact Please advise

Elena Ruth Sassower
Petitioner-Appellant Pro Se

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