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); Calendar #2000-5434

Wednesday, November 21, 2001
Appellate Division, First Department
Nardelli, P.J., Mazzarelli, Andrias, Ellerin, Rubin, JJ.

NOTE: The Appellate Division, First Department is a "court of record", pursuant to the New York State Constitution, Article VI, §1b and Judiciary law §2. Moreover, §29.2 of the Rules of the Chief Judge specifically authorizes audio/visual coverage of appellate proceedings. Nonetheless, the Appellate Division, First Department denied my written applications for permission for a court stenographer and/or audio/visual taping – applications supported by the petition signatures of over 600 citizens. What follows is a reconstruction, based on my contemporaneous recollection and that of others in the courtroom.

The text below in regular type-face was what I read at the oral argument from my prepared written statement[1]. The indented *italicized* text is reconstructed.

> *At the 10:00 a.m. calendar call, I requested that my 15 minutes for argument be divided up -- 13 minutes for my direct presentation and 2 minutes for my rebuttal. The Attorney General's representative, Assistant Solicitor General Carol Fischer, stated that she would be using only five minutes of the 15 she had available to her. The case, the seventh to be argued on that morning's calendar, was called at approximately 11:15 a.m.*
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> *Before beginning my statement, I placed a box containing a copy of the lower court and appellate record of my proceeding on the table beside me. I removed pertinent documents from the box, arranging them on the table so that I could conveniently reach for them to raise at the appropriate point in my argument. These were my November 16th Interim Relief Application and my November 19th Interim Relief Application. On the lectern itself, on either side of the warning light, I placed a copy of my fully-submitted August 17th motion (on the right side) and a clock which I faced toward me (on the left side). This prompted a question from Presiding Justice Nardelli as to whether the clock was a tape recorder. My response was no, that it was an alarm clock. Presiding Justice Nardelli then mumbled something which resulted in laughter from the audience. Because of the laughter, I assumed it to be unimportant – and did not request it to be repeated. According to two separate spectators, asked independently for their recollections, what*

[1] My written statement included record citations in the event I was asked for same by the appellate panel. I did not, however, read them.

Presiding Justice Nardelli said was that I would be charged for the time it took to assemble my papers and that I would have only 12 minutes. He then asked me what time I had on my clock. I answered that I had set the clock for "high noon".

My name is Elena Ruth Sassower and I am privileged to be the Petitioner-Appellant *pro se* in this Article 78 proceeding against the New York State Commission on Judicial Conduct --

I was here interrupted with a question by Justice Mazzarelli as to whether I was an attorney. My response was that if this were a "hot bench" she would know that I had brought the proceeding in my individual capacity and, therefor, I did not have to be a lawyer. I pointed out that the caption does NOT say that I am bringing this proceeding "AS coordinator of the Center for Judicial Accountability", but simply identifies that I am "Coordinator of the Center for Judicial Accountability" – words which are descriptive only[2].

I am privileged to be the Petitioner-Appellant *pro se* in this Article 78 proceeding against the New York State Commission on Judicial Conduct, brought in the public interest.

The record of the proceeding in Supreme Court/New York County is clear and unambiguous in what it shows: the Commission had NO legitimate defense to my Verified Petition's Six Claims for Relief [A-37-45], it was defended by fraudulent defense tactics of its attorney, the New York State Attorney General, and it was rewarded by a fraudulent judicial decision of Acting Supreme Court Justice William Wetzel, which, in every material respect, falsified, fabricated, and distorted the record of the proceeding. But for Justice Wetzel's corrupt decision [A-9-14] -- the subject of the appeal – the Commission would not have survived my legal challenge.

I would like to devote this oral argument to summarizing the particulars from my *uncontroverted* 70-page Appellant's Brief as to what the record shows, including as to my entitlement to summary judgment, requested by my July 28, 1999 omnibus motion [A-196] -- as to which the standard for this panel's appellate review is *de novo*. However, I cannot do so. The reason is that there are two threshold issues which, because they involve the integrity of this appellate process, necessarily precede the panel's adjudication of the annihilation of the rule of law committed by Justice Wetzel in the court below.

These two threshold issues are: (1) my right to this Court's disqualification for interest and bias and, relatedly, to disclosure by this panel's justices of the facts pertaining to their relationships with, and dependencies on, the persons and entities whose misconduct is the subject of this lawsuit or exposed thereby; and (2) my right to have the Attorney General's Respondent's Brief stricken as a "fraud on the court" and the Attorney General disqualified from representing the Commission.

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[2] At the conclusion of the argument, following Assistant Solicitor General Carol Fischer's oral argument, I provided Justice Mazzarelli with a record reference to my Appellant's Brief – p. 62, fn. 34.

On August 17th, I made a motion addressed to these threshold issues, which was fully-submitted on October 15th -- *more than five weeks ago*. I respectfully submit that *any* fair and impartial tribunal would have adjudicated this motion in advance of the oral argument, since, obviously, *if* I have demonstrated therein that the Court is disqualified, there is no reason for this panel to be wasting its time and everyone else's by holding oral argument. By the same token, *if* I have demonstrated therein that the Attorney General is disqualified, the panel should not be permitting his representative to orally argue here today – least of all to argue based on his fraudulent Respondent's Brief.

I do not believe there is any legal authority for the panel to proceed here today without first adjudicating my threshold August 17th motion. Nor do I believe there is legal authority to justify the behind-the-scenes court manipulations that resulted in the August 17th motion being withheld from this panel until today. I so stated in a November 16th Interim Relief Application, requesting, in the absence of such legal authority, that the Court adjourn this oral argument pending adjudication of the motion. Such Application was *unopposed* by the Attorney General, because, as I set forth therein without controversion, he could not "concoct a basis for opposition – *let alone substantiate it with legal authority*"

Indeed, contained by my *unopposed* Interim Relief Application was citation to treatise authority on judicial disqualification that:

> "As a general rule... once a challenged judge has... 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." [A-232]

Nonetheless, on Monday, November 19th, you, Presiding Justice Nardelli, denied my *unopposed, legally-supported* Interim Relief Application and did so *without* reasons or legal authority. This included denying without reasons or legal authority that most innocuous branch of the Application as requested "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" -- relief also requested by my unadjudicated August 17th motion, where it was supported by the petition signatures of over 600 interested citizens. And here are some further petition signatures which I wish to submit[3].

Immediately, thereafter, I filed a second Interim Relief Application – this one for supervisory oversight from this Court's Presiding Justice, Joseph Sullivan. That, too, has been denied, without reasons.

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[3] *See Exhibit "B" to my November 30, 2001 letter to the appellate panel.*

Just ten days ago, this Court, in *Daniel Nadle v. L.O. Realty Corp.* expressly recognized that reasoned decisions not only benefit litigants but are "necessary from a societal standpoint, in order to assure the public that judicial decision making is reasoned rather than arbitrary". For all the good it did, my *unopposed* Interim Relief Application both quoted and annexed a copy of that decision to support my request that, in the event the Application was denied, the Court provide reasons and legal authority for same.

Before returning to Justice Wetzel's fraudulent decision, will this panel furnish legal authority for proceeding today with oral argument in face of my unadjudicated August 17th motion?

[*pause – no response*]

I thought that legal authority, rather than raw will, is supposed to be the standard in a court of law.

I would point out that my Interim Relief Application[4] contained a summary of the Attorney General's response to my August 17th motion for the Court's disqualification and disclosure, *to wit*, he had not denied my showing as to this Court's disqualification for "apparent bias", had fashioned his opposition to my showing as to the Court's disqualification for "interest" and "actual bias" on NO Law and on wilful and deliberate falsification, distortion and omission of my substantiated factual allegations, and had not denied the disclosure obligations of the members of this appellate panel. My Interim Relief Application noted that the significance of the Attorney General's response was all the greater as his client, the Commission, has "unparalleled expertise as to the standards for judicial disqualification and disclosure, with myriad of caselaw examples at its disposal, including its own caselaw". In view of the fact that the Commission concedes my entitlement to your disqualification for apparent bias and for disclosure, would any of the panel members wish to disqualify himself or make the disclosure requested by my August 17th motion?

[*pause – no response*]

It must be noted that –

> *I was here interrupted with a question by Justice Andrias as to whether the Governor's conflict of interest didn't interfere with appointment of a Special Prosecutor. My response focused on the public's entitlement to an official investigation based on the state of the record of my proceeding – with its physically incorporated copies of the record of Doris L. Sassower v. Commission and Michael Mantell v. Commission. I asserted that 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,*

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[4] *See Exhibit "C", p. 7 thereto.*

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. [See my November 30, 2001 letter to the appellate panel, further clarifying my response to Justice Andrias.]

Upon concluding my answer to Justice Andrias, Presiding Justice Nardelli announced that my time had expired. I thereupon replied that I would use the 2 minutes I had reserved for rebuttal.[5]

Let me just say that based on the Attorney General's written advocacy here and in Supreme Court/New York County – which, at each and every turn I have painstakingly exposed as

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[5] Thus omitted from my oral argument was the following from my written statement:

> ...treatise authority – cited in my Appellant's Brief (at p. 38) and included in my Appellant's Appendix [A-578] – is that:
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> "...the judge is ordinarily obliged to disclose to the parties the facts that would be relevant to the parties and their counsel in considering whether to file a judicial disqualification motion."
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> If this panel is unwilling to confront threshold disqualification/disclosure issues as to itself – as likewise the threshold issues of the Attorney General's fraudulent Respondent's Brief to this Court and my right to his disqualification on this appeal – this panel cannot possibly, except by the rankest hypocrisy, confront the comparable threshold issues of disqualification/disclosure as they relate to Justice Wetzel and to Administrative Justice Stephen Crane, who "steered" this case to Justice Wetzel, in violation of random assignment rules. Nor can the panel confront the comparable threshold issues of the Attorney General's fraudulent submissions in Supreme Court New York County, most notably his dismissal motion – which, *without findings*, Justice Wetzel purported to grant.
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> As I wish to leave time for rebuttal and to answer any questions this panel may have, I will close.

I then continued with the final portion of my written statement.

fashioned, from beginning to end, on knowing falsification, distortion, and omission of the material facts and disregard of controlling law – this panel should mercilessly challenge his representative here today. To do otherwise would publicly demonstrate your readiness to tolerate conduct which would be grounds for disbarment if committed by a private attorney, rather than New York's highest law enforcement officer.

You should begin by challenging the Attorney General's representative to confront here and now the accuracy of my *uncontroverted* 3-page analyses [A-52-54] of Justice Cahn's decision in *Doris L. Sassower v. Commission* and of my *uncontroverted* 13-page analyses [A-321-334] of Justice Edward Lehner's decision in *Michael Mantell v. Commission*, establishing that each of those decisions are fraudulent – being factually fabricated and legally contrived and bogus. These two *uncontroverted* analyses, substantiated by copies of the record in each of those cases, were before Justice Wetzel when, nonetheless, he rested his dismissal of my Verified Petition on the decisions of Justices Cahn and Lehner, *exclusively*. The record shows that throughout this litigation, the Attorney General has avoided confronting the accuracy and dispositive nature of these analyses by acting as if they do not exist.

This is the first of the three "dispositive highlights" listed at page 5 of my Reply Brief – and this panel should likewise require the Attorney General's representative to confront the other two as well. The second of these "highlights" is that the Attorney General has infused his Respondent's Brief with knowingly false propositions about the Commission derived from the decisions of Justices Cahn and Lehner, without identifying these decisions as his source. The third "highlight" is that the Attorney General's Respondent's Brief relies on this Court's appellate decision in *Mantell* to support inflated claims that I lack "standing" to sue the Commission – concealing not only the different facts of my case, making the *Mantell* appellate decision inapplicable, but the fraudulence of the *Mantell* appellate decision, highlighted in my *uncontroverted* 1-page analysis thereof – the accuracy of which analysis the Attorney General has never denied or disputed.

> *Thereupon Assistant Solicitor General Carol Fischer presented a less than five-minute oral argument, which, inter alia, purported, without specificity, that her Respondent's Brief discussed Justice Cahn's decision and that the panel should rely on the Mantell appellate decision. Not a single question was posed to her by the panel – which caused me to exclaim, as Ms. Fischer left the lectern, that I had given the panel the dispositive questions to ask her. Before leaving the counsel table adjoining the lectern, I quickly provided Justice Mazzarelli with the record reference for my answer to her question relating my non-lawyer status [See fn. 2, supra] – a record reference I had located while Ms. Fischer was presenting her frivolous oral argument.*
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> *As I turned to depart, the gallery of spectators erupted in spontaneous applause for me.*