To be argued by:
Carol Fischer

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

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

Petitioner-Appellant,

-against-

COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF NEW YORK,

Respondent-Respondent.

----------x

New York County
Clerk's No.
108551/99

BRIEF FOR RESPONDENT COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF NEW YORK

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Preliminary Statement

In this CPRL article 78 proceeding, Elena Ruth Sassower, pro se petitioner-appellant ("petitioner"), appeals from a Decision, Order and Judgment of Acting Supreme Court Justice William A. Wetzel, which denied her motion for, inter alia, his recusal, Acting Justice William A. Wetzel's recusal, and dismissed her petition (Petitioner-Appellant's Appendix ("A.") 22-47). The petition sought orders directing respondent, the Commission on Judicial Conduct of the State of New York ("respondent" or "Commission"), to investigate petitioner's judicial misconduct complaints against Justices Albert Rosenblatt and Daniel Joy, which complaints the Commission had previously dismissed. The ultimate goal of the action, however, was to have various New York State disciplinary proceeding laws and rules declared

unconstitutional, and to instigate the investigation of what the petition alleged was high-level corruption and political fraud in the selection and retention of judges in New York State.

For the reasons discussed in this brief, Supreme Court correctly dismissed the petition. Initially, as a matter of law petitioner had no standing to seek an order compelling the Commission to exercise its discretion by "accepting" and "investigating" a previously-dismissed judicial misconduct complaint. Therefore, recusal, and the other forms of relief petitioner sought, are beside the point. See Point I, infra. Furthermore, since petitioner's claim that Justice Wetzel was required to recuse himself because he had an "interest" in her suit was based entirely on speculation as to how Justice Wetzel might behave in the event that certain future contingencies came to pass, and not on any evidence of a present, tangible interest, it was properly denied. See Point II, infra.

Questions Presented

1. Does Judiciary Law §45 require the Commission to fully investigate every complaint of judicial misconduct, even when after it concludes that the complaint does not merit comprehensive investigation?

The court below answered in the negative.

2. Does a person who files a judicial misconduct complaint

with the Commission that he claims is "valid on its face" have standing to compel the Commission to reverse its dismissal of that complaint, and institute a full investigation?

The court below answered in the negative.

3. Was an Acting Supreme Court Justice required to recuse himself from a case based on speculation that the outcome might negatively affect the Governor, upon whom the justice was dependent for re-appointment, or on speculation that the outcome might persuade the Commission to revisit previously-dismissed complaints concerning the justice?

The court below answered in the negative.

Statement of the Case

A. Background

1. The Commission on Judicial Misconduct

The Commission is a disciplinary agency created in 1976 by the New York State Legislature to review complaints of judicial misconduct. New York State Constitution, Art. 6, §22; Judiciary Law, art. 2-A. The Commission has the power to "conduct hearings and investigations," to confer immunity, to subpoena witnesses and documents, to adopt and promulgate "rules and procedures, not otherwise inconsistent with law, necessary to carry out the provisions and purposes of this article." Judiciary Law §42. The Commission "shall receive, initiate, investigate and hear

complaints" with respect to the conduct of judges; it also has the power to initiate an investigation of a judge on its own motion. Judiciary Law §44(1). "Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit." Id.

"[A]ll complaints, correspondence, commission proceedings and transcripts thereof, other papers and data and records of the commission shall be confidential . . .," subject to only a few exceptions. Judiciary Law §45. While the complainant is to be notified of the Commission's "disposition" of his complaint, Judiciary Law §44(11), complainants are not among those listed as having access to the Commission's records.

The Commission's "Operating Procedures and Rules" are contained in Title 22 NYCRR Part 7000. Pursuant to 22 NYCRR §7000.1 and §7000.3, the Commission established a two-part procedure for investigating a complaint. First, when a complaint is received, the Commission may undertake an "initial review and inquiry," 22 NYCRR §7000.3(a), defined as

> the preliminary analysis and clarification of the matters set forth in a complaint, and the preliminary fact-finding activities of commission staff intended to aid the commission in determining whether or not to authorize an investigation . . .

22 NYCRR §7000.1(i).

If the Commission undertakes a full-fledged investigation, the Commission and its staff examine witnesses and documents, including the judge who is the subject of the complaint. 22 NYCRR §7000.1(j).

2. Previous Lawsuits Involving Doris Sassower, The Commission, and The Justices of The Appellate Division, Second Department

In 1991, the Grievance Committee of the Appellate Division, Second Department, indefinitely suspended the law license of petitioner's mother, Doris L. Sassower ("D. Sassower"). See Sassower v. Mangano, 927 F. Supp. 113, 115-117 (S.D.N.Y. 1996), aff'd, Sassower v. Mangano, 122 F.3d 1057 (2d Cir. 1997), cert. den., 525 U.S. 872 (1998)(reviewing history of the disciplinary proceedings regarding D. Sassower). D. Sassower challenged her suspension unsuccessfully in both state and federal court actions. Sassower v. Mangano, 196 A.D.2d 843 (2d Dep't 1993), app. den., 84 N.Y. 863, cert. den., 514 U.S. 1109 (1994); Sassower v. Mangano, 927 F. Supp. 113, supra, aff'd, Sassower v. Mangano, 122 F.3d 1057 (2d Cir. 1997), cert. den., 525 U.S. 872 (1998). The federal action named all the justices of the Appellate Division, Second Department, as defendants, and both actions challenged constitutionality of New York's disciplinary rules.

On or about April 10, 1995, after the failure of her State court action, D. Sassower brought a precursor to this action, an

article 78 proceeding against the Commission, D. Sassower v. Commission, N.Y. Co. Clerk's No. 109141/95 (Cahn, J.) (A. 174-188). Her claim in that proceeding is one renewed in the present case, in essentially the same language: she alleged that she had filed complaints concerning a justice of the Second Department (in the D. Sassower case, Justice William B. Thompson), but that the Commission had violated its mandatory duty under Judiciary Law §45 to investigate such facially valid complaints by summarily dismissing them (A. 181-183). She sought the following relief: the annulment of the dismissals, a declaration that 22 NYCRR §7000.3 was unconstitutional (as it purportedly authorized the Commission's summary dismissals), a request the Governor to appoint a Special Prosecutor to investigate the Commission, and the reference of the Commission to various bodies, including the Attorney General of the State of New York and the United States Attorney for "appropriate criminal and disciplinary investigation" (A. 187).

D. Sassower's petition was dismissed in its entirety by a Decision, Order and Judgment of Supreme Court, New York Co. (Cahn, J.) dated July 13, 1995 (A. 189-194). Supreme Court concluded that the Commission had correctly interpreted its legislative mandate to "investigate" complaints to include the power to make discretionary preliminary determinations as to whether it wished to undertake more comprehensive investigations

(A. 192). The Commission, therefore, had the power to promulgate, and follow, regulations permitting it to decide which complaints it believed worthy of comprehensive investigation and which it did not (A. 192-193).

B. Petitioner's Misconduct Complaint Concerning Justice Rosenblatt

The present article 78 proceeding arises from a judicial misconduct complaint filed with the Commission in the name of the Center for Judicial Accountability, Inc. ("CJA") on October 6, 1998. The complaint concerned Justice Albert Rosenblatt, then an Associate Justice of the Appellate Division, Second Department (A. 61). CJA is not-for-profit organization, of which petitioner is a co-founder. While neither the present action nor D. Sassower v. Commission were brought in its name, the judicial misconduct complaints at issue in this proceedings were filed in CJA's name and CJA's public interest advertisements refer to the D. Sassower case as CJA's case (see A. 50, 51, 55-55a). For the sake of clarity, however, the complaints at issue will be referred to as petitioner's complaints, rather than CJA's.

Petitioner filed the October 6, 1998 complaint after learning that Justice Rosenblatt was under consideration for appointment to the Court of Appeals. (A. 61). Justices Rosenblatt and Justice Thompson, while they were Associate Justices of the Second Department, had been members of many of the panels that had issued rulings against D. Sassower in the

lawsuits related to her disciplinary proceedings. See, e.g., Sassower v. Mangano, 196 A.D.2d 843, supra, (refusing to stay disciplinary proceedings); Sassower v. Blaustein, 208 A.D.2d 820 (2d Dep't 1994) (dismissing D. Sassower's complaint in legal fee action and striking her answer in related legal malpractice action due to her failure to comply with discovery orders).

The complaint to the Commission alleged that Justice Rosenblatt had committed "perjury" (A. 64) in response to Commission application questions as to whether, to his knowledge, he had ever been the subject of judicial misconduct complaints and whether, in the previous ten years, he had been sued as a "public officer," other than in a article 78 proceeding. Petitioner concedes, however, that she has never seen Justice Rosenblatt's Commission application (Petitioner-Appellant's Brief ("Pet. Br.") 5). The other basis for petitioner's misconduct complaint was Justice Rosenblatt's purported "collusion and complicity . . . in the fraudulent defense counsel tactics of co-defendant counsel, the New York State Attorney General in the Sassower v. Mangano federal action," apparently due to Justice Rosenblatt's awareness of certain litigation filings (A. 68).

The Commission dismissed petitioner's complaint against Justice Rosenblatt on December 23, 1998 (A. 93). Undeterred, even after Justice Rosenblatt's appointment to the Court of Appeals had been confirmed, petitioner continued to exchange a

series of letters with the Commission asking it to explain, in detail, why her complaint against Justice Rosenblatt had been dismissed (A. 94-108). During the course of this correspondence, which extended over a period of several months, petitioner (1) lodged a judicial misconduct complaint with the Commission against Justice Daniel Joy, for allegedly having participated in the decision to dismiss the complaint against Justice Rosenblatt despite having a purported conflict of interest; (2) asserted that the State Attorney General and Supreme Court Justice Herman Cahn had committed "litigation fraud" in connection with the decision in D. Sassower v. Commission; and (3) further asserted that the Commission's Chairman, Henry T. Berger, was a participant in the Commission's "fraud" (Pet. Br. 8; A. 99). After failing to receive what she believed to be satisfactory answers from the Commission, petitioner commenced this article 78 proceeding.

C. **The Petition**

The petition in this proceeding, dated April 22, 1999, asked the court to:

- declare 22 NYCRR §7000.3 to be unconstitutional "as written and as applied" (A. 23);

- vacate the Commission's "summary dismissal" of petitioner's judicial misconduct complaint concerning Justice Rosenblatt (A. 23);

- declare Judiciary Law § 45, either as applied by the Commission or as written, unconstitutional;

- declare that 22 NYCRR §7000.11 was [concerning the composition of quorums] to be unconstitutional, or, in the alternative, declare Judiciary Law §41.6 and §43.1 [also concerning composition of quorums and panels] unconstitutional;

- declare the Commission in violation of Judiciary Law §41.2 [providing that the chairman of the Commission shall serve for two years, or for his term of office, whichever period is shorter] by the "continued chairmanship of Henry T. Berger and mandating his removal" (A. 23-24);

- "command[]" the Commission to "formally 'receive' and 'determine'" petitioner's misconduct complaint against Justice Daniel W. Joy (A. 24);

- "request[]" the Governor to appoint a Special Prosecutor to investigate the Commission's "complicity in judicial corruption" (a. 24);

- "refer[]" the Commission to the Attorney General of the State of New York, the United States Attorney, the District Attorney in New York, and the New York State Ethics Commission for "appropriate criminal and disciplinary investigation" (A. 24); and

- impose a $250 fine on the Commission under Public Officers Law §79 (A. 24).

The petition asserted that the decision in D. Sassower v. Commission had been a "fraud" (A. 26) and again asserted that Judiciary Law §45 mandated the acceptance and complete investigation of every "facially valid" complaint (A. 37).

D. Petitioner's Application For Recusal

As the case record reflects, Justice Wetzel was the seventh and final judge to whom this case was assigned (A. 122). Six preceding justices, most of whom had been chosen randomly assignment, had recused themselves, some sua sponte and others after petitioner's recusal motions (A. 122-127). When the matter was finally assigned directly to Justice Wetzel by Administrative Justice Stephen Crane (A. 127), two motions, the Commission's Motion to Dismiss the Petition, and petitioner's Motion for Omnibus Relief, were pending.

Petitioner's Motion for Omnibus Relief was directed against the Commission's attorney, the Attorney General of the State of New York (A. 195-197). It asked the court to disqualify the Attorney General from representing the Commission, to sanction the Attorney General and the Commission, and to refer them for criminal and disciplinary action, for their "litigation misconduct" in connection with the present litigation -- apparently by filing the motion to dismiss (Id.).

In connection with this motion, petitioner also asked that the case be assigned to a retired or about-to-be-retired judge,

one who no longer had an interest in further judicial appointment. The claimed reason for this request was that prior actions against the Commission, including D. Sassower v. Commission, had been "thrown" by "fraudulent" judicial decisions (A. 221). Petitioner augmented her requests to the court by a her letter application to Justice Wetzel dated December 2, 1999 (A. 250-261). In that application, she asserted that Justice Wetzel was required to recuse himself, as had his predecessors, due to his dependency on the Governor for reappointment (in his case, to the Court of Claims), and because the Commission had dismissed several misconduct complaints concerning him.

Justice Wetzel denied petitioner's application and dismissed her petition in a Decision, Order and Judgment dated January 31, 2000 (A. 9-14). The court found that petitioner had not created an actual or apparent conflict of interest by asserting that all judges, such as Justice Wetzel himself, were subject to re-appointment by the (non-party) Governor, who, in turn, was alleged to be implicated by petitioner's allegations of respondent's wrongdoing:

> This court must and indeed has seriously considered the application for recusal and is acutely aware that it is not only actual conflicts which compel recusal, but also the appearance of conflicts. However, this court is also aware that the determination of the existence of an appearance of conflicts requires an objective basis, not simply a litigant's bald assertion. This court has no conflict, in fact or in "appearance."

(A. 11).

Justice Wetzel also pointed to the case's history of repeated recusal motions, and the fact that seven different judges had already been assigned to it, as proof that the case was needlessly absorbing scarce judicial resources without progressing beyond its preliminary stages (Id.). Under these circumstances in particular, he concluded that it would be particularly inappropriate to recuse himself without a proper basis simply to avoid what he correctly anticipated would be "petitioner's relentless vilification" (A. 12).

With respect to the Commission's motion to dismiss, the court chose to follow the holding of Mantell v. Comm'n on Judicial Conduct, 181 Misc. 2d 1027 (Sup. Ct. N.Y. Co. 1999), and concluded that petitioner could not seek a writ of mandamus to require the Commission to investigate a particular complaint, as such investigation was a discretionary, rather than administrative act (A. 12-13). (As discussed further below, this Court affirmed Mantell after Justice Wetzel rendered his decision.)

Finally, "[g]iven the history of this litigation and its progeny, this court is compelled to put an end to the petitioner's badgering of the respondent and the court system" (A. 13). The court -- clearly regarding petitioner, D. Sassower and their not-for-profit organization, CJA, as alter egos --

enjoined both petitioner and CJA from instituting "any further actions or proceedings relating to the issues decided herein" (Id.).

Argument

POINT I

PETITIONER HAS NO STANDING TO SUE THE COMMISSION

Petitioner has no standing to challenge the Commission's alleged "summary dismissal" of the complaints she that filed against Justices Rosenblatt and Joy. In Mantell v. New York State Comm'n on Judicial Conduct, ___ A.D.2d ___, 715 N.Y.S.2d 316 (1st Dep't 2000), noted by petitioner as a "related proceeding[]" also on appeal to this Court when petitioner filed her Notice of Appeal (A. 7), this Court affirmed the dismissal of an article 78 proceeding brought, just as petitioner's had been, to compel the Commission to investigate a "facially meritorious" complaint of judicial misconduct. The Court found that:

> Petitioner lacks standing to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct. Respondent's determination whether or not a complaint on its face lacks merit involves an exercise of discretion that is not amenable to mandamus.

715 N.Y.S.2d at 316 (emphasis added).

Mantell's holding disposes of petitioner's claims in this action. She cannot sue to compel the Commission to perform a discretionary act. Since she cannot assert a right to relief for

a direct, personal injury, she has no standing to challenge the constitutionality of any laws or regulations concerning the manner in which the Commission investigates complaints, or, for that matter, to challenge the tenure of Chairman Berger. See Valley Forge Christian College v. Americans United For Separation of Church And State, 454 U.S. 464, 472 (1982) (citation omitted) (in order to have standing to challenge the constitutionality of an act, plaintiff must demonstrate that "he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct.")

POINT II

SUPREME COURT DID NOT ABUSE ITS DISCRETION BY DENYING PETITIONER'S RECUSAL MOTION

No matter what Supreme Court justice ultimately was assigned to hear petitioner's case, he or she would have been required, by Mantell, to dismiss the petition, just as Justice Wetzel did. Therefore, any question of judicial bias is meritless. Nonetheless, none of the actions of which petitioner complains, such as the the so-called "steering" of the case to Justice Wetzel, or Justice Wetzel's retention of the case despite his alleged immediate "dependency" on the Governor for reappointment, created a conflict of interest requiring Justice Wetzel's recusal.

A. The Manner In Which The Case Was Assigned Was Proper

No impropriety, or appearance of impropriety, was created by Administrative Judge Crane's direct assignment of the case to Justice Wetzel, much less a "flagrant violation of Petitioner's rights" (Pet. Br. 41). While Uniform Supreme Court Rule 202.3(b) provides for the random assignment of cases, Rule 203.3(c) lists numerous "exceptions" to this rule. Rule 203.3(c)(5) is a catchall exception providing that "[t]he Chief Administrator may authorize the transfer of any action or proceeding and any matter relating to an action or proceeding from one judge to another in accordance with the needs of the court."

Rule 203.3(c)(5) does not require any specific fact-finding or hearing for such an administrative transfer to take place. Indeed, litigants do not have standing to challenge a failure to comply with the Individual Assignment System rules, as they were meant to aid to the court system, not "advance the personal interest of litigants, as such." Coastal Oil N.Y. v. Newton, 231 A.D.2d 55, 57 (1st Dep't 1997), app. den., 91 N.Y.2d 808 (1998) (per curiam) (holding that defendants had no standing to challenge the alleged assignment of a criminal case to a trial judge in violation of the Individual Assignment System). See also Vacca v. Valerino, 161 A.D.2d 1142 (4th Dep't 1990) ("The [IAS] rules provide for the assignment of cases to a particular Judge and permit the transfer of any matter from one Judge to

another."); Pomirchy v. Levitin, 144 A.D.2d 655 (2d Dep't 1988), app. den., 73 N.Y.2d 708, cert. den., 493 U.S. 824 (1989) (when case was inadvertently assigned to two different judges, no error for clerk's office to select which judge would hear the case).

Therefore, Administrative Judge Crane did not violate any court rule by directly assigning the matter to Justice Wetzel.

B. Petitioner Failed To Demonstrate That Justice Wetzel Had Any Cognizable "Interest" In This Action

Recusal is mandatory only under the specific circumstances summarized in Judiciary Law § 14: "[a] judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel, or in which he is interested or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree." If no mandatory prohibition applies, the decision of a recusal motion based on alleged bias and prejudice is a matter of the judge's conscience. People v. Moreno, 70 N.Y.2d 403, 405 (1987). The decision of a judge not to recuse himself is reviewed for abuse of discretion. Woolstencroft v. Sassower, 212 A.D.2d 598, 600 (2d Dep't 1995).

Petitioner asserts that Justice Wetzel was required to recuse himself under Judiciary Law §14 and 100.3(E) of the Chief Administrator's Rules Governing Judicial Conduct, which provides that a judge shall disqualify himself in a proceeding in which his impartiality "might reasonably be questioned," such as where

the judge has a personal bias, or "has an interest that could be substantially affected by the proceeding." The "interest" Justice Wetzel was said to have in the litigation consisted of petitioner's speculation as to possible future events:

- Justice Wetzel's term as a Justice of the Court of Claims had expired. Petitioner therefore speculated that (1) Justice Wetzel would believe that petitioner's suit would inevitably succeed and, in doing so, "directly implicate the Governor in Respondent's corruption (Pet. Br. 47-48)," and (2) Justice Wetzel's desire to be reappointed and maintain himself in the Governor's "good graces (Pet. Br. 48)" would give him an interest in "protecting (Pet. Br. 47)" the Governor, prejudicing him against petitioner and her claims.

- The Commission had previously dismissed several complaints of judicial misconduct filed against Justice Wetzel. Petitioner therefore speculated that Justice Wetzel would wish to thwart petitioner's challenge to the Commission's alleged "summary dismissals" of judicial misconduct complaints because <u>if</u> the challenge succeeded a "reinvigorated" Commission <u>might</u> re-open the dismissed complaints, which, in turn, <u>might</u> have some basis in fact (Pet. Br. 49).

Any "interest" allegedly possessed by Justice Wetzel thus turned on the occurrence of a series of speculative and implausible contingencies, all of which were dependent upon

establishing petitioner's unfounded allegations of wide-ranging, high-level fraud and corruption. When a judge's purported interest in a lawsuit is "remote, contingent, or speculative, it is not the kind of interest which reasonably brings into question a judge's impartiality." In re Drexel Burnham Lambert Inc., 861 F.2d 1307, 1314 (2d Cir. 1988).

C. Justice Wetzel's Decision Is Not Itself Evidence of Disqualifying Bias

In order to justify recusal, proof of a judge's bias or prejudice must normally be based on extra-judicial conduct. Ocasio v. Fashion Inst. of Tech., 86 F. Supp.2d 371, 374 (S.D.N.Y. 2000). "Thus, a judge's adverse rulings and decisions against a party almost never are a valid basis for a party to seek disqualification based on bias or impartiality." Id. This is, unfortunately, not a point petitioner is willing to concede; her disagreement with the reasoning of Justice Wetzel's decision is so vehement that she claims it is a "criminal act" (A. 7).

The argument that a refusal to recuse oneself is evidence of bias is, on its face, is so devoid of merit that it does not warrant extended discussion. It suffices to say that petitioner's claim that the decision demonstrates bias mandating recusal amounts to no more than a claim that the court stubbornly refused to accept petitioner's arguments, such as her assertion that she has established, as a matter of incontrovertible fact, the "fraudulence" of the decisions in the D. Sassower and Mantell

(A. 60).

POINT IV

The Court Did Not Err By Sua Sponte Enjoining Petitioner And CJA From Filing Further Lawsuits

It is well-established that litigants who bring repetitious and baseless lawsuits may be enjoined from doing so unless they receive prior permission of the court issuing the injunction. See, e.g., Miller v. Lanzisera, 273 A.D.2d 866, 869 (4th Dep't 2000) (citation omitted) (court may order injunctive relief even in the absence of a finding that the party engaged in frivolous conduct, in order to "prevent the use of the judicial system as a vehicle for harassment, ill will and spite"); Safir v. United States Lines, Inc., 792 F.2d 19, 24 (2d Cir. 1986), cert. den., 479 U.S. 1099 (1987) (courts have inherent power to protect their ability to function by enjoining repetitive, baseless litigation).

That petitioner has engaged in repetitive litigation by filing virtually the same lawsuit twice against the Commission -- first in D. Sassower v. Commission and then in this suit -- is quite clear. Petitioner's own documents demonstrate that she, D. Sassower, and CJA usually function publicly as interchangeable parties. All of the judicial misconduct complaints at issue in this action and apparently in the D. Sassower case as well, were filed in the name of CJA. All of petitioner's correspondence

with the Commission, and with every other New York State office and agency save the courts, has been in the name of CJA. See, e.g., A. 48-51, 57-84, 86-90, 281-285. The petition itself identifies the D. Sassower v. Commission lawsuit as a CJA suit: "In April 1995, CJA spearheaded an Article 78 proceeding, Doris L. Sassower v. Commission on Judicial Conduct of the State of New York . . ." (A. 25, Petition, ¶8). CJA's May 7, 1997 memorandum, addressed to numerous public officials and agencies and discussing the D. Sassower case (A. 48-49), describes the case as "our" case and "CJA's challenge to . . . 22 NYCRR §7000.3."

The common identity of petitioner, D. Sassower, and CJA, for litigation purposes, is further highlighted by the public interest advertisements CJA regularly publishes. All describe CJA's litigation efforts to challenge the Commission (A. 50, 51, 55a-56). It is therefore no surprise that in this action virtually all of petitioner's documents consists of letters and memoranda she has prepared concerning the Commission, Justice Rosenblatt, and the D. Sassower and Mantell decisions, in the name of CJA. Since there is no evidence that petitioner and CJA (and, for that matter, D. Sassower) have acted independently, it was more than appropriate for the court to enjoin both of them from pursuing further litigation concerning the Commission.

The court also had the power to impose the litigation injunction sua sponte. Spremo v. Babchik, 155 Misc. 2d 796 (N.Y.

Co. Sup. Ct. 1992), aff'd as modified, 216 A.D.2d 382 (2d Dep't), app. den., 86 N.Y.2d 709 (1995), cert. den., 516 U.S. 1161 (1996). In view not only of petitioner's repeated recusal motions and voluminous correspondence, but also her bitter and personal attacks on participants in this case (see, for example, A. 308-309, arguing that the filing of a proof of service referring to the delivery of a "supplemental memorandum of law," rather than the affirmation actually served was a "fraud upon the Court," augmenting petitioner's claim for "severest sanctions" against the attorney concerned), Supreme Court's imposition of a filing injunction was amply justified.

Conclusion

For all of the reasons stated above, the January 31, 2000 Decision, Order and Judgment of Supreme Court denying petitioner's application for recusal and denying and dismissing the petition should be affirmed.

Dated: New York, New York
March 22, 2001

Respectfully submitted,

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