QUESTIONS PRESENTED

1. Did the Administrative Judge's interference with "random selection" rules to "steer" the case to Acting Supreme Court Justice Wetzel entitle Petitioner to the granting of her application for Justice Wetzel's recusal based thereon, where, additionally: (a) such interference was without affording Petitioner notice and opportunity to be heard; and (b) neither the Administrative Judge nor Justice Wetzel disclosed the facts pertinent thereto, although requested by Petitioner's recusal application?

   Justice Wetzel's Decision denying Petitioner's recusal application ignored that he was not randomly assigned and made no disclosure in connection therewith.

2. Was Petitioner's application for Justice Wetzel's recusal sufficient, as a matter of law: (a) to require that he disqualify himself for interest under Judiciary Law §14 or, alternatively, (b) to require that he disclose the facts pertinent thereto and grant Petitioner's request for time to incorporate same in a formal recusal motion?

   Justice Wetzel's Decision denying Petitioner's recusal application ignored its allegation that he was disqualified for interest under Judiciary Law §14, made no disclosure, and by dismissing Petitioner's case simultaneous with denial of her recusal application implicitly denied her request for time to make a formal recusal motion incorporating the disclosure she requested.

3. Is Justice Wetzel's Decision so unfounded, factually and legally, as to manifest: (a) the actuality of his disqualifying bias, thereby establishing his denial of Petitioner's recusal application as an abuse of discretion; and (b) a violation of Petitioner's due process rights under the United States Constitution?

   Justice Wetzel's Decision made no factual findings and its two legal citations are for propositions irrelevant to the facts of the case.

4. Based on the state of the record, would a fair and impartial tribunal have been required to grant Petitioner the relief requested by her Verified Petition and her omnibus motion?

   Justice Wetzel's Decision made no factual findings as to the state of the record before him.

INTRODUCTION

Nothing is more fundamental to due process and the rule of law than a fair and impartial tribunal. Without a fair and impartial judge, justice can neither be done nor seem to be done. This is recognized by caselaw forming the bedrock of American and New York jurisprudence and is manifested by the Chief Administrator's Rules Governing Judicial Conduct, which, pursuant to Article VI, §§20 and 28(c), have the force of the New York State Constitution behind them.

There is no greater test of the judiciary's commitment to the foundation principle of a fair and impartial tribunal – and to the statutory bar to a judge participating in a matter "in which he is interested" -- than a case whose subject matter concerns the judiciary and whose outcome directly impacts individuals with whom the judiciary has personal, professional, and political relationships. Such is this case.

At bar is a lawsuit against the New York State Commission on Judicial Conduct – the sole state agency with disciplinary jurisdiction over virtually every judge in this State -- which is being sued for corruption. Directly at issue is its dismissal, *without* investigation and *without* reasons, of a *facially-meritorious* judicial misconduct complaint against justices of the Appellate Division, Second Department and, in particular, a justice who now sits on our State's highest Court, and who formerly had been this State's Chief Administrative Judge.

Yet, the criminal ramifications of this lawsuit extend far beyond the

Commission and the Appellate Division, Second Department justices whose unlawful conduct the Commission protected. The criminal ramifications reach the very persons on whom judges seeking reappointment and promotion to the State bench are most often dependent: the Governor and the Chairman of the State Senate Judiciary Committee.

Such a case imposes upon the judiciary a heightened responsibility to ensure the neutrality of the assigned tribunal – and certainly to scrupulously adhere to "random selection" rules that govern case assignments. That was not done here.

Instead, without giving Petitioner notice and opportunity to be heard, the administrative judge, without stated reasons,[1] twice interfered with "random selection" [A-122] – the second and final time to "steer" the case to a judge more disqualified than any of his five judicial predecessors, all of whom had recused themselves[2]. Both the administrative judge and the assigned judge then flouted their obligations to make pertinent disclosure, although expressly requested by Petitioner, whose written application to recuse the assigned judge was denied by him in the same Decision as dismissed this case.

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[1] Judicial notice may be taken of the fact that the administrative judge, Stephen G. Crane, has long sought gubernatorial appointment to the Appellate Division, First Department, including this year when, additionally, he sought gubernatorial appointment to the New York Court of Appeals. On the subject of his self-interest in this case, as well as his presumed bias against Petitioner, the Court has in its possession a copy of Petitioner's February 23, 2000 letter to the Governor. It is Exhibit "G" to Petitioner's September 21, 2000 affidavit in support of her motion to intervene in the appeal of *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #108655/99) (*see* pp. 6-14 of the letter).

[2] An additional judge was removed by Administrative Judge Crane, upon "oral directive" when he initially "steered" the case [A-122].

This appealed-from Decision is the concrete expression of how completely obliterated due process and the rule of law become in the hands of a self-interested and biased tribunal. As hereinafter shown, the Decision not only departs from cognizable adjudicative standards in substituting conclusory characterizations for factual findings, but, in *every* material respect, falsifies, fabricates, and distorts the record of the proceeding to deliberately assassinate Petitioner's character and deprive her of the relief to which the record resoundingly entitles her. As such, this Court's duty goes beyond reversing the Decision and granting Petitioner the relief warranted by the record. Consistent with the "Disciplinary Responsibilities" which §100.3D of the Chief Administrator's Rules Governing Judicial Conduct impose on every judge, this Court is required to "take appropriate action". Based on this Court's own caselaw, that would include steps to secure the assigned judge's removal from the bench – as likewise the removal or, at minimum, demotion, of the administrative judge:

> "*A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal...*", italics added by this Court in *Matter of Capshaw*, 258 A.D. 470, 485 (1st Dept 1940), quoting from *Matter of Droege*, 129 A.D. 866 (1st Dept. 1909).[3]

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[3] *See also* "*Judicial Independence is Alive and Well*" by the Commission's Administrator, NYLJ, 8/20/98 [A-59-60] citing *Matter of Bolte*, 97 A.D. 551 (1st Dept. 1904), wherein this Court held: "A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for *willfully* making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another..." (at 568, emphasis in original). "Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe." (at 574).

STATEMENT OF THE CASE

A. Precipitating Background Facts:

This Article 78 proceeding against Respondent-Respondent New York State Commission on Judicial Conduct [herein "Respondent"] is based on its dismissal, *without* investigation and *without* reasons, of a ***facially-meritorious*** judicial misconduct complaint, in violation of its mandatory duty to investigate *facially-meritorious* complaints under Judiciary Law §44.1 [A-59, 60].

The subject judicial misconduct complaint, dated October 6, 1998 [A-57], was filed by Petitioner-Appellant Elena Ruth Sassower [herein "Petitioner"], Coordinator of the Center for Judicial Accountability, Inc. (CJA), against Appellate Division, Second Department justices and, most particularly, against then Appellate Division, Second Department Justice Albert Rosenblatt, then a candidate for the New York Court of Appeals.

As against Justice Rosenblatt, the complaint's *facially-meritorious* allegations included his believed perjury on his publicly-inaccessible application to the New York State Commission on Judicial Nomination in responding to 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 by Article 78 [A-57, 64, 74-75].

Although the pendency of Justice Rosenblatt's candidacy before the Commission on Judicial Nomination called for exigent consideration of the October

6, 1998 complaint, Respondent delayed acknowledging it. Thereafter, Respondent ignored Petitioner's repeated requests for an explanation [A-84-85, 92-96].

Respondent's December 23, 1998 letter, by its Clerk [A-93], purporting that Respondent had dismissed the complaint, followed Governor Pataki's appointment of Justice Rosenblatt to the Court of Appeals, confirmed by the Senate [A-108]. Such appointment was in face of the Governor's knowledge of the October 6, 1998 complaint [A-87, 99]. It was also in face of the Governor's knowledge of a prior Article 78 proceeding against Respondent, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New* York (NY Co. #95-109141), based, *inter alia*, on its prior dismissals of three *facially-meritorious* judicial misconduct complaints against Justice Rosenblatt and fellow Appellate Division, Second Department justices, also *without* investigation and reasons [A-99, 51, 51a, 56].

The ensuing Senate confirmation of Justice Rosenblatt's appointment was rammed through by the Chairman of the Senate Judiciary Committee, who held an unprecedented no-notice, "by-invitation-only" confirmation hearing at which no opposition testimony was permitted [A-100,101].

By letter to Respondent's Clerk, dated December 29, 1998 [A-94], Petitioner requested information as to: (1) the date on which Respondent purported to review and dismiss the October 6, 1998 complaint; (2) the number of Commissioners present and voting; (3) the identities of the Commissioners present and voting; (4) the basis for the purported dismissal; (5) the legal authority for the purported dismissal; and (6)

"any and all procedures for review" of Respondent's purported dismissal of the complaint.

By letter dated January 25, 1999 [A-96], Respondent's Clerk denied these requests, stating that his December 23, 1998 letter "constitutes the full extent of the notice and disclosure allowed by law".

By letter to Respondent's Administrator, dated February 3, 1999 [A-97], Petitioner provided an analysis showing that if the unidentified "law" was Judiciary Law §45, it did not prevent Respondent from supplying her with information as to whether Respondent had determined that her "complaint 'on its face lacks merit' – the ONLY ground for the Commission to predicate dismissal, *without* investigation, under Judiciary Law §44.1" -- and that such determination had been made "by a duly-constituted Commission, with members untainted by bias or self-interest."

Petitioner's February 3, 1999 letter pointed out [A-98] that pursuant to Judiciary Law §43 and 22 NYCRR §7000.11, it appeared that as few as two of Respondent's eleven members, forming a majority of a three-commissioner panel, could dismiss a complaint *without* investigation. Petitioner requested that "absent express notice" that Commissioner Daniel Joy, an Appellate Division, Second Department Justice, did not participate in the consideration of her October 6, 1998 judicial misconduct complaint, her February 3, 1999 letter be deemed a judicial misconduct complaint against him for participating in a complaint in which he had a "direct, personal interest in the outcome", proscribed by Judiciary Law §41.4, as

well as by Judiciary Law §14, Canon 3 of the Code of Judicial Conduct, and §100.3 of the Chief Administrator's Rules Governing Judicial Conduct [A-98-99].

Petitioner's February 3, 1999 letter also noted the animus that could be presumed to exist against her among the Commissioners [A-99]. This, as a result of her "vigorous public advocacy" against Respondent for corruption based on what had occurred in *Doris L. Sassower v. Commission*, wherein Respondent was the beneficiary of litigation fraud committed by its attorney, the State Attorney General, and by Supreme Court Justice Herman Cahn, whose fraudulent decision "threw" the case – as to which Respondent had failed to take corrective steps. Petitioner identified two Commissioners who could be expected to have a particular animus. One of these was Respondent's Chairman, Henry T. Berger, whose complicity in Respondent's corruption had been publicly identified in CJA's $3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4) [A-55-56]. As to Chairman Berger, Petitioner requested confirmation that he had been chairman since 1990 or 1991 and inquired as to the legal authority for same, in view of the express limitation imposed by Judiciary Law §41.2 restricting the chairmanship to a member's "term in office or for a period of two years, whichever is shorter" [A-99].

By letter dated February 5, 1999 [A-102], Respondent's Administrator refused to address Petitioner's analysis of Judiciary Law §45 and ignored her argument as to a complainant's right to have her judicial misconduct complaint reviewed by "a duly-

constituted commission, with members untainted by bias or self-interest". Without identifying Judiciary Law §44.1 as the legal authority controlling Respondent's dismissal of the October 6, 1998 judicial misconduct complaint, but echoing its language, Respondent's Administrator purported that "the Commission determined that [Petitioner's] October 1998 complaint against a judge who is being considered for the Court of Appeals was not valid on its face. No further explanation is warranted or expedient." [A-102].

By letter to Respondent's Administrator, dated March 11, 1999 [A-104], Petitioner requested that he define "not valid on its face" and clarify that such alleged determination as to the October 6, 1998 complaint was made by the Commissioners themselves, and not by him or other staff [A-107]. Petitioner annexed extensive past correspondence with Respondent's Administrator, establishing a pattern of dishonesty, falsehood, and concealment by him [A-105, 111-115]. This included letters showing instances where he had misrepresented his own actions as being Respondent's [A-107, fn. 9].

Petitioner's March 11, 1999 letter reiterated the specific questions unanswered by Respondent's Administrator. These included whether as few as two Commissioners could summarily dismiss a complaint under Judiciary Law §44.1, the legal authority for Chairman Berger's long tenure as chairman, and information as to "any and all procedures for review" of Respondent's dismissal of the *facially-meritorious* October 6, 1998 complaint [A-107-109]. Petitioner also objected that

Respondent's Administrator was failing to acknowledge her February 3, 1999 letter as a judicial misconduct complaint against Justice Joy, notwithstanding Respondent had not given Petitioner notice that Justice Joy had not participated in consideration of her October 6, 1998 judicial misconduct complaint [A-107-108].

Neither Respondent nor its Administrator responded to Petitioner's March 11, 1999 letter [A-104]. Nor did they otherwise acknowledge or act on her February 3, 1999 letter as a judicial misconduct complaint against Justice Joy.

B. <u>The Verified Article 78 Petition</u>:

On April 22, 1999, this proceeding was commenced in Supreme Court, New York County, pursuant to CPLR §7801 *et seq*. Accompanying it was a Notice of Right to Seek Intervention pursuant to CPLR §§1012 and 1013, served on the New York State Attorney General, the District Attorney of New York County, the New York State Ethics Commission, and the United States Attorney for the Southern District of New York, as persons and agencies "charged with the duty to protect the public interest, which will or may be affected by the outcome of the... proceeding, raising constitutional issues of gravity and magnitude" [A-16].

Six distinct Claims for Relief were presented by the Verified Article 78 Petition [A-37-45]:

(1) declaring 22 NYCRR §7000.3, *as written*, unconstitutional and unlawful in contravening Article VI, §22a of the New York Constitution and Judiciary Law §44.1 [A-37-38];

(2) declaring 22 NYCRR §7000.3, *as applied*, unconstitutional and unlawful in contravening Article VI, §22a of the New York Constitution and

Judiciary Law §44.1 [A-38-40];

(3) declaring Judiciary Law §45, *as applied*, unconstitutional, and, in the event such relief is denied, that Judiciary Law §45, *as written*, is unconstitutional [A-40-42, 116-121];

(4) declaring 22 NYCRR §7000.11 unconstitutional, *as written and as applied*, and, in the event such relief is denied, that Judiciary Law §§41.6 and 43.1 are unconstitutional, *as written and as applied* [A-42-44];

(5) declaring Respondent in violation of Judiciary Law §41.2 by the continued long-time chairmanship of Henry T. Berger and mandating his removal [A-44-45];

(6) commanding Respondent to formally "receive" and "determine" Petitioner's February 3, 1999 judicial misconduct complaint against Appellate Division, Second Department Justice Joy in conformity with Article VI, §22a of the New York Constitution and Judiciary Law §44.1 [A- 45];

Additional relief included:

> "requesting the Governor to appoint a Special Prosecutor to investigate Respondent's complicity in judicial corruption by powerful, politically-connected judges through, *inter alia*, its pattern and practice of dismissing facially-meritorious judicial misconduct complaints against them, without investigation or reasons" [A-19, 24], and
>
> "referring Respondent, its Commissioners, Administrator, and Clerk 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-19, 24].

The Notice of Petition also specified that as to those branches of relief seeking a declaration of the unconstitutionality of statutory provisions, the proceeding be converted to a declaratory judgment action to the extent required by law [A-20].

Illustrating Respondent's "pattern and practice" of dismissing, *without* investigation, *facially-meritorious* complaints, particularly against powerful, politically-connected judges, the Verified Petition recited facts pertaining to Respondent's summary dismissals of eight prior *facially-meritorious* judicial misconduct complaints against such judges, which were the subject of *Doris L. Sassower v. Commission* [A-25-27]. These included the three prior *facially-meritorious* judicial misconduct complaints against Justice Rosenblatt and other Appellate Division, Second Department justices, most prominently, Justice William Thompson, who had been Justice Joy's predecessor as a member of Respondent [A-25, 27-28].

¶NINTH of the Verified Petition [A-25-26] detailed the outcome of *Doris L. Sassower v. Commission*, whose sole challenge was to the constitutionality and legality of Respondent's self-promulgated rule 22 NYCRR §7000.3, *as written and as applied*:

> "In July 1995, the prior Article 78 proceeding was dismissed by a Supreme Court decision (per Herman Cahn, J.) which upheld the constitutionality of 22 NYCRR §7000.3, *as written*, by falsely attributing to Respondent the Court's own *sua sponte* argument which did not reconcile the facial discrepancy between §7000.3 and Judiciary Law §44.1. As to the constitutionality of §7000.3, *as applied* to Respondent's dismissal of the aforesaid eight facially-meritorious judicial misconduct complaints, the decision falsely stated that the Petitioner therein had contended that Respondent had 'wrongfully determined' that her complaints lacked facial merit – which she had not – and then falsely held that the 'issue is not before the court'. All other relief was dismissed."

Substantiating ¶NINTH was a three-page analysis of Justice Cahn's decision [A-26, 52-54]. This analysis was annexed as Exhibit "A" to the Verified Petition, along with a May 5, 1997 memorandum identifying that it had been provided to a large number of public officers and agencies responsible for the public welfare or with specific oversight over Respondent – all of whom had had copies of the underlying Article 78 file [A-48-49]. Among these, Governor Pataki and the Senate Judiciary Committee. ¶THIRTEENTH of the Verified Petition [A-26-27] asserted that neither Respondent nor any of the other recipients of the analysis ever controverted it – and that this was highlighted by CJA's ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", annexed to the Verified Petition as Exhibit "B" [A-55-56]. ¶FOURTEENTH [A- 27] then asserted:

> "The facts and legal argument set forth in that analysis as to the false and fraudulent nature of the decision in the prior Article 78 proceeding were, and are, accurate and correct."

C. Proceedings in the Supreme Court:

The Verified Article 78 Petition, returnable on May 14, 1999 [A-18], was randomly-assigned to Acting Supreme Court Justice Diane Lebedeff. On that date, Respondent, then in default, sought, through its attorney, the New York State Attorney General [herein "Attorney General"], to obtain from the Court a two-week adjournment and extension in which to oppose the Verified Petition. On May 17, 1999, Petitioner and the Attorney General went before Justice Lebedeff. Justice Lebedeff, *sua sponte*, disclosed that she had been "extremely fond" of Justice Joy,

for whom she had served as counsel for a four-year period, and raised the question as to whether she should recuse herself [A-132-137]. After clarifying with Petitioner the extent to which the proceeding involved Justice Joy she stated:

> "Then I believe the best course would be for me to recuse myself. I will return this case for reassignment. I will advise motion support that it should be reviewed, including appropriate contact with Administrative Judge Crane, for possible reassignment to Justice Cahn[4] or to be put on the wheel. That will be a determination made by somebody else." [A-137]

Justice Lebedeff cut short Petitioner's attempt to object to Administrative Judge Crane's involvement, which Petitioner had prefaced by her statement that there are "innumerable justices in this court who are likewise disqualified for both apparent and actual bias" based on "personal and professional relationships" [A-138], as well as her further argument that "every justice in this state is under the jurisdiction, disciplinary jurisdiction of the Commission on Judicial Conduct and, as such, there are legitimate reasonable questions as to their ability to be fair and impartial and particularly in a case of this magnitude..." [A-139-140]. It was after having recused herself, and over Petitioner's objection that she was without jurisdiction by reason of her recusal, that Justice Lebedeff extended the Attorney General's "time to answer" the Verified Petition to May 24, 1999 [A-140-142]. In so doing, Justice Lebedeff

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[4] This, in response to the Attorney General's May 17, 1999 "Affirmation in Support of Respondent's Application pursuant to CPLR 3012(d)", handed up to Justice Lebedeff on that date, suggesting (at p. 4) that the proceeding be referred to Justice Cahn as a "related case" to *Doris L. Sassower v. Commission*. Annexed to the affirmation was a copy of Justice Cahn's decision [A-189-194], as well as the notice of right to seek intervention, notice of petition, and verified petition therein [A-172-188].

also ignored Petitioner's objection to the lawfulness of the Attorney General representing Respondent [A-130-132, 140-143], which Petitioner asserted, along with an objection based on the limitations imposed by CPLR §7804(e) [A-142].

The computerized court record reflects that the case was then randomly assigned to Acting Supreme Court Justice Walter Tolub on May 19, 1999 and that he recused himself the next day [A-122]. The reason stated for Justice Tolub's recusal in his May 20, 1999 Recusal Order was "because petitioner's father, on a prior occasion, attempted to initiate a proceeding before the commission." [A-124].

The computerized court record reflects that the case was then randomly assigned to Supreme Court Justice Carol Huff on May 24, 1999 and taken away from her on the same day by "oral directive" of Administrative Judge Crane, referring it to Acting Supreme Court Justice Zweibel [A-122]. On that same date, the Attorney General, with the benefit of the extension granted by Justice Lebedeff, made a motion to dismiss the Verified Petition, rather than submitting an answer.

By letter to Justice Zweibel, dated May 25 1999, the Attorney General requested a conference or, alternatively, "a scheduling order for the briefing and submission of the proceeding." Petitioner responded with her own letter, dated May 28, 1999, in which she joined in the conference request, objecting to any scheduling order without such conference in light of the threshold issues which first needed to be resolved[5]. These she particularized to include the unlawfulness of Justice

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[5] The Attorney General's May 25, 1999 letter and Petitioner's responding May 28, 1999

Lebedeff's extension to the Attorney General, his disqualification from representing Respondent, and his litigation misconduct to date. Noting that there had already been two judicial recusals, Petitioner requested that Justice Zweibel "make requisite disclosure as to facts bearing upon [his] ability to be fair and impartial" in an explosive public interest case such as this

> "with repercussions reaching beyond the corruption of the State Commission on Judicial Conduct to systemic governmental corruption involving the newest member of this State's highest Court, former Appellate Division, Second Department Justice Rosenblatt, and embracing the State Commission on Judicial Nomination, the Governor, the Chairman of the State Judiciary Committee – and, in the private sector, leaders of the organized bar." (at pp. 5-6).

On June 14, 1999, Justice Zweibel held a conference [A-144-171][6]. Petitioner, who had no knowledge that he had not been randomly-assigned the case [A-217, 259 (fn. 13), 292 (fn. 13)], recapitulated the "profound threshold issues" summarized by her May 28, 1999 letter, including her request for disclosure [A-146-151]. She then expressed her view that:

> "this Court has an interest in the proceeding as proscribed by Judiciary Law 14, which is mandatory, which would make... disqualification of this Court... mandated." [A-151].

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letter are annexed to Petitioner's July 28, 1999 affidavit in support of her omnibus motion as Exhibits "M" and "N", respectively.

[6] Petitioner's May 28, 1999 letter reflects (at p. 6) that Justice Zweibel's law secretary informed Petitioner that it was his "customary practice" to hold a conference upon assignment of a case. *Cf.* Justice Wetzel's "practice", as stated in his November 22, 1999 letter [A-248] and his refusal to hold a conference upon being assigned the case five months later, in face of a file which then "exceed[ed] fourteen inches in height and required two court officers to deliver to chambers." [A-11].

Petitioner reiterated her argument that "all the judges here are under the disciplinary jurisdiction of the Commission on Judicial Conduct and, therefore, have an inherent conflict in a case involving it" [A-153]. She stated, however, that there were "some more immediate issues" relating to the expiration of Justice Zweibel's appointive Court of Claims term in two years and his presumed interest in a reappointment [A-153]. After Justice Zweibel confirmed that he was not intending to retire and move to Florida at the expiration of his term [A-153], the exchange was as follows [A-154-156]:

Petitioner: "...Reappointment for a Court of Claims judge is through the governor. I can guarantee you that you would not get a reappointment were you to have passing respect for the facts and law in this case, because the facts and law in this case would require you to expose not just the corruption of the Commission on Judicial Conduct, but the complicity and actual knowledge of Governor George Pataki, not only with the fact that the Commission is corrupt, known to him over many years, but specifically in connection with his appointment of Albert Rosenblatt to the Court of Appeals, with knowledge that Albert Rosenblatt was the subject of a judicial misconduct complaint pending before the Commission.

Court: Was that brought by you?

Petitioner: Hmm-hmm. The issue in this case, your Honor, is what – the immediate issue, the transcending issue is a complaint filed by me on October 6, 1998, concerning, among others, the candidacy of Albert Rosenblatt to the Court of Appeals.

Among other things, it alleged a belief, for reasons particularized, that Albert Rosenblatt had perjured himself in his – in his response to two questions on his questionnaire to the Commission on Judicial [Nomination].

Court: I'm not really getting into that issue.

Petitioner: The result is the issue in the case, unfortunately, and an adjudication of what took place –

Court: I want to hear something further as to why you think I should recuse myself. I'm not interested in that matter concerning Justice Rosenblatt.

Petitioner: Unfortunately, that matter is at the heart of the case and exposing what the Commission did in connection with that complaint would exposed the government's – I'm sorry, the Governor's fraudulent nomination of Albert Rosenblatt, which was then rammed through the Senate Judiciary Committee, fraudulently, by the chairman.

You, as a Court of Claims judge, seeking reappointment in two years, would have to be reappointed by the Governor, who is directly implicated herein, in criminal conduct, him as well as the chairman of the Senate Judiciary Committee as well as a whole host of government officials and agencies and bar leaders whose support you would need and require if you were not intending to move down to Florida and you indicated you were not."

Justice Zweibel deferred decision on his disqualification [A-159-160]. However, before concluding the conference, he returned to the judicial disqualification issue [A-165-166]:

Court: "Last thing I want to know from you is what category of judge do you think would be appropriate to resolve your matter, since Court of Claims judges are up for reappointment?

Petitioner: Well, you are up in two years.

Court: Supreme Court judges are elected.

Petitioner: You're up in two years.

Court: If I was up in nine years, it would make a difference?

Petitioner: Governor Pataki would not be in office. He will be in office in two years, okay.

Court: He may be vice-president.

Petitioner: I would say, in answer to your question, that for appearance sake, it is a judge who is not subject to reappointment in the near future, under this governor. And likewise, not up for election in the immediate future, because we know that elections are controlled by political interests. That's the reality in this State."

Justice Zweibel directed that Petitioner's threshold objections be set forth, in writing, with her opposition to Respondent's dismissal motion [A-161, 164-171]. Petitioner did this by her July 28, 1999 omnibus motion[7], whose first three branches of relief were:

> (1) disqualifying the Attorney General from representing Respondent for non-compliance with Executive Law §63.1 and for multiple conflicts of interest; [A-195]
>
> (2) nullifying and vacating Justice Lebedeff's post-default extension of time to Respondent, granted by her after she had recused herself and without adhering to the provisions of CPLR §7804(e) or the specific requirements of §3012(d), which Respondent had not satisfied [A-195];
>
> (3) granting a default judgment against Respondent in favor of Petitioner by reason of its failure to file its answer or dismissal motion in accordance with mandatory time requirements of CPLR §7804(c)(e), if such is denied, directing that an answer be filed, together with a certified transcript of the record of the proceedings before Respondent, both as specified by CPLR §7804(e) [A-196];

Petitioner's omnibus motion also demonstrated the truth of her assertion at the June 14, 1999 conference that the Attorney General had "no legitimate defense to the

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[7] The July 28, 1999 omnibus motion consists of Petitioner's 55-page supporting affidavit, substantiated by appended exhibits and four free-standing file folders of documents [A-346-349], including one containing a copy of the file in *Doris L. Sassower v. Commission* [A-346], as well as a 2-page affidavit of CJA Director Doris L. Sassower [A-202-203], and Petitioner's 99-page memorandum of law.

proceeding" and that, therefore, his dismissal motion was "from beginning to end, filled with falsification, concealment, omission, misrepresentation, distortion" [A-165], including the "four points" of his supporting memorandum of law. These she identified as "entirely predicated on [his] falsification of the pleading, entirely" [A-169]. Consequently, the omnibus motion requested:

> (4) converting Respondent's dismissal motion under CPLR §3211(a) to a motion for summary judgment in favor of Petitioner pursuant to CPLR §3211(c), and, if deemed appropriate by the Court, immediate trial of the issues raised on the motion, particularly with regard to the sanctionable misconduct of Respondent and the Attorney General [A-196].

As to this litigation misconduct, Petitioner's omnibus motion expressly requested sanctions and costs "against Respondent, its members and culpable staff, and against Attorney General Spitzer personally and his culpable Assistant Attorneys General", pursuant to Part 130-1.1 of the Chief Administrator's Rules [A-196]. It further expressly requested that they be referred for

> "disciplinary and criminal action based on their litigation misconduct, including fraud and deceit upon the Court and Petitioner, as well as the crimes of, *inter alia*, perjury, filing of false instruments, conspiracy, obstruction of the administration of justice, and official misconduct" [A-196].

Thereafter, Petitioner's September 24, 1999 reply papers[8] demonstrated that much as Respondent had had no legitimate defense to the Verified Petition, it had no

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[8] Petitioner's September 24, 1999 reply papers consist of Petitioner's 9-page reply affidavit with appended exhibits, a 3-page reply affidavit of CJA Director Doris Sassower [A-211-213], and Petitioner's 63-page memorandum of law.

legitimate defense to her omnibus motion -- being based on "falsifying, distorting, and concealing the evidence-supported material allegations of [her] omnibus motion". Petitioner showed that such opposition, like Respondent's dismissal motion, was "a brazen deceit on the Court within the meaning of Judiciary Law §487" [A-216]. This, in addition to being insufficient as a matter of law.

By letter to Justice Zweibel, dated October 1, 1999 [A-227], Petitioner stated that she had received no response from him to her letter inquiry of six weeks earlier as to whether he would be ruling on her June 14, 1999 oral recusal application or whether a formal written motion was needed. Justice Zweibel did not respond. However, on October 8, 1999, at the outset of what was to have been the oral argument on Respondent's dismissal motion and Petitioner's omnibus motion, Justice Zweibel recused himself. He stated that this was "in view of the position taken by Ms. Sassower; and in order to avoid even the appearance of any impropriety" [A-242, lns. 17-19].

The computer court record shows a delay of almost two and a half weeks from Justice Zweibel's recusal on October 8, 1999 until October 25, 1999, when the case was randomly assigned to Acting Supreme Court Justice Franklin Weissberg, who, four days later, recused himself [A-122]. Justice Weissberg's October 29, 1999 Recusal Order stated as its reason "My law secretary, who was formerly a New York State Assistant Attorney General, supervised an appeal handled by that office in a related case involving the Sassower family" and expressly referred the case "for

random assignment" [A-126].

The computer court record shows that the case was then assigned to Justice Kapnick as "the next pure IAS judge in alpha order per admin judge's dir" [A-122]. This was on November 1, 1999. However, four days later, Justice Kapnick recused herself, without reasons. Her November 5, 1999 Recusal Order stated:

> "I hereby recuse myself and this motion and proceeding are remanded pursuant to the directive of the Administrative Judge to the Motion Support Office for reassignment to the Hon. William Wetzel." [A-127, emphasis in the original]

By letter to Justice Wetzel, dated November 15, 1999 [A-247], Petitioner requested a conference – reiterating requests she had made earlier in the day, by phone to his chambers, immediately upon learning of Justice Kapnick's recusal and Administrative Judge Crane's assignment of the case to him. The basis for Petitioner's conference request was "to resolve the threshold issues set forth in [her] November 5, 1999 letter to Justice Kapnick" [A-217], which she stated were "no less relevant now than they were prior to Justice Kapnick's recusal."[9] In particular, Petitioner referred Justice Wetzel to pages 4-9 of that letter [A-220-225].

The very first sentence on page 4 [A-220] was:

> "a conference would afford the Court the opportunity to confront the threshold disqualification issue, as is its duty under §100.3E of the Chief Administrator's Rules Governing Judicial Conduct ("Disqualification"). [A-220].

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[9] Petitioner's November 5, 1999 letter to Justice Kapnick did not reach her chambers until November 9, 1999 [A-226]. This was four days *after* Justice Kapnick had recused herself by her November 5, 1999 Recusal Order [A-127], which is stamped as having been received by IAS motion support on November 8, 1999 [A-127].

The subsequent sentences on that page were even more specific:

> "The Court will be able to question me as to the systemic governmental corruption which this case exposes, its CRIMINAL ramifications on New York's highest echelons of political power, and the public perception that this Court will be subjected to enormous political pressures and enticements as a result. Certainly, the conference would be a convenient forum for the Court to make disclosure, pursuant to Section 100.3F of the Chief Administrator's Rules Governing Judicial Conduct ("Remittal of disqualification"), as to facts bearing upon its impartiality... [A] conference will have the beneficial result of speedily clarifying relationships or other interests requiring the Court's recusal. These interests include those created by judicial misconduct complaints against the Court filed with the Commission – as to which the Court may have knowledge -- or its knowledge of judicial misconduct complaints against judicial colleagues with whom the Court has friendships or is dependent professionally." [A-220, emphasis in the original]

Petitioner gave record references to the transcripts of the proceedings before Justice Lebedeff and Justice Zweibel [A-139-140, 152-153], both annexed as exhibits to her omnibus motion, to show that her position, from the outset, was that:

> "there is reasonable question whether *any* judge under the disciplinary jurisdiction of the Commission can be fair and impartial in a case such as this. No judge can be expected to want to revitalize a corrupted Commission when the consequence will be to increase the likelihood that legitimate complaints against him and his fellow judges will be the subject of investigation, rather than – as they presently are – dumped *without* investigation." [A-221, emphasis in the original]

She urged that "arrangements must be made for this case to be assigned to a retired or retiring judge, willing to disavow an intention of judicial and/or political appointment" [A-221] and identified that the "imperative for special

assignment... [had] been reinforced by concurrent and supervening events: another Article 78 proceeding against the Commission, *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #99-108655)", commenced just days after her own [A-221]. She stated that she had only just then become aware of it [A-221, 244], but that based on her review of the decision and file, she could "affirmatively state" that the case had been "'thrown' by a fraudulent September 30, 1999 decision of Supreme Court Justice Edward Lehner" [A-221]. She asserted this was

> "now the second Article 78 proceeding against the Commission 'thrown' since the Article 78 proceeding *Doris L. Sassower v. Commission*... was 'thrown' by the fraudulent July 13, 1995 decision of Supreme Court Justice Herman Cahn" [A-221].

Petitioner referenced the uncontroverted analysis, annexed as Exhibit "A" to her Verified Petition [A-52], as demonstrating the fraudulence of Justice Cahn's decision and stated that at the conference she intended to present an analysis of Justice Lehner's fraudulent decision in *Mantell v. Commission* to support

> "an oral application that the Court refer her Article 78 proceeding to Judge Crane with a recommendation for special assignment – lest it become the third Article 78 proceeding 'thrown' by a fraudulent judicial decision of a Supreme Court, New York County Justice, protecting the Commission." [A-222].

Petitioner further asserted that based on her review of the file in *Mantell v. Commission*, it was evident that the Attorney General's flagrant misconduct in her proceeding had "served as a template for his litigation misconduct in Mr. Mantell's concurrent proceeding" [A-222] and that "substantial portions" of the Attorney

General's May 24, 1999 motion to dismiss her Verified Petition "were replicated *verbatim* or with minor changes" in the Attorney General's June 23, 1999 motion to dismiss Mr. Mantell's verified petition. Petitioner provided an illustrative example: the Attorney General's claim in both proceedings that Executive Law §63.1 and the case of *Sassower v. Signorelli*, 99 A.D.2d 358 (2d Dept. 1984), entitled Respondent to his representation [A-245-246a]. Indeed, Petitioner showed that by reason of her advocacy at the June 14, 1999 conference before Justice Zweibel [A-162-163], the Attorney General knew such claim to be false when he interposed his June 23, 1999 dismissal motion in Mr. Mantell's proceeding [A-222].

Petitioner, therefore, stated that she believed it appropriate to supplement those branches of her omnibus motion as sought the Attorney General's disqualification and sanctions for his litigation misconduct on Respondent's behalf, and that a conference would permit her to make a presentation on the subject [A-222].

Finally, Petitioner stated that because the record of her proceeding showed that Respondent had "NO legitimate defense" and that the Attorney General had "defended [Respondent], in violation of Executive Law §63.1 and conflict of interest rules, with litigation misconduct reaching a level of criminality" [A-223], a conference would afford the Court with an opportunity to discharge its mandatory "Disciplinary Responsibilities" under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct to "take appropriate action". Petitioner stated that such

"appropriate action" would include inquiring as to the intentions of the proposed intervenors, both insofar as their proposed intervention, as well as investigation of the criminal and disciplinary complaints she had filed against the Attorney General and Respondent, based on their litigation misconduct [A-223-225].

Justice Wetzel replied by letter dated November 22, 1999 [A-248]. After stating he had reviewed Petitioner's November 5, 1999 letter to Justice Kapnick [A-217], Justice Wetzel declined to hold a conference, claiming:

> "the issue before Justice Kapnick was your application that she recuse herself. No such application is pending before me."

He also peremptorily imposed a December 6, 1999 deadline for filing any additional papers or making further applications "after which time the matter will be considered fully submitted." [A-248, emphasis in the original].

Petitioner's responding December 2, 1999 letter to Justice Wetzel [A-250] quoted extensively from pages 4-6 of her November 5, 1999 letter [A-220-222] to demonstrate that his statement that no recusal application was before him was incorrect. She pointed out that "the Court is presumed to know that it has an independent duty to recuse itself and make disclosure when facts exist giving rise to a reasonable question as to its ability to be fair and impartial" [A-252] and that her November 5, 1999 letter had annexed pages from a treatise on judicial disqualification showing that it is the Court's burden to disclose grounds of potential disqualification [A-237-238]. Indeed, she noted that three of Justice Wetzel's

judicial predecessors, Justices Lebedeff, Tolub, and Weissberg, had, "without any application pending before them, *sua sponte* recognized their duty to recuse themselves and/or make requisite disclosure"[10] [A-252].

Based on the record, as highlighted by Petitioner's November 5, 1999 letter [A-217], Petitioner asserted that Justice Wetzel had an obligation to make the following disclosure:

(1) he was directly dependent upon Governor Pataki for each day he remained on the bench inasmuch as he was a "hold over" on the Court of Claims, his appointive term having expired five months earlier [A-253-255]. In substantiation, Petitioner annexed the Governor's June 12, 1995 certificate of nomination, showing the expiration of Justice Wetzel's Court of Claims term on June 30, 1999 [A-264];

(2) he had "a long-standing personal and professional relationship with Governor Pataki going back many years." They had been in the same politically-connected Westchester County law firm and, in 1994, Justice Wetzel had held a fundraiser at his home for then gubernatorial candidate Pataki [A-256]. In substantiation, Petitioner annexed a photograph of candidate Pataki and Justice Wetzel, believed to have been taken at that very fundraiser [A-265];

(3) he had been the beneficiary of Respondent's dismissal, *without* investigation, of at least one *facially-meritorious* judicial misconduct complaint. Said complaint had been based, *inter alia*, on the impropriety of his having held the 1994 fundraiser for then gubernatorial candidate Pataki while serving as a village justice, and contended that his appointment to the Court of Claims was "a quintessential quid pro quo", rewarding a friend and political supporter of the Governor [A-256]. In substantiation Petitioner annexed a copy of the complaint against Justice Wetzel, dated May 21, 1999, and filed by Clay Tiffany [A-266] and Respondent's September 14, 1999 dismissal letter [A-278]. To demonstrate Justice Wetzel's knowledge of the complaint, Petitioner also annexed Mr. Tiffany's November 4, 1999 "Guest Editorial" in a local

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[10] In fact, FOUR of Justice Wetzel's judicial predecessors had recused themselves, *sua sponte*. Petitioner was not then aware that Justice Kapnick's recusal was *prior* to receipt of Petitioner's November 5, 1999 letter (*see* fn. 9, *supra*).

newspaper, which publicly discussed the complaint and reflected that Mr. Tiffany had done so previously on his cable television show [A-279].

As to these, Petitioner stated:

> "I submit that the foregoing facts suffice to raise reasonable question as to whether this Court can be fair and impartial in this proceeding in which the Court's long-time friend and now patron, Governor Pataki, on whom it is presently dependent for reappointment, is implicated in criminal conduct and the Commission, being sued for protectionism, recently dismissed a facially-meritorious complaint against the Court involving its relationship with Mr. Pataki, both as candidate and Governor." [A-257]

Additionally, Petitioner stated that Justice Wetzel's denial of a conference was itself a manifestation of his bias as "*any* fair and impartial judge" would have recognized the necessity of such conference [A-257]. Petitioner detailed that the three bases for the conference, particularized by her November 5, 1999 letter, (1) recusal and special assignment; (2) supplementing the omnibus motion; and (3) ascertaining the intentions of the proposed intervenors, had a "*common purpose: to ensure the integrity of the judicial process in this Article 78 proceeding*" and that the imperative for doing so was "evident from the most cursory examination of the Court's file of the case". Petitioner asserted:

> "The Court's failure to even request that the proposed intervenors furnish a sworn statement of their intentions prior to imposing its arbitrary December 6th deadline 'after which time the matter will be considered fully submitted' (emphasis in the original) – let alone to apprise them of the December 6th deadline so that they might be guided accordingly – supports a view that the Court, intent on 'throwing' the case to advance its own self-interest and that of the Governor, does not want to facilitate their intervention, which would prevent that from happening. Nor does it want to foster

[their] investigation of CJA's ethics and criminal complaints, since this would expose the fraudulent defense tactics which the Court must cover-up if this case is to be 'thrown'." [A-258]

Petitioner requested that in the event the Court did not recuse itself that it:

> "belatedly meet its duty to disclose the relevant specifics, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct: whether and when it applied to be reappointed, its personal and professional relationship with Mr. Pataki before he became Governor, including information concerning its 1994 fundraiser for him, its relationship since, if any, and its knowledge of Mr. Tiffany's judicial misconduct complaint, as well as of any other judicial complaints against it that may have been filed with the Commission." [A-258][11]

Additionally, Petitioner requested that Justice Wetzel, formerly a village justice in Westchester, disclose his relationships with other politically-connected persons having an interest in the outcome of this proceeding. She identified them to include:

> "past and present leaders of the Westchester Republican County Committee involved in the 1989 cross-endorsement judge-trading deal and illegally-conducted judicial nominating conventions, which were the subject of several of the eight judicial misconduct complaints from the prior Article 78 proceeding, sought to be reviewed in this proceeding, as well as [his] relationship with Court of Appeals Judge Albert Rosenblatt, formerly a prominent Republican from Dutchess County." [A-259]

Petitioner further stated that

> "since there is also reasonable question as to the basis upon which the Court was hand-picked for this case by Administrative Judge Crane, I request information as to the Court's knowledge of the

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[11] Judicial notice may be taken of a series of three additional *facially-meritorious* judicial misconduct complaints against Justice Wetzel filed with Respondent, dated May 27, 1999, June 25, 1999, and July 23, 1999, by Kamau Bey – which Respondent dismissed *without* investigation by letters dated September 17, 1999 and September 28, 1999. These are identified at pages 29-30 of Petitioner's February 23, 2000 letter to Governor Pataki, annexed as Exhibit "G" to her September 21, 2000 motion to intervene on the appeal of *Mantell v. Commission.*

> basis and whether the Court apprised the Administrative Judge of any of the aforesaid facts bearing upon the appearance and actuality of its disqualification for bias and self-interest." [A-259]

Petitioner also requested that if Justice Wetzel did not recuse himself based on her December 2, 1999 letter-application, that she be afforded time to make "a formal recusal motion", incorporating the information she had requested him to disclose pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct [A-260]. Petitioner identified that copies were being sent to Governor Pataki and Administrative Judge Crane, with informational requests [A-258, 260, 293]. As to the Governor, Petitioner requested him to identify why he had maintained Justice Wetzel as a "hold over", to supply a copy of the report of Justice Wetzel's qualifications rendered by his "temporary" judicial screening committee when, assumedly, it screened him in 1995, and to provide a copy of the committee's procedures [A-260-261]. As to Administrative Judge Crane, Petitioner requested that he disclose:

> "the basis upon which he directed the case to the Court, following Justice Kapnick's recusal, and whether he knew of its aforesaid disqualifications [and] [a]dditionally, the basis for his previous direction in this case: taking it away from Justice Carol Huff, to whom it had been *randomly* assigned following Justice Tolub's disqualification, and directing it to Justice Zweibel. This includes the legal authority for such actions." [A-259]

Petitioner furnished Justice Wetzel with copies of her transmittal coverletters to the Governor [A-281] and to Administrative Judge Crane [A-291].

The Attorney General responded by a December 6, 1999 letter, transmitting an "Affirmation in Further Support of Respondent's Motion to Dismiss the Verified

Petition" [A-294, 295], stating:

> "we know of no basis for this Court's recusal, and do not see any basis for recusal in petitioner's 12/2/99 letter or otherwise..." [A-296].

The affirmation also urged that the Verified Petition be dismissed "in its entirety" for "all the reasons set forth in respondent's memorandum of law" in support of its dismissal motion [A-297] and, additionally, based on Justice Lehner's decision dismissing the petition in *Mantell v. Commission* – a copy of which it annexed [A-299].

This necessitated Petitioner's December 9, 1999 letter to Justice Wetzel [A-308], "submitted to prevent fraud upon the Court – and through it upon the public" by the Attorney General. In it, Petitioner reiterated the grounds upon which her December 2, 1999 application sought Justice Wetzel's recusal, based both upon the mandatory disqualification of Judiciary Law §14 and the "reasonable question" standard for recusal under §100.3E of the Chief Administrator's Rules Governing Judicial Conduct [A-309-313] – grounds wholly omitted from the Attorney General's affirmation [A-295]. She also pointed out that the Attorney General's affirmation did not, in fact, oppose recusal, but instead "defers to the Court the determination of whether recusal is appropriate in this case" [A-313]. She further noted that by the Attorney General's failure to address her alternative request for disclosure and an extension of time within which to make a formal recusal motion, such was unopposed [A-313].

As to the Attorney General's request that her Verified Petition be dismissed "in its entirety" based on the memorandum of law supporting Respondent's dismissal motion, Petitioner cited record references showing that this would require the Court to "'throw' the case by completely ignoring the record before it, thereby additionally demonstrating its disqualifying self-interest and bias." [A-313-314]. She reiterated that her July 28, 1999 omnibus motion had already exposed that that memorandum of law was "from beginning to end, and in virtually every line, based on falsification, distortion, and concealment of the evidence-supported pleaded allegations of [her] Verified Petition" and, moreover, "not properly before the Court". This, because:

> (a) the Attorney General was disqualified from representing Respondent by reason of his non-compliance with Executive Law §63.1 and multiple conflicts of interest;
>
> (b) Justice Lebedeff was without authority to grant a post-default extension of time to Respondent after recusing herself;
>
> (c) Justice Lebedeff's post-default extension was without adherence to the provisions of CPLR §7804(e) and the specific requirements of CPLR §3012 – which Respondent had not satisfied.

Petitioner provided the specific record references in her omnibus motion for her factual presentation and legal discussion of these objections [A-314 (fns. 11-13)]. She also pointed out that the very first page of her July 28, 1999 memorandum of law in support of her omnibus motion had highlighted that these objections were "EACH threshold issues for the Court's adjudication, once it has ruled on the issue of its own disqualification" [A-314, 205-206].

Finally, Petitioner asserted that it was "a flagrant deceit" for the Attorney General to proffer Justice Lehner's decision in *Mantell v. Commission* as usable authority, without referencing Petitioner's assertions that the decision was fraudulent and without making any affirmative statement as to its legitimacy [A-315-316]. To establish the decision's fraudulence, Petitioner annexed a 13-page analysis [A-321-334] and transmitted a copy of the underlying case file [A-350]. Petitioner stated that this analysis was

> "to prevent the Court from being defrauded and to reinforce [her] entitlement to sanctions against... the Attorney General, and the Commission. However, it should ALSO be read in support of the express requests in [her] December 2nd letter (at p. 9) that, upon the Court's recusal, 'its order of recusal refer the case back to Judge Crane for reassignment' and that 'in view of the appearance and actuality of Judge Crane's *own* disqualifying bias and self-interest', a conference be scheduled 'so that proper arrangements may be made to ensure that this Article 78 proceeding is assigned to a fair and impartial tribunal.'" [A-317].

By letter dated December 10, 1999 [A-335], the Attorney General purported that Justice Wetzel's November 22, 1999 letter [A-248] was a "scheduling order" and requested that "the arguments contained in petitioner's December 9, 1999 [letter] should be rejected as untimely."

This resulted in Petitioner's December 17, 1999 letter [A-336], again "to prevent fraud upon the Court – and through it upon the public". Pointing out that the Attorney General had not denied or disputed the showing in her December 9, 1999 letter as to the fraudulent claims and material omissions in his December 6, 1999 affirmation, Petitioner asserted, *inter alia*, that

> "fraud is so inimical to the judicial process that even were the Court's November 22nd letter to be construed as the 'scheduling order' [the Attorney General] pretends it would not bar [Petitioner's] bringing to the Court's attention the multiple fraud [the Attorney General] sought to perpetrate by [his] December 6th affirmation. (*Cf.* CPLR §5015(3) containing no time restriction for seeking relief from a judgment or order based on 'fraud, misrepresentation, or other misconduct of an adverse party.')" [A-338]

Petitioner provided Administrative Judge Crane with copies of both her December 9, 1999 and December 17, 1999 letters to Justice Wetzel [A-308, 317, 340], adding to the copy of her December 2, 1999 letter to Justice Wetzel, which she had previously transmitted to Administrative Judge Crane under a separate coverletter [A-291, 293]. Administrative Judge Crane did not respond, thereby failing to provide Petitioner with the information she had requested as to the basis for his twice interfering with "random selection", the second and last time to "steer" the case to Justice Wetzel.

Likewise, Governor Pataki did not respond to Petitioner's request to him for information as to his reasons for retaining Justice Wetzel as a Court of Claims "hold over", for a copy of the publicly-available screening committee report of Justice Wetzel's qualifications, and for a copy of the committee's screening procedures [A-281, 293].

D. The Appealed-From January 31, 2000 Decision, Order & Judgment

In a single Decision, Order, & Judgment, dated January 31, 2000 [A-9-14], Justice Wetzel:

(1) denied Petitioner's December 2, 1999 letter-application for his recusal, *without* identifying any of the grounds it had set forth as warranting his recusal and *without* making any factual findings with respect thereto;

(2) ignored, *without* mention, the alternate request in Petitioner's December 2, 1999 letter-application for disclosure and time to make a formal recusal motion, thereby implicitly denying it;

(3) denied Petitioner's July 28, 1999 omnibus motion, *without* reasons or factual findings;

(4) dismissed the Verified Petition based on the decisions in *Doris L. Sassower v. Commission* and in *Michael Mantell v. Commission* – *without* identifying the existence of Petitioner's record-supported written analyses of those decisions showing them to be fraudulent, *without* making any factual findings with respect thereto, and *without* examining whether those decisions were dispositive of each of the Verified Petition's six separate Claims for Relief;

(5) enjoined Petitioner and the *non-party* Center for Judicial Accountability, Inc. from instituting "related" actions or proceedings, of whose "relatedness" Justice Wetzel designated himself the judge – *without* any factual findings to support the injunction or legal authority for appointing himself arbiter of the "relatedness" of any such future actions or proceedings.

Justice Wetzel's short-form order [A-15] for his January 31, 2000 Decision, Order & Judgment [hereinafter "Decision"] failed to reflect the "papers" on which it was based and falsely indicated the existence of a "cross-motion".

ARGUMENT

PRELIMINARY STATEMENT

The bedrock principle for a judge – and the judicial process – is judicial impartiality, both in fact and in appearance:

> "...the state is bound to furnish to every litigant not only an impartial judge, but one who has not, by any act of his, justified a doubt of his impartiality." *McCormick v. Walker*, 142 N.Y.S. 759, 764, aff'd, 158 A.D.54 (1st Dept 1913).
>
> "...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).
>
> "Not only must there be no prejudice, actual or implied, but even the appearance of prejudice must be avoided. 'Next in importance to the duty of rendering a righteous judgment, is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge.'" *Matter of Merola v. Walsh*, 75 A.D.2d 163, (1st Dept. 1980).

This standard of impeccable impartiality is the hallmark of the Chief Administrator's Rules Governing Judicial Conduct (Part 100), which, pursuant to Article VI, §§20 and 28(c) of the New York State Constitution, is binding on every judge of this State:

> "§100.2 A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES
>
> (A) A judge... shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;
>
> (B) A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or

judgment;

(C) A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others..."

§100.3 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY...

(B) Adjudicative Responsibilities: (1)...A judge shall not be swayed by partisan interests... (4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person...

(C) Administrative Responsibilities: (1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice... (2) a judge shall require... others subject to the judge's direction and control...to refrain from manifesting bias and prejudice in the performance of their official duties.

(D) Disciplinary Responsibilities: (1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(E) Disqualification: (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a)(i) the judge has a personal bias or prejudice concerning a party... (d) the judge knows that the judge..(iii) has an interest that could be substantially affected by the proceeding.

(F) Remittal of Disqualification: A judge disqualified by the terms of subdivision (E), except subparagraph 1(a)(i)... of this section, may disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation of the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding.

> The agreement shall be incorporated in the record of the proceeding."

Judiciary Law §14 is "the sole statutory authority in New York for disqualification of a judge", *Johnson v. Hornblass, supra*, 279. In pertinent part, it states:

> "A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding... in which he is interested..."

It is the duty of the judge to make relevant disclosure:

> "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, p. 578, Little, Brown & Co., 1996.

Adjudication of a recusal application should be guided by the same legal and evidentiary standards 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.

The law is clear – and so recited in Petitioner's September 24, 1999 reply memorandum of law[12] -- that "failing to respond to a fact attested in the moving papers... will be deemed to admit it", Siegel, New York Practice, §281 (1999 ed., p.

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12 *See* pages 16-18 thereof.

442) -- citing *Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 599 (1975), itself citing *Laye v. Shepard*, 265 N.Y.S.2d 142 (1965), aff'd 267 N.Y.S.2d 477 (1st Dept. 1966) and Siegel, McKinney's Consolidated Laws of New York Annotated, Book 7B, CPLR 3212:16. "If a key fact appears in the movant's papers and the opposing party makes no reference to it, he is deemed to have admitted it" *id.* Undenied allegations will be deemed to be admitted. *Whitmore v. J. Jungman, Inc.*, 129 N.Y.S. 776, 777 (S.Ct., NY Co. 1911).

Moreover, "when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party." Corpus Juris Secundum, Vol. 31A, 166 (1996 ed., p. 339)[13].

POINT I

THE ADMINISTRATIVE JUDGE'S VIOLATION OF "RANDOM SELECTION" RULES TO "STEER" THE CASE TO JUSTICE WETZEL, WHERE, ADDITIONALLY, PETITIONER WAS GIVEN NO NOTICE AND OPPORTUNITY TO BE HEARD, ENTITLED PETITIONER TO THE GRANTING OF HER RECUSAL APPLICATION BASED THEREON

The integrity and impartiality essential to judicial proceedings begin with the assignment of the case. Pursuant to §202.3(b) of the Uniform Rules of the Supreme

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[13] *Cf. People v. Conroy*, 90 N.Y. 62, 80 (1884):

> "The resort to falsehood and evasion by one accused of a crime affords of itself a presumption of evil intentions, and has always been considered proper evidence to present to a jury upon the question of the guilt or innocence of the person accused." Citing cases.

Court and the County Court, assignment of cases:

> "*shall* be made by the clerk of the court pursuant to a method of random selection authorized by the Chief Administrator." (emphasis added.)

> "As used in statutes or rules or the like, words of command such as 'shall' are generally construed as mandatory. [citing cases]. Thus, assignment by random selection is mandatory..." *Morfesis v. Wilk*, 138 A.D.2d 244, 248 (dissent), 525 N.Y.S.2d 599, 602 (1st Dept 1988)

At bar, the record shows that Administrative Judge Crane twice interfered with "random selection" [A-122], the first time, giving an "oral directive" to remove the case from randomly-assigned Supreme Court Justice Huff and refer it to Acting Supreme Court Justice Zweibel; the second time, to direct the case to Acting Supreme Court Justice Wetzel, following the recusal of Acting Supreme Court Justice Kapnick, which he may have caused. Indeed, Justice Kapnick is the only judge herein whose Recusal Order states no reason[14], other than "the directive of Administrative Judge Crane" assigning the case to Justice Wetzel [A-127].

On neither of these two occasions did Administrative Judge Crane give Petitioner notice and opportunity to be heard relative to his interference with "random selection" rules. *Cf. Morfesis v. Wilk, supra.* Thereafter, and in the face of Petitioner's assertion as to the appearance and actuality of his "*own* disqualifying bias and self-interest" [A-291, 258], Administrative Judge Crane ignored Petitioner's

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14 "A Judge who recuses himself or herself should state, on the record, the general reasons for the recusal.", *Kurz v. Justices of the Supreme Court of New York, Kings County*, 228 A.D.2d 74, 654 N.Y.S.2d 783, 784 (2nd Dept. 1997).

written request [A-291] that he disclose the basis for such interference, including "the legal authority" for same and whether, before directing the case to Justice Wetzel, he was aware of the appearance and actuality of Justice Wetzel's disqualifying bias and self-interest, as set forth in her December 2, 1999 recusal application [A-250]. Such behavior is inconsistent with Administrative Judge Crane's "Administrative Responsibilities" and "Disciplinary Responsibilities" under §§100.3C and 100.3D of the Chief Administrator's Rules Governing Judicial Conduct.

The reasonable inference from Administrative Judge Crane's non-response is that he could not respond without conceding his flagrant violation of Petitioner's rights – including by directing the case to a judge he knew to be disqualified – and that he did not want to provide her with any relief from the prejudice she was suffering as a result.

If no legal authority exists for Administrative Judge Crane's interference with "random selection" rules to direct the case to Justice Wetzel, let alone without giving Petitioner notice and opportunity to be heard -- and Petitioner has been unable to locate any -- the assignment to Justice Wetzel was unlawful. As such, Petitioner was entitled to Justice Wetzel's granting of her December 2, 1999 recusal application on that ground alone. That Justice Wetzel's Decision [A-9] omits such ground as having been raised by Petitioner's recusal application and fails to make the requested disclosure with respect thereto only underscores Justice Wetzel's conscious knowledge that acknowledging he was not randomly assigned, in and of itself, would

entitle Petitioner to his recusal.

POINT II

PETITIONER'S DECEMBER 2, 1999 APPLICATION FOR JUSTICE WETZEL'S RECUSAL ENTITLED HER TO HIS RECUSAL FOR INTEREST AND BIAS

Administrative Judge Crane's "steering" of this case to Justice Wetzel, in violation of "random selection" rules, is not the only ground for recusal omitted from Justice Wetzel's Decision [A-9]. His Decision also omits EVERY other ground raised by Petitioner's December 2, 1999 application. This, notwithstanding the Decision describes Petitioner's application as "particulariz[ing] grounds" for his recusal and "contain[ing] specific allegations of impropriety." [A-10-11].

Indeed, it is only in a sentence of the Decision *preceding* reference to the December 2, 1999 application, wherein Justice Wetzel cites Petitioner's alleged applications to disqualify his judicial *predecessors*, that he singles out from what he terms her "potpourri" of grounds against them:

> "petitioner's categorical allegation that this action somehow implicates the Governor, and, therefore all judges who are subject to reappointment by the Governor are ipso facto disqualified" [A-10].

This description falsely implies that Petitioner was not specific as to how the Governor is implicated, conceals that it is in criminal conduct, and expands the disqualification to apply to all gubernatorially-appointed judges, rather than all judges nearing expiration of their appointive or elective terms who were not retiring and not willing to disavow an interest in judicial and/or political appointment. Over and beyond that, the Decision does

not tie this description to Petitioner's December 2, 1999 application for Justice Wetzel's recusal. Thus, the Decision nowhere mentions that Justice Wetzel is *himself* subject to gubernatorial reappointment – or its immediacy by virtue of *his* already-expired Court of Claims term. Nor does it mention that the repercussions of the case on the Governor were eminently clear to Justice Zweibel, who did not require Petitioner to supplement her June 14, 1999 oral recusal application [A-151-157, 165-166], and who, with two years still remaining to his Court of Claims term, recused himself "to avoid even the appearance of any impropriety" [A-242, lns. 17-19].

To the extent the repercussions of this case on the Governor were unclear to Justice Wetzel, the record shows that clarification was readily available through a conference, which Petitioner had *expressly* requested be held for that purpose, as well as to enable his disclosure of other potentially disqualifying relationships and interests, including whether, to his knowledge, he had himself been or was the subject of any judicial misconduct complaints [A-247, 220, 251]. Justice Wetzel refused such conference request [A-248], obviously to avoid having to confront issues which he knew would prevent him from continuing on the case[15].

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[15] Justice Wetzel's attempt to dodge issues germane to his disqualification may also be seen from the statement in his November 22, 1999 letter that he does "not permit calls to Chambers" [A-249]. Such statement may be presumed to reflect his awareness of Petitioner's phone calls on November 15, 1999, inquiring about the expiration of his Court of Claims term. A recitation of these phone calls appears in Petitioner's December 2, 1999 letter [A-253-254] and identifies that Justice Wetzel's law secretary led Petitioner to believe that he had many years left to run on his Court of Claims term. This, after Petitioner expressed concern that Justice Wetzel might be "dependent on the Governor for upcoming reappointment". Irrespective of the extent to which the law secretary thereafter related to Justice Wetzel her phone conversation with Petitioner, Justice Wetzel *independently* knew from Petitioner's November 5, 1999 letter [A-217] – which he claimed to have read [A-248]– that she would object to his "holdover" status, were she to know of it. Yet, he did not use his November 22, 1999 letter to make any disclosure relative thereto.

Examination of Petitioner's recusal application [A-250] shows that the grounds it set forth for Justice Wetzel's recusal under Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct were highly specific and perfectly clear. Yet, rather than examining those asserted grounds – as was Justice Wetzel's absolute duty – he launches into a diversionary attack on Petitioner, portraying himself as one of her many victims:

> "It is noteworthy that this court finds itself in wide company as a target of allegations by this petitioner. These papers are replete with accusations against virtually the entire judiciary, the Attorney General, the Governor, and the respondent." [A-11].

The Decision provides no specifics as to these "allegations" and accusations", fostering the misimpression that Petitioner is taking random buckshots at innocent public officials, that she is "making accusations against a court", without "an objective basis" for recusal, and that her objections are "simply a litigant's bald assertion" [A-11].

This perversion of Petitioner's particularized and documented December 2, 1999 application is to conceal that Petitioner has, in fact, met the "heavy" and "substantial" burden required for a successful recusal application, thereby relieving Justice Wetzel of his obligation to respond.

> "The factual basis for the motion ordinarily must be stated with specificity – that is, for the moving party's allegations to warrant the requested relief, such allegations, when taken as true, must contain information that is definite as to time, place, persons, and circumstances. Before acting on a judicial disqualification motion, the challenged judge should carefully examine the allegations to determine whether the motion alleges specific, objective facts that, considered as a whole, would lead a reasonable person to believe that the court is

> biased, that the appearance of the court's impartiality is in doubt, or that a fair and impartial disposition may not occur." Flamm, Judicial Disqualification, pp. 572-3.

It is without having "carefully examine[d]" Petitioner's allegations – indeed, without even acknowledging *any* of the grounds specified by Petitioner – that Justice Wetzel proclaims "this court has no conflict, in fact or in 'appearance'" [A-11] and condemns "petitioner's assertions as to this court" as "devoid of merit, in law or in fact" and "a baseless recusal motion" [A-12]. In so doing, Justice Wetzel praises himself for his fidelity to the highest standards required of a judge:

> "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." [A-11, emphasis in the original].

There is NO evidence of Justice Wetzel's "serious[] consider[ation]" of Petitioner's recusal application. Such would have been manifested by a discussion of the "cold, hard facts" it presented for his recusal, as likewise of the legal standards applicable to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct. Indeed, *U.S. v. Bayless*, 201 F.3d 116 (2nd Cir. 2000) – the only legal authority Justice Wetzel cites on the recusal issue[16] [A-12] -- makes plain that if "appearance of impropriety" is to be evaluated on an "objective basis", it requires:

> "...examining the record facts and the law, and then deciding whether

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[16] Justice Wetzel's citation to *Bayless* is for purposes of grandstanding that "recusal is not intended to be 'used by judges to avoid sitting on difficult or controversial cases.'" [A-12] – simultaneously bolstering himself and impugning his judicial predecessors who recused themselves.

> a reasonable person knowing and understanding all the relevant facts would recuse the judge.'", (at 126-127, emphasis added)[17].

The appellate standard for recusal under Judiciary Law §14 is *de novo* review of whether the presented facts constitute interest under the law.

> "The interest which will disqualify a judge to sit in a cause need not be large, but it must be real. It must be certain, and not merely possible or contingent; it must be one which is visible, demonstrable, and capable of precise proof", *People v. Whitridge*, 144 A.D. 493, 129 N.Y.S.300, 304 (1st Dept 1911);

46 Am Jur 2d §100. Such is the two-fold interest presented by Petitioner's December 2, 1999 application.

First, Justice Wetzel's expired Court of Claims term made him directly and immediately dependent on Governor Pataki. It is axiomatic that tenure in office is the essential pre-condition for judicial independence. This is why the New York State Constitution gives New York Supreme Court judges and Court of Claims judges lengthy terms of 14 years and 9 years, respectively (Article VI, §§6(c), 9). "Unduly short terms increase the frequency with which judges are subjected to political pressure from the electorate or the appointing authority", Uncertain Justice: The Reports of the Task Forces of Citizens for Independent Courts, at p. 90 (Century Foundation Press, NY, 2000, 242 pp.).

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[17] The Second Circuit thus framed the issues in that case as "whether, on the facts before us, recusal was warranted." at 127. It then based its decision on the recited facts: "We hold merely that, on the facts before us, Judge Baer's decision not to recuse himself was not plain error, in part because Bayless made a strategic choice not to move for his recusal until he had ruled against her." at 129; "We hold merely that, on these facts, Judge Baer's decision not to recuse himself, when he was not asked by the defendant to do so, was not plain error." at 130. [emphases added].

The fully-developed record before Justice Wetzel bore out precisely what Petitioner had stated to Justice Zweibel at the June 14, 1999 conference [A-154-156]: that this case, if decided on the facts and law, would directly implicate the Governor in Respondent's corruption, both as to the subject *facially-meritorious* October 6, 1998 judicial misconduct complaint [A-57], of which the Governor had knowledge before appointing Justice Rosenblatt to the Court of Appeals [A-87], as well as to Justice Cahn's fraudulent decision dismissing *Doris L. Sassower v. Commission*, of which the Governor had knowledge for many years before that [A-99]. Indeed, the record contained Petitioner's ethics and criminal complaints against the Governor based on his complicity in Respondent's corruption[18], filed with the proposed intervenors. These were joined with Petitioner's ethics and criminal complaints against Respondent and the Attorney General, *inter alia*, for their fraudulent defense tactics in subverting this proceeding, as likewise for their fraudulent defense tactics in *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission* to subvert those proceedings.

Under such circumstances, Justice Wetzel had an interest in "protecting" the

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[18] *See* CJA's March 26, 1997 ethics complaint, filed with the NYS Ethics Commission (pp. 1-2, 14-22), annexed as Exhibit "E" to Petitioner's July 28, 1999 affidavit in support of her omnibus motion;

CJA's September 15, 1999 supplemental ethics complaint, filed with the NYS Ethics Commission, annexed as Exhibit "G" to Petitioner's September 24, 1999 reply affidavit, as well as Exhibit "H" thereto, which is CJA's September 7, 1999 criminal complaint, filed with U.S. Attorney/Eastern District of NY;

CJA's October 21, 1999 criminal complaint, filed with the Manhattan District Attorney, annexed as Exhibit "G" to Petitioner's November 5, 1999 letter to Justice Kapnick; and

CJA's October 21, 1999 criminal complaint, filed with the U.S. Attorney/Southern District of NY, annexed as Exhibit "H" to Petitioner's November 5, 1999 letter to Justice Kapnick.

Governor, on whose will he was dependent and who the record showed knew of this proceeding, having been sent copies of Petitioner's filed ethics and criminal complaints against him[19], as well as her December 2, 1999 letter for information concerning Justice Wetzel's "hold over" status [A-281, 293]. Any adjudication in the proceeding which would require Respondent to investigate the October 6, 1998 *facially-meritorious* judicial misconduct complaint [A-57] would put the Governor at risk, as likewise, any adjudication of Petitioner's analysis of Justice Cahn's fraudulent judicial decision, annexed as Exhibit "A" to the Verified Petition [A-52' and sworn to at ¶FOURTEENTH [A-27]. So, too, any adjudication of the omnibus motion, documenting the defense misconduct of the Attorney General and Respondent herein. This would expose that they had no legitimate defense and the consequent obligation of the proposed intervenors to intervene on the public's behalf and to investigate Petitioner's ethics and criminal complaints. All these adjudications were compelled by the state of the record before Justice Wetzel.

The fact that Petitioner's ethics and criminal complaints against the Governor encompassed his manipulation of judicial appointments, including to the Court of Claims[20], only reinforced the self-interest Justice Wetzel would have had in maintaining himself in the Governor's good graces.

Second, Respondent's recent dismissal of a *facially-meritorious* judicial

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19 *See* Petitioner's September 24, 1999 reply affidavit, ¶15.

20 *See* CJA's March 26, 1999 ethics complaint, pp. 2, 15-20

misconduct complaint against Justice Wetzel gave him a direct and immediate interest in thwarting Petitioner's challenge to Respondent's unlawful dismissals of *facially-meritorious* judicial misconduct complaints. Plainly, a reinvigorated Respondent – the goal of Petitioner's lawsuit – would be in a position to re-open such unlawfully-dismissed *facially-meritorious* complaint, either ***sua sponte*** or upon resubmission, or to initiate and pursue other misconduct complaints against him[21].

Judiciary Law §14 is "remedial" in nature and "should be liberally construed to accomplish its intended object of assuring that justice is properly administered, free from bias or influence"; 28 N.Y. Jur. 2d §395 (1997); 32 N.Y. Jur. §§42 and 46 (1963).

As to Justice Wetzel's actual and apparent bias, proscribed by §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, there is legal authority that the appellate standard should, likewise, be *de novo* review, particularly where the

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[21] That judges fear Respondent and do not want to antagonize it is reflected by the statement of former Bronx Surrogate Bertram Gelfand at the May 14, 1997 public hearing on the Commission held at the Association of the Bar of the City of New York – the same hearing as referred to in "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" [A-55, 56]. Mr. Gelfand concluded his statement with the following:

> "...I would like to state that you may wonder why on a subject so critical to the professional life and death of jurists it is so difficult to obtain public input from sitting judges. I can assure you the commission is a subject that is frequently, deeply and regularly discussed by sitting judges in privacy. These judges fear to express their views in public. This understandable timidity is evidenced by a comment made to me by the Commission's Administrator Gerald Stern. His comment was that he has a file on every judge in the State and that he can get any judge of any court at any time. He warned me that trial judges should not draw any security from the review authority of the Court of Appeals." (pp. 9-10).

lower court performed no "fact-finding". Flamm, Judicial Disqualification, at 1003-4; 1007-8; Stempel, Jeffrey W., *Rehnquist, Recusal and Reform*, 53 Brooklyn Law Review 589, 661-662 (1987).

Even using an abuse of discretion standard, however, this standard is met where the judge's "bias or prejudice or unworthy motive" is "shown to affect the result", *People v. Moreno*, 70 N.Y.2d 403, 521 N.Y.S.2d 663, 666 (1987), citing *Johnson v. Hornblass*, *supra*. See also, *Shrager v. NY University*, 227 A.D.2d 189, 642 N.Y.S.2d 243 (1st Dept. 1996); *Yannitelli v. D. Yannitelli & Sons Const.*, 247 A.D.2d 271, 668 N.Y.S.2d 613 (1st Dept. 1998); *Matter of Rotwein*, 291 N.Y. 116, 123 (1943); 32 N.Y. Jur. §44. As hereinafter demonstrated, such is the case at bar.

As to the appearance and actuality of Justice Wetzel's bias under §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, the facts set forth in Petitioner's December 2, 1999 letter-application [A-250] included: (1) that Justice Wetzel was not "randomly assigned" to the case, but received it on "directive" of Administrative Judge Crane, for reasons unknown, notwithstanding he was more disqualified than any of his judicial predecessors; (2) Justice Wetzel's long-standing personal and professional relationship with Governor Pataki before he became Governor, which, quite apart from his dependence on the Governor for reappointment, would incline Justice Wetzel to "throw" the case to protect his friend and former law firm colleague from the scandal and criminal consequences of this case being adjudicated on the facts and law; and (3) Justice Wetzel's November 22,

1999 letter to Petitioner [A-248], *inter alia*, (a) falsely claiming no recusal application was before him; (b) failing to meet his obligation to, *sua sponte*, disclose facts relating to the disqualification issues presented by Petitioner's November 5, 1999 letter [A-217]; (c) declining Petitioner's conference request, whose salutary purpose, as outlined by her November 5, 1999 letter [A-217], was to ensure the integrity of the judicial process; and (d) failing to inquire of the proposed intervenors as to their intentions either as to intervention or investigation of the ethics and criminal complaints Petitioner had filed against Respondent and the Attorney General based, *inter alia*, on their litigation fraud herein.

Further adding to the appearance of Justice Wetzel's bias is his failure to make the disclosure expressly requested by Petitioner's recusal application, in the event he did not disqualify himself. The Decision wholly conceals this request, as likewise Petitioner's request for an extension of time to make a formal recusal motion based on such disclosure.

This Department has recognized the salutary significance of "full disclosure" in cases where it has upheld a lower court's failure to recuse as a proper exercise of discretion, *Goodman v. Goodman*, 228 A.D.2nd 388, 644 N.Y.S.2d 731 (1st Dept. 1996); *Leventritt v. Eckstein*, 206, A.D.2d 313, 615 N.Y.S.2d (1st Dept. 1994); *Fitzgerald v. Tamola*, 199 A.D.2d 122, 605 N.Y.S.2d 67 (1st Dept. 1993). *Cf. Matter of Murphy*, 82 N.Y.2d 491, 605 N.Y.S.2d 232 (1993).

Justice Wetzel's failure to identify, let alone discuss, the grounds presented by

Petitioner's December 2, 1999 recusal application [A-250] as warranting his disqualification – and to make disclosure pertinent thereto – compels the inference that here, too, he knew that he could not do so without conceding his self-interest and bias for which Petitioner was entitled to his disqualification. This inference is all the stronger by reason of Justice Wetzel's legally-immunized defamation of Petitioner and her recusal application in his Decision.

POINT III

JUSTICE WETZEL'S DECISION IS *PRIMA FACIE* PROOF OF HIS DISQUALIFYING ACTUAL BIAS AND IS UNCONSTITUTIONAL FOR THAT REASON, AS WELL AS ITS LACK OF ANY FACTUAL OR LEGAL SUPPORT

Justice Wetzel's Decision violates the most fundamental standards of adjudication and due process. It substitutes unwarranted aspersions and characterizations for factual findings and, in *every* material respect, falsifies, fabricates, and distorts the record of the proceeding. This, to deprive Petitioner of the relief to which the record before Justice Wetzel showed her to be overwhelmingly entitled. As such, it is *prima facie* evidence of Justice Wetzel's actual bias. Indeed, it is "so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause" of the United States Constitution. *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960).

A. The Decision Fails To Make Findings As To The Threshold Issues Particularized, Factually and Legally, By Petitioner's Omnibus Motion:

After disposing of recusal, the next matter for adjudication were the threshold objections particularized by Petitioner's omnibus motion [A-195-196, 205-208]: (1) that the Attorney General was disqualified from representing Respondent for wilful violation of Executive Law §63.1 and multiple conflicts of interest; (2) that the Attorney General's dismissal motion was not properly before the Court because Respondent was in default, of which Justice Lebedeff had unlawfully relieved it, after recusing herself; and (3) that the Attorney General's dismissal motion, even were it properly before the Court, could not be granted because it was based, from beginning to end, on material falsification, distortion, and omission – mandating costs and monetary sanctions under 22 NYCRR §130-1.1, as well as disciplinary and criminal referral of the Attorney General and Respondent.

The record shows that both before and after Petitioner made her July 28, 1999 omnibus motion, she repeatedly emphasized the threshold nature of these objections. This includes at the May 17, 1999 proceeding before Justice Lebedeff [A-140-143], at the June 14, 1999 conference before Justice Zweibel [A-147-151, 160-171], and in her December 9, 1999 letter to Justice Wetzel [A-314].

Justice Wetzel does not deny or dispute that these are threshold issues. Nonetheless, after denying recusal, the Decision immediately turns to dismissing the Verified Petition. As for Petitioner's omnibus motion, whose requested relief the

Decision incompletely and erroneously recites [A-10][22], the Decision makes *no* findings, except that it is "an inch thick" [A-11]. Aside from its irrelevance, this is untrue. The fact-specific, document-supported omnibus motion and reply papers are the bulk of the case file, estimated by the Decision to "exceed fourteen inches in height" and to have "required two court officers to deliver to chambers" [A-11].

Justice Wetzel's failure to make findings on Petitioner's threshold objections reflects yet again his conscious knowledge, based on the record before him, that he could not do so without conceding Petitioner's entitlement to adjudications thereon in her favor, precluding the granting of Respondent's dismissal motion.

B. The Decision's Dismissal Of The Article 78 Petition Is Legally Unsupported And Insupportable And Rests On Wilful Falsification Of The Factual Record:

The Decision accomplishes its dismissal of the Verified Petition in two paragraphs [A-12-13]. Neither even refer to Respondent's dismissal motion or to Petitioner's response thereto by her omnibus motion. Indeed, the Decision makes *no* findings as to the dismissal motion, which, in its final sentences, it grants "in all respects" [A-14]. This, *without* having identified a single one of these "respects". As such, Justice Wetzel's dismissal of the Verified Petition is essentially *sua sponte*, reflective of his departure from any neutral judicial role.

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[22] The Decision omits that the notice of motion [A-195] had requested conversion of the Attorney General's dismissal motion to a motion for summary judgment in Petitioner's favor pursuant to CPLR §3211(a). It also falsifies that Petitioner sought nullification of an "order" of Justice Lebedeff granting Respondent an extension of time. In fact, no such "order" existed and the omnibus motion did not allege any "order". This fact was highlighted by Petitioner's September 24, 1999 reply memorandum of law (at p. 37) in response to the Attorney General's pretense on the subject.

In the first of these two paragraphs [A-12], Justice Wetzel purports that Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-189] bars the instant proceeding on grounds of *res judicata* and collateral estoppel. He cites ***no*** legal authority to support his invocation of these preclusive defenses. Nor does he discuss the elementary standards governing their applications.

The standards for invocation of *res judicata*/collateral estoppel are reflected in *Gramatan Home v. Lopez*, 46 N.Y.2d 481 (1979), a case twice cited in the Attorney General's dismissal motion for dismissal on those grounds -- without reference to the standards therein articulated[23]:

> "Collateral estoppel... is but a component of the broader doctrine of *res judicata*... As the consequences of a determination that a party is collaterally estopped from litigating a particular issue are great, *strict requirements for application of the doctrine must be satisfied* to insure that a party not be precluded from obtaining at least one full hearing on his or her claim. ... First, *it must be shown* that the party against whom collateral estoppel is sought to be invoked had a full and fair opportunity to contest the decision said to be dispositive of the present controversy. Additionally, *there must be proof* that the issue in the prior action is identical, and thus decisive, of that in issue in the current action [*Schwartz v. Public Administrator of County of Bronx*], (24 N.Y.2d, at p. 71)." (*Gramatan*, at 485, emphasis added).

Because Justice Wetzel cannot meet even lax requirements for applying *res* judicata/collateral estoppel – let alone "strict requirements" -- he dispenses with factual findings entirely. Instead, he relies on bald assertions based on falsifications

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[23] *See* Respondent's May 24, 1999 memorandum of law in support of its dismissal motion, p. 14.

more flagrant than those in Respondent's dismissal motion, for which Petitioner's omnibus motion had sought sanctions. Thus, by identifying *Doris L. Sassower v. Commission* only as "Sassower v. Commission on Judicial Conduct, Index No. 109141/95", Justice Wetzel purports:

> "In that case, *the same petitioner* sought ***virtually the same relief*** requested herein, and the decision addressed the *same issues*." [A-12, emphasis added]

Even Respondent's dismissal motion had not concealed the different names of the petitioners in the two proceedings. Rather, its dismissal motion had falsely pretended that Doris Sassower had brought her lawsuit "as" CJA's Director and that Elena Sassower had brought hers "as" CJA's Coordinator and that, therefore, "since both petitioners brought their claims as and on behalf of CJA, it must be said that the petitioners in each case are the same."[24] This deceit was exposed by Petitioner's omnibus motion and reply, presenting documentary and testimonial proof establishing that the two different petitioners had each brought their lawsuits individually and, further, that CJA had expressly refused to authorize Petitioner to sue on its behalf [A-A-198-203, 209-213][25].

Additionally, although Respondent's dismissal motion had invoked *res judicata*/collateral estoppel to bar the proceeding "in whole or in part", it had been

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[24] *See* Respondent's May 24, 1999 memorandum of law in support of its dismissal motion, p. 16.

[25] *See* also Petitioner's July 28, 1999 memorandum of law, pp. 59-61, 65-66; Petitioner's September 24, 1999 reply memorandum of law, pp. 46-56, 60-61.

unable to pretend more than that the first three of Petitioner's six Claims for Relief had been "raised and necessarily resolved" in *Doris L. Sassower v. Commission*[26]. Petitioner's omnibus motion and reply highlighted this, further showing the inapplicability of *res judicata*/collateral estoppel to all six Claims[27]. This included for reasons going beyond the fraudulence of Justice Cahn's decision, which Petitioner asserted to be sufficient, in and of itself, to vitiate *res judicata*/collateral estoppel (9 Carmody-Wait 2d §63:442) (1999, p. 393).

Justice Wetzel's factually fabricated and legally-insupportable invocation of *res judicata* based on *Doris L. Sassower v. Commission* to dismiss all six of Petitioner's Claims for Relief, where the record before him showed a *different* petitioner, seeking relief *not* "virtually the same", and a decision by Justice Cahn *not* "address[ing] the same issues", is only surpassed by his bald declaration that "the doctrine of collateral estoppel applies" [A-13]. Such purported application flies in the face of the standard articulated in *Gramatan, supra*, as well as the legal authority presented by Petitioner showing that the first inquiry on collateral estoppel is "whether it is being used only against one who has already had his day in court" – for which, together with a careful analysis to establish "identity of issues", "all the circumstances of the prior action must be examined to determine whether the

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[26] *See* Respondent's May 24, 1999 memorandum of law in support of its dismissal motion, pp. 15-18.

[27] *See* Petitioner's July 28, 1999 memorandum of law, pp. 62-67; Petitioner's September 24, 1999 reply memorandum of law, pp. 57-62.

estoppel is to be allowed." Siegel, New York Practice, §462 (1999 ed., pp. 742-3). Justice Wetzel examines *none* of the circumstances pertaining to *Doris L. Sassower v. Commission* – although these were particularized and documented for him by Petitioner's omnibus motion and reply (*see* fns. 25, 27, *supra*) and the copy of the file of *Doris L. Sassower v. Commission* which she supplied [A-346].

Nor does Justice Wetzel in any way examine Justice Cahn's decision [A-189], which he nonetheless endorses as "sound authority in its own right for the dismissal of the petition." [A-12]. Such endorsement is belied by Petitioner's analysis of Justice Cahn's decision, showing it to be a fraud [A-52]. Justice Wetzel's conscious knowledge of that fact may be presumed from his failure to even acknowledge the existence of this analysis – as to which his Decision makes *no* findings.

Likewise, in his second paragraph, baldly endorsing Justice Lehner's decision in *Mantell v. Commission* [A-299] as "a carefully reasoned and sound analysis of the very issue raised in the within petition" [A-13], Justice Wetzel conceals Petitioner's carefully-reasoned and documented analysis of Justice Lehner's fraudulent decision [A-321] -- as to which his Decision also makes *no* findings. This includes Petitioner's analysis of "Justice Lehner's finding that mandamus is unavailable to require the respondent to investigate a particular complaint" -- which "finding" Justice Wetzel "adopts" *without* the slightest discussion.

The Decision's only reference to Petitioner's objections relating to *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission* is a single sentence:

> "petitioner seeks to distinguish or disregard these two cases on the basis that they were 'corrupt' decisions and both cases were 'thrown,' a contention which speaks volumes about the frivolousness of this petition" [A-13].

By such non-sequitur, Justice Wetzel maligns both Petitioner's supposed "contention" and her Verified Petition – with *no* findings of fact or law as to either.

In characterizing as a "contention" Petitioner's analyses of the decisions of Justice Cahn and Lehner, Justice Wetzel follows Respondent's strategy in its dismissal motion. Thus, in advancing its *res judicata*/collateral estoppel defense, the dismissal motion had pretended that Petitioner had only made a "conclusory claim" that Justice Cahn's decision was "false" and "fraudulent".[28] Petitioner's omnibus motion had vigorously protested this deceit, demonstrating that there was nothing "conclusory" about the specificity of ¶NINTH of her Verified Petition [A-25] and the three-page analysis of Justice Cahn's decision [A-52], the accuracy of which she had attested at ¶FOURTEENTH [A-27]. She asserted that these provided the "detail" required by CPLR §3016(b) for pleading fraud[29]. Respondent did not deny or dispute this. Instead, it continued to ignore the analysis and the pertinent paragraphs of the Verified Petition as if they did not exist. This was highlighted by Petitioner's reply[30].

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[28] *See* Respondent's May 24, 1999 memorandum of law in support of its dismissal motion, pp. 13-14.

[29] *See* Petitioner's July 28, 1999 memorandum of law in support of her dismissal motion, pp. 62-65.

[30] *See* Respondent's August 13, 1999 reply/opposition memorandum of law, pp. 11-12 and

Based on the record before him, Justice Wetzel knew, beyond doubt, that the reason Respondent ignored Petitioner's analysis of Justice Cahn's decision [A-52], *as if it did not exist*, and thereafter ignored Petitioner's analysis of Justice Lehner's decision [A-321], *as if it did not exist*, was because these analyses established the fraudulence of each decision [A-189, A-299]. The fact that Justice Wetzel also ignores these *uncontroverted* analyses, *as if they do not exist*, bespeaks his knowledge that he could not confront them without exposing the fraud he is committing in predicating dismissal of Petitioner's Verified Petition on those decisions.

As for the Verified Petition [A-22], Justice Wetzel may be presumed to know that there is nothing "frivolous" about it – his Decision providing *no* specificity for this baseless characterization. The only detail about the Verified Petition is at the outset of the Decision [A-9-10], purporting to summarize the relief sought. In fact, this summary is not taken from the Verified Petition or Notice of Petition, as would be expected. Rather, it is taken *verbatim* from the summary appearing in Respondent's dismissal motion[31]. This, notwithstanding such summary was objected-to in Petitioner's omnibus motion as false and misleading[32]. Indeed, the *only* change Justice Wetzel makes in Respondent's summary is of a single word. Thus, rather than purporting that Petitioner is seeking to have the Court "request[] the Governor to appoint a special prosecutor",

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Petitioner's September 24, 1999 reply memorandum of law, at pp. 57-58.

[31] *See* Respondent's May 24, 1999 memorandum of law in support of motion to dismiss, pp. 2-3, and Assistant Attorney General Kennedy's May 24, 1999 supporting affirmation, p. 2.

[32] *See* Petitioner's July 28, 1999 memorandum of law in support of her omnibus motion, pp. 17-18, 20 (fn. 25), 33 (fn. 37).

he revises it to "direct[] the Governor to appoint a special prosecutor". This revision is the only aspect of the summarized relief that is *per se* frivolous, the Court having no authority to so-direct the Governor.

The Decision does not subsequently refer to this summary of the relief sought by the Verified Petition. This includes in the two paragraphs purporting to dismiss the Verified Petition, based on *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission* [A-12-13], each of which contain a similar pretense: "The *issue* raised in this Article 78 proceeding is a matter which was previously resolved by Justice Cahn of this Court..." [A-12, emphasis added] and "Judge Lehner's decision is a carefully reasoned and sound analysis of the very *issue* raised in the within petition." [A-13, emphasis added]. As Justice Wetzel may be presumed to know when he purposefully transforms the plural "issues" presented by the Verified Petition's six Claims for Relief into a singular unidentified "issue", these are not precluded by the decisions of Justice Cahn and Lehner, quite apart from the fraudulence of those decisions[33].

C. The Decision's Injunction Against Petitioner And The *Non-Party* CJA Is *Sua Sponte*, Without Affording Them Notice And Opportunity To Be Heard, And Without Basis In Fact Or Law:

Having perverted fundamental adjudicative standards and brazenly falsified the factual record to deny Petitioner's recusal application and dismiss her Verified Petition, Justice Wetzel enjoins the *pro se* Petitioner and the *non-party* Center for

[33] As highlighted in Petitioner's December 9, 1999 letter to Justice Wetzel [A-315 (fn. 14)], her Verified Petition presented issues different from those in *Mantell v. Commission*.

Judicial Accountability, Inc.[34] "from instituting any further actions or proceedings relating to the issues decided herein" [A-13]. To prevent the possibility that these "actions" or "proceedings" might land before a fair and impartial tribunal *via* "random selection" rules, Justice Wetzel also appoints himself judge of their relatedness [A-13].

Here, too, Justice Wetzel acts on his own. Respondent made ***no*** request for an injunction in its dismissal motion or elsewhere. Nor had it requested any lesser sanctions. The Decision fails to identify that the injunction is entirely *sua sponte* and that Petitioner and the *non-party* CJA have been afforded NO notice and opportunity to be heard. This is a fundamental deprivation of due process, requiring vacatur of the injunction even were there facts in the record to support it – *which there are not*

It is black-letter law that "'due process requires that courts provide notice and opportunity to be heard before imposing *any* kind of sanctions.'" *Ted Lapidus, S.A. v. Vann*, 112 F3d 91, 96 (2d Cir. 1997), quoting *In Re Ames Dep't Stores, Inc*, 76 F.2d 66, 70 (2d Cir. 1996); *In Re 60 East 80th Street Equities, Inc.*, 218 F.3d 109, 117 (2nd Cir. 2000); *Schlaifer Nance & Co., Inc. v. Estate of Warhol*, 194 F.3d 323, 334 (2nd Cir. 1999); *Matter of Hartford Tile Corp.*, 613 F.2d 388, 390 (2nd Cir. 1979).

An injunction is more draconian, by far, than imposition of costs and

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[34] Justice Wetzel opens his Decision by falsely stating that Petitioner is suing "*as* the 'coordinator' of the Center for Judicial Accountability, Inc. (CJA)" [A-9, emphasis added] – replicating a deceit employed by Respondent, which Petitioner's omnibus motion and reply papers resoundingly exposed. *See* [A-198-203, 209-213], Petitioner's July 28, 1999 memorandum of law, pp. 46-7, 59-61, 65-66; Petitioner's September 24, 1999 reply memorandum of law, pp. 46-56.

sanctions under 22 NYCRR §130-1.1 *et seq.* – which rule provision expressly provides for a "reasonable opportunity to be heard". *Marcus v. Bamberger*, 180 A.D.2d 533, 580 N.Y.S.2d 256 (1st Dept. 1992), *People v. Rodriguez*, 180 A.D.2d 578, 580 N.Y.S.2d 292 (1st Dept. 1992). *See, also, Bruckner v. Jaitor Apts. Co.*, 147 Misc.2d 796, 802 (Civil Ct, Queens, 1990)[35]. Obviously, the more dire the sanction sought to be imposed, the greater the due process right to notice and opportunity to be heard.

Justice Wetzel's imposition of an injunction, without notice and opportunity to be heard, bespeaks his knowledge that allowing Petitioner and CJA the rudiments of due process would have exposed the lack of any grounds for such intended penalty. The baselessness of its imposition is plain from the Decision's failure to make findings as to any misconduct by Petitioner and CJA, let alone misconduct of such severity as to justify the extraordinary remedy of an injunction.

This also contrasts with 22 NYCRR §130-1 *et seq.* As noted by this Court in *Dubai Bank Limited v. Ayyub*, 187 A.D.2d 373, 589 N.Y.S.2d 486 (1st Dept. 1992), no sanctions and costs can be awarded thereunder without "findings of fact in accordance with 22 NYCRR 130-1.2", *to wit*,

> "a written decision *setting forth the conduct* on which the award or imposition is based, *the reasons why* the court found the conduct to be frivolous, and *the reasons why* the court found the amount awarded or imposed to be appropriate." 22 NYCRR §130-1.2,

35 "...what is involved is access to the courts, a right cherished by every citizen. Ready access to the judicial system as a means to redress grievances is a right and privilege of citizenship, which should not be lightly cast aside." *Bruckner*, at 802.

emphasis added

Instead of any comparably reasoned decision, Justice Wetzel rests his injunction on a conclusory declaration: "[given] 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]. This is the culminating falsehood toward which all the Decision's false and vilifying characterizations have been aimed.

Thus, to present a false picture of Petitioner as a harassing, vexatious litigant – essential to this ultimate injunction goal – Justice Wetzel has pretended that "the proceeding has been marked by petitioner's deluge of applications seeking recusal of each of the various assigned judges" [A-10]. He offers no specificity as to this alleged "deluge of applications". In fact, it does *not* exist.

The record shows that four of Justice Wetzel's five judicial predecessors who recused themselves did so *sua sponte* – Justices Lebedeff, Tolub, Weissberg, and Kapnick[36]. Of these, all but Justice Kapnick stated their legitimate reasons for stepping down – reasons having nothing to do with any supposed "badgering" by Petitioner [A-123, 124, 126]. Nor did Justice Zweibel contend that Petitioner had "badgered" him when he recused himself expressly "to avoid even the appearance of any impropriety", based on Petitioner's oral application [A-242, lns. 18-19].

Having distorted the record to blame Petitioner for what Justice Wetzel

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[36] The *sua sponte* recusals of Justices Lebedeff, Tolub, and Weissberg were expressly identified for Justice Wetzel in Petitioner's December 2, 1999 recusal application [A-252-253]. That Justice Kapnick's recusal was also *sua sponte* may be seen from the fact that she stepped down *before* receiving Petitioner's November 5, 1999 letter [A-127, 226].

implies are the unjustified recusals of all his judicial predecessors, Justice Wetzel postures himself as a hero, standing up, where they did not, to Petitioner's "baseless recusal motion". As hereinabove shown, there is nothing baseless about Petitioner's December 2, 1999 application for his recusal – as is obvious from Justice Wetzel's failure to identify *any* of the grounds therein presented as warranting his disqualification. Moreover, the right "to escape a biased tribunal" is itself a due process right, *Holt v. Virginia*, 381 U.S. 131, 136 (1965), which cannot be punished absent a showing that there is something inappropriate about the language used. Justice Wetzel cites no inappropriate language – and there is none.

Likewise, there is nothing in the least bit baseless or inappropriate in Petitioner's other submissions. This includes Petitioner's November 5, 1999 letter to Justice Kapnick [A-217], to which Justice Wetzel disdainfully refers when he singles out from among Petitioner's letters one containing "upwards of ten exhibits and measur[ing] in excess of two inches" [A-11]. In fact, its volume is ¾ inch. Likewise, there is nothing baseless and inappropriate about Petitioner's omnibus motion, whose dimension he reduces to an "inch thick" [A-11], rather than two inches, with another six inches for its four free-standing file folders of documents [A-346-349].

Any fair and impartial tribunal examining the voluminous exhibits and materials substantiating Petitioner's written presentations, as likewise the written presentations themselves, could not but be impressed by the very highest of evidentiary standards to which Petitioner adhered in documenting the issues pertinent

to this lawsuit: (1) Respondent's corruption – the gravamen of the proceeding; (2) Petitioner's entitlement to the Attorney General's disqualification from representing Respondent by reason of his violation of Executive Law §63.1 and multiple conflicts of interest; (3) the Attorney General's litigation misconduct, entitling Petitioner to sanctions against him and Respondent, as well as disciplinary and criminal referral; and (4) the need to ensure the impartiality and independence of the tribunal hearing the proceeding so that it would not be "thrown" by a fraudulent judicial decision, as happened in *Doris L. Sassower v. Commission* and *Mantell v. Commission.* This is not "relentless vilification" of a "long list of public officials and judges" by Petitioner, as the Decision falsely pretends, once again with no specificity [A-12].

As to the only other "history of this litigation" presented by the Decision, Petitioner herein is *not* the same petitioner as in the proceeding decided by Justice Cahn, which, moreover, Justice Cahn never found to be frivolous [A-189], and Justice Wetzel himself does not claim it to be [A-9]. The record before Justice Wetzel, containing a copy of the file of *Doris L. Sassower v. Commission* [A-346], shows its absolute merit.

As for "progeny" of this litigation, there is none --and Justice Wetzel does not identify what he is referring to. Of course, inasmuch as he falsely pretends that *Doris L. Sassower v. Commission* was brought by this Petitioner, he may be inferring that this proceeding is the "progeny" of that one.

It is in the complete absence of *any* facts to support his false, defamatory, and wholly conclusory characterizations that Justice Wetzel gratuitously cites the 16-year

old decision in *Sassower v. Signorelli*, 99 A.D.2d 358 (2nd Dept. 1984) [A-14], as precedential legal authority for his injunction[37].

Here, as in his citation to "Sassower v. Commission on Judicial Conduct, Index No. 109141/95" [A-12], Justice Wetzel omits *any* first name for the plaintiff in *Sassower v. Signorelli*. By so doing, he fosters the misimpression that Petitioner is that plaintiff -- and that his imposition of draconian injunction penalties is not the first against her. Such prejudicial citation, irrelevant to the facts of this case, is in face of Petitioner's omnibus motion identifying the plaintiffs in *Sassower v. Signorelli* to be her judicial "whistle-blowing" parents, who sued the Suffolk County Surrogate for his official misconduct, and that "[u]pon information and belief, such decision was without any hearing having been held by the lower court or Appellate Division as to the facts allegedly supporting the defamatory conclusory statements therein"[38].

Conspicuously, Justice Wetzel provides no statutory or rule authority for his imposition of an injunction against Petitioner and the non-party CJA. Indeed, there is none. It is an exercise of inherent power, which he fails even to acknowledge. This concealment is understandable in view of the Court of Appeals decision in *AG Ship Maintenance v. Lezak*, 69 N.Y.2d 1 (1986), where our State's highest Court identified that the problem of frivolous litigation – which Justice Wetzel purports to remedy by his injunction -- is properly addressed by the Legislature and by court rules

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[37] Obviously, shepardizing *Sassower v. Signorelli* would have produced more recent cases.

[38] Petitioner's discussion of *Sassower v. Signorelli* was in the context of her opposition to the Attorney General's false claim in his dismissal motion that Executive Law §63.1 requires the

"adopted in accordance with procedures prescribed by the Constitution and statute (NY Const, Art VI, §30, Judiciary Law §210[1][b])", at p. 6. The Court further stated:

> "the most practicable means for establishing appropriate standards and procedures which will be an effective tool for dealing with this problem is by plenary rule rather than by ad hoc judicial decisions." (at p. 6).

Such subsequently-promulgated "plenary rule" is 22 §NYCRR 130-1.1 *et seq.*, which Justice Wetzel has chosen to ignore in favor of the *ad hoc* judicial decision in *Sassower v. Signorelli*. As Justice Wetzel gives no explanation, the most obvious is that 22 NYCRR §130-1 *et seq.* has "standards and procedures" requiring notice, opportunity to be heard, and a reasoned written decision.

Finally, as to Justice Wetzel's pretense that an injunction would "best serve the interests of justice" [A-14], for which, again, he provides no substantiating detail, the most cursory examination of the record shows that it is to defeat justice -- and to advance the illegitimate personal and political interests complained of in Petitioner's December 2, 1999 recusal application [A-250] -- that Justice Wetzel imposes the injunction. Such injunction is to deprive the public of its most formidable champions against Respondent, whose corruption Petitioner established by overwhelming evidentiary proof.

Attorney General to represent Respondent [A-245a].

POINT IV

THE RECORD ESTABLISHES THAT A FAIR AND IMPARTIAL TRIBUNAL WOULD HAVE BEEN REQUIRED TO GRANT THE RELIEF REQUESTED BY PETITIONER'S VERIFIED PETITION AND OMNIBUS MOTION

Obvious to any fair and impartial tribunal examining the record is what Justice Wetzel sought to conceal by his facially non-conforming Decision: Petitioner's absolute entitlement to the relief requested by her Verified Petition [A-18] and omnibus motion [A-195]. Such entitlement is underscored by Petitioner's September 24, 1999 memorandum of law and reply affidavit, with Petitioner's December 9, 1999 and December 17, 1999 letters to Justice Wetzel further reinforcing her entitlement to that branch of the omnibus motion as seeks sanctions and disciplinary and criminal referral of the Attorney General and Respondent for their fraudulent litigation tactics permeating their defense of this proceeding [A-308, 336].

CONCLUSION

For the foregoing reasons, the Decision, in its entirety, must be reversed and the Order & Judgment thereon vacated. Petitioner's omnibus motion should be granted, including an award of summary judgment in favor of Petitioner on the Verified Petition.

Consistent with this Court's own "Disciplinary Responsibilities" under §§100.3(D)(1) and (2) of the Chief Administrator's Rules Governing Judicial Conduct, pertaining to its duty to act upon "information" of violative conduct by judges and lawyers of a "substantial" nature, this Court must "take appropriate action" by referring Justice Wetzel, Administrative Judge Crane, and the culpable attorneys of Respondent and the Attorney General's office to disciplinary and law enforcement agencies.

Additionally, Appellant requests such other and further relief as this Court may deem just and proper, including costs, disbursements, and an award of sanctions from this Court on her successful appeal.

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Dated: White Plains, New York
December 22, 2000