COURT OF APPEALS
STATE OF NEW YORK

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

Petitioner-Appellant,

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

NOTICE OF MOTION FOR DISQUALIFICATION AND DISCLOSURE

AD 1st Dept. #5638/01
S.Ct./NY Co. #108551/99

PLEASE TAKE NOTICE that upon the annexed Affidavit of Petitioner-Appellant, ELENA RUTH SASSOWER, dated May 1, 2002, "Law Day", the exhibits annexed thereto, and upon all the papers and proceedings heretofor had, ELENA RUTH SASSOWER will move this Court at 20 Eagle Street, Albany, New York 12207-1095 on Monday, May 20, 2002 at 10:00 a.m. or as soon thereafter as Respondent-Respondent and its counsel can be heard for an order:

1. Disqualifying this Court's Chief Judge and Associate Judges from participating in the above-captioned appeal for interest, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, as well as for bias, pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct;

2. Designating justices of the Supreme Court to serve as Associate Judges of this Court for all purposes of this appeal, pursuant to Article VI, §2a of the

Ex "B-2"

New York State Constitution, with the condition that the so-designated judges make disclosure pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct of material facts bearing upon their personal, professional, and political relationships with, and dependencies on, the persons and entities whose misconduct is the subject of this appeal or exposed thereby.

3. Such other and further relief as may be just and proper, including disciplinary and criminal referrals, pursuant to §§100.3D(1) & (2) of the Chief Administrator's Rules Governing Judicial Conduct and DR 1-103(A) of New York's Disciplinary Rules of the Code of Professional Responsibility, of the documentary proof herein presented of longstanding and ongoing systemic corruption by judges and lawyers on the public payroll.

Dated: May 1, 2002, "Law Day"
White Plains, New York

Yours, etc.

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*
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TO: ATTORNEY GENERAL OF THE STATE OF NEW YORK
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Respondent-Respondent
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COURT OF APPEALS
STATE OF NEW YORK

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

AFFIDAVIT IN SUPPORT OF DISQUALIFICATION & DISCLOSURE

Petitioner-Appellant,

A.D. 1st Dept. #5638/01
S.Ct./NY Co. #108551/99

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

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STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the *pro se* Petitioner-Appellant, fully familiar with all the facts, papers, and proceedings in this important public interest Article 78 proceeding against Respondent-Respondent New York State Commission on Judicial Conduct [hereinafter "Commission"].

2. This motion is for the threshold relief of disqualifying this Court's judges from adjudicating this appeal by reason of their interest, proscribed by Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, as well as their bias, also proscribed by §100.3E of the Chief Administrator's Rules. Pursuant to Article VI, §2a of the New York State Constitution[1], I seek to replace this

[1] In pertinent part, Article VI, §2a states:

Court's judges as adjudicators of the jurisdictional issues of my Notice of Appeal and of the subsequent appeal[2] with specially-designated Supreme Court justices, who will make pertinent disclosure of disqualifying facts pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct.

3. To avoid needless repetition of the basic facts of this extraordinary appeal, as to which, additionally, there can be no doubt as to public importance and decisional conflict – the standard for appeal by leave (22 NYCRR §500.11(d)(1)(v)) -- I refer the Court to my simultaneously-filed Jurisdictional Statement and the record on which it rests, most particularly, my motions in the Appellate Division, First Department for reargument and for leave to appeal.

4. Because virtually every judge in this State is under the Commission's disciplinary jurisdiction and because the criminal ramifications of this lawsuit reach this State's most powerful leaders upon whom judges are directly and immediately dependent and with whom they have personal, professional, and political relationships, I raised legitimate issues of judicial disqualification and disclosure in the courts below, always suggesting alternative more neutral tribunals. Before the Appellate Division, First Department, I made a threshold August 17, 2001 motion for

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> "...In the case of the temporary absence or inability to act of any judge of the court of appeals, the court may designate any justice of the supreme court to serve as associate judge of the court during such absence or inability to act..."

[2] If notwithstanding this Court's holding in *Valz v. Sheepshead Bay*, 249 N.Y. 122, 131-2 (1928), the Court dismisses my appeal of right, I request, in the interest of judicial economy and justice, that it, *sua sponte*, grant leave to appeal for all the reasons set forth in my February 20, 2002 motion to the Appellate Division, First Department for leave. Otherwise, I will make a formal motion for leave to appeal, reiterating and expanding upon the grounds therein set forth.

its disqualification for interest and bias, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, and for disclosure by its justices, pursuant to §100.3F of the Chief Administrator's Rules. Before Justice Wetzel, I presented a threshold December 2, 1999 letter-application for his disqualification for interest and bias and for disclosure pursuant to these same statutory and rule provisions [A-250-290].

5. By its December 18, 2001 decision & order[3], the Appellate Division, First Department denied my August 17, 2001 motion -- *without* findings, *without* reasons, *without* even identifying that the motion sought disqualification and disclosure and, indeed, by *falsifying* its requested relief. By his January 31, 2000 decision, order & judgment [A-9-14], Justice Wetzel denied my December 2, 1999 letter-application – *without* findings, *without* identifying any of the grounds it set forth as warranting his disqualification, and by concealing and totally ignoring its requested disclosure relief.

6. Just as Justice Wetzel's wrongful denial of my December 2, 1999 letter-application was the threshold and overarching issue on my appeal to the Appellate Division, First Department of his January 31, 2001 decision (*see* my Appellant's Brief, at pp. 1, 36-52), so the Appellate Division, First Department's wrongful denial of my August 17, 2001 motion in the last sentence of its December 18, 2001 decision is the threshold and overarching issue on my appeal to this Court (*see* my Jurisdictional Statement, pp. 5-6, 11-12).

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[3] The Appellate Division, First Department's December 18, 2001 decision & order is Exhibit "B" to my Jurisdictional Statement.

7. Consequently, on this motion, the Court will be grappling with the same statutory and rule provisions of judicial disqualification and disclosure that are the substantive content of the appeal as they relate to the lower courts. Here – as there – the decisive question is the legal sufficiency of the subject motion/application in establishing statutory disqualification for interest, as well as my entitlement to "discretionary" recusal for bias, both actual and apparent, and for disclosure. Thus, while the substance of this appeal calls upon the Court to enunciate the fundamental adjudicative standards that must govern a judge when confronted with a judicial disqualification/disclosure application – as to which it appears this Court has *never* spoken -- this motion requires the Court to teach by its own example. There is no better way for this Court to instruct our State's judiciary[4].

8. It is my contention – so stated before the Appellate Division, First Department (my Appellant's Brief: pp. 38-9; my reargument motion: Exhibits "B-1", p. 6) -- that:

> "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...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. 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

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[4] *Cf.* "*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*", John M. Levy, 22 Santa Clara Law Review, pp. 95-116 (1982).

> 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)".

Further, based on treatise authority placed before the Appellate Division, First Department (my Appellant's Brief, p. 38; my reargument motion: Exhibit "C", p. 5) and, prior thereto, before Justice Wetzel [A-252; A-237]:

> "'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 judicial disqualification motion', Flamm, Richard E., Judicial Disqualification, p. 578, Little, Brown & Co., 1996."

9. Consistent with §100.3E of the Chief Administrator's Rules Governing Judicial Conduct that "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned"[5], all seven of this Court's judges must recuse themselves so as to avoid the appearance of their bias. Six judges, however, are statutorily disqualified for interest, pursuant to Judiciary Law §14:

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

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[5] In reviewing the Commission's determinations of public discipline against judges, this Court routinely repeats, as the standard, the need to avoid the "appearance of impropriety", *Matter of Sardino*, 58 N.Y.2d 286, 290-291 (1983); *Matter of Sims*, 61 N.Y.2d 349, 358 (1984), citing cases, *Matter of Duckman*, 92 N.Y.2d 141, 153 (1998). Likewise, in public statements, Chief Judge Kaye reiterates that "judges must disqualify themselves when their impartiality might reasonably be questioned.", citing the Chief Administrator's Rules and the Model Code of Judicial Conduct, "*Safeguarding a Crown Jewel: Judicial Independence and Lawyer Criticism*", 25 Hofstra Law Review 703, 713 (Spring 1997).

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10. These six judges, in the order in which their statutory disqualification is discussed, are: Associate Judge Albert M. Rosenblatt, Chief Judge Judith S. Kaye, Associate Judge George Bundy Smith, Associate Judge Victoria A. Graffeo, Associate Judge Carmen Beauchamp Ciparick, and Associate Judge Howard A. Levine. As herein demonstrated, their disqualifying interest is based on *their participation in the events giving rise to this lawsuit or in the systemic governmental corruption it exposes -- as to which they bear disciplinary and criminal liability.*

11. Consequently, the interests of these six judges are personal and pecuniary. This contrasts sharply with the *ex officio* interests of this Court's judges in *Morgenthau v. Cooke*, 56 N.Y.2d 24 (1982), and the shared generic judicial interests in *Maresca v. Cuomo*, 64 N.Y.2d 242 (1984) -- two appeals where no motions were even made for the Court's disqualification. It also contrasts sharply with *New York State Association of Criminal Defense Lawyers, et al. v. Kaye, et al.*, 95 N.Y.2d 556 (2000), where the Court, in denying a formal motion to disqualify those of its judges who had participated in the Court's challenged approval of administrative rule-making, explicitly stated:

> "The respondent Judges have no pecuniary or personal interest in this matter and petitioners allege none. Nor do petitioners allege personal bias or prejudice." (at 561).

12. Moreover, the "rule of necessity", invoked by the Court in each of these three cases, is inapplicable to the instant motion, based, as it is, on the individual disciplinary and criminal liabilities of the Court's judges. Replacement Supreme Court justices would not be so encumbered. Nor would they be material witnesses to

an official investigation born of this lawsuit, a further ground for judicial disqualification (*Cf.* §100.3E(1)(d)(iv) of the Chief Administrator's Rules Governing Judicial Conduct).

13. Finally, to the extent that this Court in *New York State Association of Criminal Defense Lawyers, et al., supra*, takes exception to the

> "substitution of the entire constitutionally appointed court, leaving 'the most fundamental questions about the Court and its powers to persons whose selection and retention are not tested by constitutional processes' (*In re Vermont Supreme Ct. Admin. Directive No. 17 v. Vermont Supreme Court*, 154 Vt. 217, 226, 576 A.2d 127, 132)", at 560,

the systemic governmental corruption exposed by this lawsuit embraces the corruption of the very "merit selection" process whereby this Court's judges are chosen. Indeed, at the time the Court issued its December 21, 2000 decision in *New York Association of Criminal Defense Lawyers*[6], adopting the notion that its judges are "tested by constitutional processes", Chief Judge Kaye was not only in possession of the documentary proof *from this lawsuit* chronicling how sham and repugnant these "constitutional processes" had become, but had received, *in hand*, my December 9, 2000 letter urging that she secure an official investigation thereof (¶¶90-98 *infra*).

14. Such long overdue official investigation would necessarily emerge from adjudication of this appeal by a fair and impartial tribunal – to which I and the People of this State are constitutionally entitled.

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[6] According to the decision (at 558, fn. 1), Chief Judge Kaye recused herself as "It is not an uncommon practice for the Chief Judge alone to be recused in similar appeals involving judicial administration", citing *Maresca v. Cuomo*.

15. For the convenience of the Court, a Table of Contents follows:

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