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*,

Petitioner-Appellant,

REPLY AFFIDAVIT to Memorandum of Law in Opposition to MOTION FOR LEAVE TO APPEAL

-against-

Motion #1213/02

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 heretofore had in this important public interest lawsuit against the New York State Commission on Judicial Conduct [hereinafter "the Commission"].

2. Pursuant to §500.11(c) of this Court's rules and its referred-to §500.12, this is to request permission to file this affidavit in reply to the knowingly false, deceitful, and frivolous six-page November 8, 2002 memorandum of law in opposition to my October 24, 2002 motion for leave to appeal, signed by Assistant Solicitor General Carol Fischer, which does NOT deny or dispute ANY of the

facts presented by my 22-page motion or the accuracy of my discussion of law – most importantly, this Court's dispositive decision in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980).

3. This affidavit is also submitted in support of a request that my October 24, 2002 notice of motion for "Such other & further relief as may be just and proper" be deemed to include the striking of Ms. Fischer's November 8, 2002 memorandum of law, based on a finding that it is a "fraud on the court", violative of 22 NYCRR §130-1.1 and 22 NYCRR §1200 *et seq.*, specifically, §§1200.3(a)(4), 1200.3(a)(5), and 1200.33(a)(5), with a further finding that the Attorney General and Commission are "guilty" of "deceit or collusion...with intent to deceive the court or any party" under Judiciary Law §487, and, by reason thereof, for an order:

(a) imposing maximum monetary sanctions and costs on the Attorney General's office and Commission, pursuant to 22 NYCRR §130-1.1, including against Attorney General Eliot Spitzer, *personally*;

(b) referring Attorney General Spitzer and the Commission for disciplinary and criminal investigation and prosecution, along with culpable staff members, consistent with the Court's mandatory "Disciplinary Responsibilities" under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, for, *inter alia*, filing of false instruments, obstruction of the administration of justice, and official misconduct; and

(c) disqualifying the Attorney General from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules.

4. Ms. Fischer's November 8, 2002 memorandum of law marks the FIFTH instance of her fraudulent litigation conduct before this Court. The previous four

instances are recited at page 7 of my simultaneously-submitted December 3, 2002 reply affidavit on my pending October 15, 2002 reargument motion, incorporated herein by reference. Such continuum of unrestrained misconduct by Ms. Fischer, ratified, if not directed, by her superiors at the Attorney General's office and the Commission, is the predictable result of the Court's denial, *without reasons and without findings*, of my fully-documented June 17, 2002 motion to strike, as "fraud[s] on the court", her May 17, 2002 memorandum of law in opposition to my May 1, 2002 disqualification/disclosure motion and her May 28, 2002 letter in response to the Court's *sua sponte* jurisdictional inquiry and for other relief identical to that hereinabove requested. The Court's denial of that motion, including the further §130-1.1 relief sought by my July 13, 2002 reply affidavit by reason of Ms. Fischer's fraudulent June 28, 2002 opposing "affirmation" therein, is encompassed by my October 15, 2002 reargument motion.

5. To avoid needless duplication, I specifically incorporate by reference the discussion of legal and ethical provisions applicable to Ms. Fischer's misconduct and that of her superiors at the Attorney General's office and the Commission, set forth in my June 17, 2002 motion, and, in particular, in Exhibits "B", "C", and "D" thereto, which should be deemed my memorandum of law on the subject.

6. Ms. Fischer and those with supervisory authority over her at the Attorney General's office and the Commission have been on notice that I would

be seeking the above requested relief. By fax to Attorney General Spitzer, dated November 21, 2002 (Exhibit "A-1"), I notified him that unless he discharged his

> "mandatory supervisory responsibilities under the clear and unambiguous provisions of 22 NYCRR §§1200.5 [DR 1-104 of New York's Disciplinary Rules of the Code of Professional Responsibility], as well as under NYCRR §130-1.1, to take 'reasonable remedial action'",

by withdrawing Ms. Fischer's November 8, 2002 memorandum of law, I would have "no choice but to burden the Court with reply papers", expressly requesting such relief (Exhibit "A-1", p. 5).

7. My November 21, 2002 fax to Mr. Spitzer further stated:

> "As I have expressly asserted in my extensive prior correspondence with you and reiterated in my court papers – including [my October 15, 2002 reargument motion and my October 24, 2002 motion for leave to appeal][fn. 6] -- your duty as York's highest law enforcement officer and 'The People's Lawyer' is to come forward with a statement, *under penalties of perjury*, as to the state of the record herein, including as to my analyses of the FIVE fraudulent lower court decisions of which the Commission has been the beneficiary. I, therefore, expressly call upon you to provide such sworn statement to the Court for its consideration on my important October 15, 2002 and October 24, 2002 motions in which the public's rights and welfare are so directly at stake. This is consistent with – indeed compelled by -- Executive Law §63.1.
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> As in the past, I also call upon your client, the state agency charged with enforcing judicial standards of

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fn. 6 "*See* pages 27-28 of my October 15, 2002 reargument motion; page 21 of my October 24, 2002 motion for leave to appeal."

> conduct, to come forward with its own statement, *under penalties of perjury*, as to the state of the record herein, including as to my analyses of the FIVE fraudulent lower court decisions.
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> Statements by you and the Commission are all the more essential as Ms. Fischer has tellingly avoided making *any* statement, even unsworn, as to the accuracy of such analyses – whose very existence she does not *even* mention.
>
> Please inform me of your intentions no later than 5:00 p.m., Monday, November 25, 2002, so that I may know how to proceed." (Exhibit "A-1", pp. 5-6, emphases in the original).

8. Faxed copies were sent to the indicated recipients: Solicitor General Caitlin Halligan and Deputy Solicitor General Michael Belohlavek, each Ms. Fischer's direct superiors, as well as Ms. Fischer herself and the Commission.

9. On November 25, 2002, I received a fax from Ms. Fischer, purporting that her "supervisors ha[d] asked [her] to respond on their behalf" (Exhibit "B"). *Without* denying or disputing the accuracy of my fax's extended summary of illustrative respects in which her November 8, 2002 memorandum of law is knowingly false, deceitful, and frivolous (Exhibit "A-1", pp. 2-4), Ms. Fischer stated that the Attorney General's office did "not intend to withdraw" it.

10. She then asserted, *without* the slightest reason or legal authority[1]

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[1] The only legal authority cited in Ms. Fischer's November 25, 2002 fax is MISCITED, *to wit*, §§510.12(b) and 510.14 of the Court's rules for the proposition that "reply papers are not permitted unless their submission is authorized, in writing, by the Clerk of the Court". Such rules, which pertain to capital cases, are inapplicable to this civil case.

Ms. Fischer's knowledge of my familiarity with the correct rules may be seen from the record herein where I have already twice requested the Court's permission to submit reply papers

> "neither the Attorney General of the State of New York nor the Commission will submit to the Court of Appeals any 'statement, under penalties of perjury, as to the state of the record herein."

11. That the Attorney General and Commission are not ashamed to make this bald declaration *via* Ms. Fischer -- albeit concealing their refusal to provide a sworn statement as to "my analyses of the FIVE fraudulent lower court decisions of which the Commission has been the beneficiary" -- in and of itself warrants the striking of her memorandum of law and the other relief herein requested since the very basis for my motion for leave to appeal is the record and, in particular, the analyses which are a prominent part. This is evident from my "Question Presented for Review":

> "Whether this Court recognizes a supervisory responsibility to accept judicial review of an appeal against the New York State Commission on Judicial Conduct, sued for corruption, where the record before it[fn. 1] establishes, *prima facie*, that the Commission has been the beneficiary of five fraudulent judicial decisions[fn. 2] without which it would not have survived

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to her fraudulent opposition to my motions – each time invoking this Court's §500.11(c) and its referred-to §500.12. *See* ¶2 of my June 7, 2002 affidavit in reply to Ms. Fischer's May 17, 2002 memorandum of law opposing my May 1, 2002 disqualification/disclosure motion; and (2) ¶2 of my July 13, 2002 affidavit in reply to Ms. Fischer's June 28, 2002 affidavit opposing my June 17, 2002 affidavit to strike, etc.

> fn. 1 "The record, in full, was filed with the Court on May 1, 2002 "Law Day", in conjunction with Petitioner-Appellant's May 1, 2002 jurisdictional statement in support of her appeal of right and her May 1, 2002 motion for disqualification of the Court's judges and for disclosure."

> fn. 2 "Excluded from these five decisions are the Court's two September 12, 2002 decision/orders (Exhibits "B-1", "B-2"), the subject of Petitioner-Appellant's separate reargument motion to vacate for fraud and lack of jurisdiction, etc."

> three separate legal challenges -- with four of these decisions, two of them appellate, contravening this Court's own decision in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980), *to wit*:
>
> > '...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subd. 1)...' (emphasis added)" [underlining added herein for emphasis],

amplified by pages 6-22 of my motion, "Why the Question Presented Merits Review". These pages detail: (a) that the fraudulence of the five subject decisions is "*readily verifiable* from the record herein" containing "fact-specific, legally-supported analyses" of the decisions; (b) that throughout the 3-1/2 years of this litigation, the Attorney General, on behalf of the Commission, has not only REFUSED to address the analyses, but has never even acknowledged them to exist, let alone denied or disputed their accuracy; and (c) that two of the analyses – of Justice Cahn's decision in *Doris L. Sassower v. Commission* and Justice Lehner's decision in *Michael Mantell v. Commission*, the latter explicating *Nicholson*,

> "suffice to expose the fraud of <u>all five decisions</u>, *readily*. The Court must not countenance opposition from the Attorney General and Commission unless they confront these two dispositive analyses. (p. 21, emphases in the original).

12. It is in face of such motion and the fundamental legal principles set forth in my prior sanctions motions against Ms. Fischer[2], whose applicability she has never denied or disputed,

> "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 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)";
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> "'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)"[3],

that Ms. Fischer's opposing memorandum does NOT identify the "Question Presented for Review"; OMITS any mention of my analyses, including those of the decisions of Justices Cahn and Lehner, OMITS any mention of *Nicholson*, and pretends, by virtue of such concealment, that my motion is unsubstantiated:

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[2] *See* my June 7, 2002 reply affidavit on my disqualification/disclosure motion (Exhibit "C", pp. 2, 4-5). *Also*, my October 15, 2001 reply affidavit in further support of my August 17, 2001 motion (Exhibit "A", p. 9).

[3] "'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.'" *People v. Conroy*, 90 NY 62, 80 (1884).

> "Petitioner's only support for her claim that her case merits review is the assertion she has repeated in every filing submitted to this Court: that Sassower, Mantell, and every related, unfavorable decision are 'judicial frauds,' 'deceit[s],', 'hoax[es].' (Stat., pp. 6, 8, 9)." (at p. 4).

13. Examination of "Stat., pp. 6, 8, 9" – the ONLY reference in Ms. Fischer's memorandum to pages of my motion, as distinct from pages of its exhibits – reflects the deliberateness with which Ms. Fischer conceals the substantiating proof, identified in the very sentences of those pages containing the characterizations "judicial frauds", "deceit[s]", and "hoax[es]". Thus, the full sentence at page 6 of my motion reads:

> "That these five decisions are **judicial frauds,** falsifying both the material facts AND applicable law in each proceeding so as to 'protect' a corrupted Commission, **is *readily verifiable* from the record herein.**" (bold added for emphasis)

The full sentence at page 8 reads:

> "**The 3-page analysis of Justice Cahn's decision (Exhibit "H") – contained in the record of this proceeding [A-52-54] – detailed the hoax** Justice Cahn had perpetrated in *Doris L. Sassower v. Commission*" (bold added for emphasis)

And the sentence at page 9:

> "**This deceit was resoundingly exposed by the analysis as follows (Exhibit "H", p. 2; [A-53]):**" (bold added for emphasis),

and continues, after the colon, with a lengthy *verbatim* recitation from my analysis of Justice Cahn's decision.

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14. Having obliterated the existence of record proof in the form of analyses, annexed as exhibits to the motion, as well as excerpted in the motion's text, Ms. Fischer besmirches the motion and me with false and defamatory characterizations which she uses as a pretext for avoiding "further comment":

> Petitioner's practice of declaring every decision that displeases her to be a 'fraud,' and relentlessly vilifying anyone who opposes her, is by now too well-documented to require further comment." (at pp. 4-5).

15. Conspicuously, Ms. Fischer's memorandum, whose barely more than one-page "Argument" (at pp. 4-5) relies EXCLUSIVELY on the *Mantell* appellate decision, makes NO statement that such *Mantell* decision is not a "judicial fraud", "deceit" and "hoax" and that it does not contravene *Nicholson*. Nor does Ms. Fischer's memorandum make any statement as to the legitimacy of any of the other decisions challenged by my motion, whose number and citations are not specifically identified – with Justice Cahn's decision in *Doris L. Sassower v. Commission* seemingly omitted[4]. Indeed, Ms. Fischer's memorandum does NOT deny or dispute ANY of the facts presented by my motion or the accuracy of ANY of my discussion of law – the most important of which is *Nicholson*.

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[4] As hereinafter detailed (p. 17, *infra*), Ms. Fischer's "Statement of the Case" (p. 3) obliterates the fact that Justice Wetzel relied on the July 13, 1995 decision of Justice Cahn in *Doris L. Sassower v. Commission* as his first ground for dismissing my verified petition. As her memorandum nowhere identifies Justice Cahn's decision in *Doris L. Sassower v. Commission*, the reference to "Sassower" at page 4 of her "Argument" is more reasonably interpreted to refer to the decisions herein of Justice Wetzel and the Appellate Division.

16. Consequently, *as a matter of law*, the facts, if not the law, presented by my motion as to the fraudulence of five lower court decisions "protecting" a corrupt Commission are deemed conceded. Under such circumstances, there can be NO doubt as to the Court's "supervisory responsibility", this Court having recognized its "primary responsibility for the administration of the judicial branch of government" in *New York State Association of Criminal Defense Lawyers v. Kaye*, 95 N.Y.2d 556, 560 (2000)[5], and Chief Judge Kaye having long ago assured the public, "The court system has zero tolerance for jurists who act unethically or unlawfully"[6]. Ms. Fischer's memorandum does not dispute the Court's "supervisory responsibility" in the uncontested circumstances identified by my "Question Presented for Review" nor that such "supervisory responsibility" would be appropriately discharged by the Court's accepting judicial review. Indeed, ONLY through judicial review can the irreconcilable conflict with *Nicholson* of four of these decisions, two appellate, be resolved.

17. The Court must be presumed to already be familiar with my 19-page analysis of the decision which is "[t]he direct subject of the appeal", *to wit*, of the Appellate Division's December 18, 2001 decision, as its dispositive significance was focally presented by my papers in support of my May 1, 2002 notice of

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[5] The Court's decision in *Association of Criminal Defense Lawyers v. Kaye* is annexed to my October 15, 2002 reargument motion as Exhibit "D".

[6] "*Court controversies aren't the whole picture*", perspective column by Chief Judge Kaye, Gannett newspapers, 3/22/96.

appeal[7]– without contest from Ms. Fischer. Clearly, the Court could not properly have adjudicated that notice of appeal[8] – or my May 1, 2002 disqualification/disclosure motion and June 17, 2002 motion to strike, etc. – unless it either deemed the accuracy of this 19-page analysis [motion, Ex. "L-1") conceded, *as a matter of law*, or independently verified it. In so doing, it would, likewise, have had to either concede or independently verify my other analyses – as they are ALL encompassed by my 19-page analysis.

18. Nor can the Court *now* properly adjudicate this motion unless it either deems the accuracy of my analyses conceded *as a matter of law*, or independently verifies them, in the event it did not previously do so.

19. In the interest of judicial economy and to reinforce my entitlement to the "other & further relief" specified at ¶3 herein, I herein set forth *verbatim* my uncontested summary of Ms. Fischer's opposing memorandum from pages 2-4 of my November 21, 2002 letter to Mr. Spitzer (Exhibit "A-1") in the following indented single-spaced type:

> "As for Ms. Fischer's barely six-page November 8, 2002 memorandum of law in opposition to my October 24, 2002 motion for leave to appeal, it conceals the existence of my fact-specific, law-supported analyses demonstrating the fraudulence of FIVE lower court decisions of which the Commission has been the beneficiary –

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[7] My May 1, 2002 jurisdictional statement (pp. 8-10); my June 7, 2002 affidavit in response to *Sua Sponte* Jurisdictional Inquiry (¶¶17, 37, 38).

[8] Page 1 of Ms. Fischer memorandum misrepresents that the Court denied my attempted appeal of right by its September 12, 2002 decision/order, when, in fact, my notice of appeal was "dismissed". [*see* Exhibit "B-2" to my October 24, 2002 motion for leave to appeal].

analyses annexed as Exhibits 'H', 'I', 'K', and 'L-1' to my October 24, 2002 motion[fn. 3] and whose accuracy Ms. Fischer does *not* deny or dispute. Indeed, her memorandum also conceals what was *expressly* identified by my 'Question Presented for Review' (at p. 3), *to wit*, that four of these five lower court decisions contravene the Court of Appeals' OWN decision in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980):

> "...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subd. 1)..." (emphasis added).'

Ms. Fischer's November 8, 2002 memorandum of law *never* mentions *Nicholson* in affirmatively misrepresenting (at p. 4) that my appeal does NOT involve 'a conflict with prior decisions of [the] Court' and in purporting, based on the very lower court decisions demonstrated by my motion to contravene *Nicholson*, that the Commission's determination to investigate a complaint is 'discretionary' (at pp. 3-4). Nor does her memorandum mention *Nicholson* in baldly asserting (at p. 1) that my 'current attempt to seek leave on the ground of its purported 'public importance' is without merit'. This, notwithstanding *Nicholson* contains the Court's unequivocal statement, quoted by my motion (at p. 22):

> 'There can be no doubt that the State has an overriding interest in the integrity and impartiality of the judiciary. There is 'hardly *** a higher governmental interest than a State's interest in the quality of its judiciary' (*Landmark Communications v. Virginia*, 425 U.S. 829, 848 [Stewart, J., concurring]'

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fn. 3 "These four annexed analyses do not include one for Justice Wetzel's decision in my lawsuit, whose most comprehensive analysis is, of course, the appellate brief I filed in the Appellate Division, First Department. As identified at page 12 of my October 24, 2001 motion for leave to appeal, the fraudulence of Justice Wetzel's dismissal of my Article 78 proceeding is exposed by my analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* and my analysis of Justice Lehner's decision in *Michael Mantell v. Commission* – since Justice Wetzel rested his dismissal exclusively on those two decisions, notwithstanding my analyses thereof were in the record before him."

Similarly Ms. Fischer's memorandum does not mention *Commission v. Doe*, 61 N.Y.2d 56, 61 (1984), where, as quoted by my motion (at p. 22), the Court recognized the Commission as 'the instrument through which the State seeks to insure the integrity of its judiciary'.

Because confronting pages 6-22 of my October 24, 2002 motion under the title heading 'Why the Question Presented Merits Review' would have required Ms. Fischer to concede the accuracy of my analyses of the FIVE fraudulent lower court decisions of which the Commission is the beneficiary – and the controlling significance of *Nicholson* – her memorandum of law, containing scarcely more than a one-page 'Argument' (at pp. 4-5), does *not* address these pages. Instead, most of her memorandum is a purported 'Statement of the Case' (at pp. 2-4), which begins by identifying that 'greater detail' may be found in the Commission's brief filed in the Appellate Division, First Department, 'previously submitted to the Court' (at p. 2).

This is a flagrant deceit. That March 22, 2001 brief, signed by Ms. Fischer, is, '*from beginning to end*, based on knowing and deliberate falsification, distortion, and concealment of the material facts and law' of this case. You are fully aware of this because, on May 3, 2001, I hand-delivered to your office my meticulous, line-by-line, 66-page critique thereof[9] under a coverletter to you of that date[fn. 4], calling upon you to meet your 'mandatory obligations, not only under New York's Disciplinary Rules of the Code of Professional Responsibility, but under Executive Law §63.1' by withdrawing that fraudulent document from the Appellate Division, First Department. Your wilful refusal to do so was recited more than a year later by my May 21, 2002 letter to you[10], reiterating your 'mandatory supervisory responsibilities' in the wake of what was then Ms. Fischer's latest litigation misconduct: her submission of a 'legally unsupported and insupportable, factually false and fraudulent' May

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[9] My 66-page critique is annexed as Exhibit "U" to my August 17, 2001 motion in the Appellate Division to strike Ms. Fischer's brief as a "fraud on the court", etc.

[fn. 4] "My May 3, 2001 letter to you is annexed as Exhibit 'T-3' to my August 17, 2001 motion in the Appellate Division, First Department, whose second branch sought to strike Ms. Fischer's brief as a 'fraud on the court', etc."

[10] This May 21, 2002 letter to Mr. Spitzer is annexed as Exhibit "A" to my June 7, 2002 reply affidavit on my disqualification/disclosure motion

> 17, 2002 memorandum of law to the Court of Appeals in opposition to my May 1, 2002 disqualification/disclosure motion – one physically annexing a copy of her March 22, 2001 brief, to which the Court was referred.
>
> As you know, in the year and a half since May 3, 2001, neither you, your staff, nor the Commission have denied or disputed the accuracy of my 66-page critique of Ms. Fischer's March 22, 2001 brief. This includes not denying or disputing the dispositive nature of the critique's three 'highlights'[fn. 5], demonstrating Ms. Fischer's brief to be fashioned on deceits from Justice Cahn's decision in *Doris L. Sassower v. Commission*, Justice Lehner's decision in *Michael Mantell v. Commission*, and the Appellate Division, First Department's 'affirmance' in *Mantell*. Ms. Fischer now incorporates these and other flagrant deceits in her purported 'summarized' 'Statement of the Case' (at pp. 2-4) in her November 8, 2002 memorandum of law."

20. As my November 21, 2002 letter to Mr. Spitzer did not identify the specific "flagrant deceits" in Ms. Fischer's "Statement of the Case", I will briefly set them forth so that the foregoing extensive summary of Ms. Fischer's November 8, 2002 memorandum of law will have the same meticulous, line-by-line quality as my responses to her other fraudulent court submissions, among them, her May 17, 2002 memorandum of law in opposition to my disqualification/disclosure motion.

21. Like her "Statement of the Case" in her May 17, 2002 memorandum, Ms. Fischer's instant "Statement of the Case" is procedurally improper. A "Statement of the Case" is ALREADY before the Court – here presented by my

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fn. 5 "These three dispositive 'highlights', referred to repeatedly in my submissions in the Appellate Division, First Department and in my

motion's "Why the Question Presented Merits Review". What Ms. Fischer had to do was to offer a "Counterstatement"[11] if she disagreed with my recited facts as to my analyses of the five fraudulent lower court decisions and the conflict of four of these with *Nicholson*. It is to divert from her failure to contest ANY of the facts on which my motion is based that Ms. Fischer offers up her irrelevant "Statement of the Case", which, in addition to referring the Court to her fraudulent March 22, 2000 respondent's brief in the Appellate Division, materially misrepresents my verified petition [A-22-46], materially misrepresents Justice Wetzel's January 31, 2000 decision [A-9-14; motion, Ex. "C"], and materially misrepresents the Appellate Division's December 18, 2001 decision [motion, Ex. "A"]. This is obvious from comparison of her "Statement" with those three specific documents.

22. Most of the text of Ms. Fischer's "Statement of the Case" (pp. 2-4) repeats, *verbatim* or nearly so, the text from her May 17, 2002 "Statement of the Case" (pp. 2-5) – notwithstanding its knowingly false and deceitful nature was particularized with line-by-line precision by my critique of her May 17, 2002 memorandum, annexed as Exhibit "C" to my June 7, 2002 reply affidavit thereto. Ms. Fischer never denied or disputed the accuracy of this critique – even in her

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correspondence with you relative thereto, are pages 3-5, 5-11, and 40-47 of my May 3, 2001 critique of Ms. Fischer's brief."

[11] The Commission did NOT cross-appeal. Therefore, Ms. Fischer was limited to a "counterstatement of the nature and facts of the case...only if respondent disagrees with the statement of the appellant" (CPLR §5528).

June 28, 2002 "affirmation" in opposition to my June 17, 2002 motion to strike her May 17, 2002 memorandum as a fraud on the court, etc.

23.. For the convenience of the Court, a copy of pages 10-16 of this June 7, 2002 critique, applicable to her repeated falsehoods and distortions in her instant "Statement of the Case", is annexed (Exhibit "C")[12]. Among the regurgitated deceits are that my Article 78 proceeding alleged that the Commission was required to conduct "comprehensive" investigations of facially meritorious complaints; that the Commission had concluded, relative to my complaints, that they did not warrant "full-scale" investigations; and that, in dismissing my proceeding, Justice Wetzel relied on the appellate decision in *Mantell v. Commission* that the petitioner therein "had no standing...".

24. Ms. Fischer's instant "Statement of the Case", however, exceeds her May 17, 2002 "Statement of the Case" in deceitfulness by its material deletions of select sections of her earlier text. Most significantly:

(a) at the beginning of the second line on page 3 of her instant "Statement", Ms. Fischer has deleted the parenthesized clause between the words "Supreme Court" and "held" that appeared at page 3 of her prior "Statement", *to wit*:

> "(following Justice Cahn's decision in D. Sassower v. Commission, N.Y. Co. Clerk's No. 109141/95, a

[12] *Also see* pages 5-9, not herein included, pertaining to the procedurally improper and irrelevant nature of Ms. Fischer's May 17, 2002 "Statement of the Case" AND the fact that her Subsection A therein: "The Underlying Article 78 proceeding" was "lifted" from pages 2-4 of her August 30, 2001 memorandum of law in opposition to my August 17, 2001 motion, notwithstanding its fraudulence was repeatedly documented by me.

> nearly identical proceeding brought by petitioner's mother, Doris Sassower)".

The deletion of this parenthesized clause conceals that Justice Wetzel's decision did NOT "hold" what Ms. Fischer claims. Rather, Justice Wetzel's decision relied on Justice Cahn's decision in "Sassower v. Commission on Judicial Conduct, Index No. 109141/95" to dismiss my verified petition, falsely representing that such prior proceeding had been brought by me, that it "sought virtually the same relief", and that the decision therein had "addressed the same issues" [A-12; motion, Ex. "C"]. These multiple flagrant falsehoods by Justice Wetzel are detailed at pages 55-58 of my comprehensive analysis of the decision, *to wit*, my December 22, 2002 appellant's brief, where they were shown to be inexplicable except as a manifestation of Justice Wetzel's self-interest and actual bias.

As Ms. Fischer's memorandum nowhere mentions Justice Cahn's decision in *Doris L. Sassower v. Commission*, she thus conceals that it is one of the five fraudulent lower court decisions encompassed by my appeal. Such decision, the only one of the five decisions not to contravene *Nicholson*, is contrary to the other four decisions in that it does NOT purport, as do they, that Judiciary §44.1 is discretionary.

(b) page 3 of Ms. Fischer's instant "Statement" directly under her subheading "B": "Proceedings Before The Appellate Division" (at pp. 3-4), deletes the entire first paragraph from page 4 of her May 17, 2002 "Statement" under the identical subheading. This paragraph pertained to my August 17, 2001

motion, whose first branch sought the Appellate Division, First Department's disqualification for interest and bias and for disclosure, and whose second branch sought to strike Ms. Fischer's March 22, 2001 respondent's brief as a "fraud on the court", sanctions against her, the Attorney General and his culpable staff and the Commission, disciplinary and criminal referrals, and the Attorney General's disqualification for violation of Executive Law §63.1 and conflict of interest rules.

Ms. Fischer's instant "Statement" then deletes from her description of the Appellate Division's December 18, 2001 decision the continuation of her first sentence as it appeared in her May 17, 2002 "Statement", *to wit*, that it "denied petitioner's motion for recusal, disqualification, and sanctions".

Ms. Fischer thereby obliterates "The Threshold and Decisive Issue" of the Appellate Division's interest and bias, highlighted by my May 1, 2002 jurisdictional statement as the very basis for my appeal of right. Indeed, the Appellate Division's interest and bias, including its denial of my August 17, 2001 motion, *without* reasons, *without* findings, and by *falsifying* the relief sought, is reflected in the first four questions proposed for review by my jurisdictional statement (pp. 11-12).

Such questions, taken from my February 20, 2002 affidavit in support of my motion in the Appellate Division for leave to appeal, are also presented by my October 24, 2002 motion for leave, which expressly refers the Court to that affidavit for "the related transcending issues encompassed by this appeal" (p. 21).

(c) the second line at page 4 of Ms. Fischer's instant "Statement", preceding the words "With respect to". Deleted is the sentence at pages 4-5 of her May 17, 2002 "Statement" which, referring to the Appellate Division's December 18, 2001 decision, read,

> "Further, 'inasmuch as petitioner has failed to demonstrate that she personally suffered some actual or threatened injury as a result of the putatively illegal conduct, she lacks standing to sue the Commission.' (Juris. Ex. B, pp. 1-2)."

This deleted text, combined with Ms. Fischer's false presentation at page 3 of her instant "Statement" to make it appear that Justice Wetzel's decision relied on the *Mantell* appellate decision "holding that petitioner had no standing..." – when the decision in *Mantell* on which Justice Wetzel relied was Justice Lehner's lower court decision which did NOT rest on "standing", conceals that the Appellate Division's December 18, 2001 decision did more than "unanimously affirm[]", as page 3 of Ms. Fischer's instant "Statement" also misrepresents . As particularized, with legal authority, by pages 13-17 of my May 1, 2002 jurisdictional statement, the Appellate Division ADDED a new ground of "standing", NOT part of Justice Wetzel's decision, as a basis to dismiss my proceeding, thereby raising issues of constitutional due process, which the Appellate Division's decision itself concealed by its violation of the requirements of CPLR §5712.

Finally, the *Mantell* appellate decision did NOT "hold" what Ms. Fischer purports at page 3 of her "Statement", *to wit*, "petitioner had no standing to seek

an order compelling the Commission to investigate a particular complaint, because such an investigation was a discretionary act, rather than an administrative act". The Appellate Division's "holding" was that Mr. Mantell lacked "standing to assert that, under Judiciary Law §44(1), [the Commission] is required to investigate all facially meritorious complaints of judicial misconduct", which, whatever its meaning as to whether Mr. Mantell had standing as to his *own* complaint (motion, p. 15), was NOT conjoined with any reason as Ms. Fischer suggests, not only at page 3 in her "Statement of the Case", but at page 5 in her "Argument", where she essentially repeats her concocted version of the *Mantell* appellate decision.

25. Insofar as Ms. Fischer's "Argument" EXCLUSIVELY relies on the *Mantell* appellate decision to support her claim that this appeal is "not 'novel'" (p. 4-5), examination of my motion shows I am not seeking review on grounds of novelty – although any number of the extraordinary and far-reaching facets of this appeal are plainly "novel". As illustrative,

(a) the opportunity, indeed, the duty, for this Court to enunciate procedural and adjudicative standards for the adjudication of judicial disqualification/recusal motions – such as do NOT presently exist – and, additionally, to demonstrate those standards by its own example;

(b) the opportunity, indeed, the duty for this Court to interpret Executive Law §63.1 pertaining to the Attorney General's advocacy in litigation – such as does NOT presently exist;

(c) the opportunity, indeed, the duty for this Court to enunciate "whether and under what circumstances, a filing injunction is constitutional – and whether [the Court's] decision in *AG Ship Maintenance v. Lezak*, 69

NY2d 1 (1986), and the subsequent promulgation of 22 NYCRR §130-1.1 preempts or forecloses such 'inherent power' remedy (*Cf.* [] Appellant's Brief, pp. 67-68)" [jurisdictional statement, p. 19] – such as does not exist;

(d) the opportunity, indeed, the duty, to address, from the perspective of the public and its rights, a panoply of statutory and rule provisions relating to the Commission – such as does not exist;

(e) the opportunity, indeed, the duty, to articulate the adjudicative standards, governing imposition of "lack of standing" – including, for the first time, on appeal – such as does not exist.

26. As for Ms. Fischer's pretense, at the outset of her "Argument" (p. 4), that "This case raises no issue that is '...of public importance, or [which] involve[s] a conflict with prior decisions of this Court...', 22 NYCRR §500.11(d)(1)(v)", *Nicholson* suffices to establish both the "public importance" and "conflict" – and is explicitly so-identified by my February 20, 2002 motion in the Appellate Division for leave to appeal (¶¶8-11, 14-16, 19-21), to which my October 24, 2002 motion refers the Court. The dispositive significance of *Nicholson* in establishing these two grounds for review is the clear reason for Ms. Fischer's wilful concealment of it.

27. Finally, as to the concluding paragraph of Ms. Fischer's "Argument" (p. 5), each of its two sentences is a wilful and deliberate deceit. This appeal does NOT concern "straightforward application of a well-established rule of law, that mandamus will not lie to compel performance of a discretionary act", as Ms. Fischer pretends, but, rather the plain-meaning of Judiciary Law §44.1, imposing

upon the Commission a mandatory investigative duty which is NOT discretionary – a fact recognized by *Nicholson*.

28. Further, insofar as Ms. Fischer's parting pretense that "Particularly in view of petitioner's consistently reckless and abusive litigation tactics, her case does not merit this Court's review", the record – beginning with this motion -- readily establishes that I have "consistently" met the highest standards of professionalism, with advocacy that is meticulously documented, both factually and legally. This includes my motions requesting sanctions against Ms. Fischer and her superiors at the Attorney General's office and the Commission, substantiated with line-by-line critiques, whose accuracy have never been denied or disputed.

29. As particularized by my February 20, 2002 motion for leave to appeal, which I hereby expressly incorporate by reference, as if set forth in full, the granting of leave is further warranted as:

> "The Attorney General's flagrant and unremitting violations of New York's Disciplinary Rules of the Code of Professional Responsibility (22 NYCRR §1200 *et seq.*) – applicable to *every* lawyer in this State and whose enforcement in the First Judicial Department is vested in this Court (Judiciary Law §90.2, 22 NYCRR §603 *et seq.*) -- is an additional issue of transcending 'public importance', as likewise the Attorney General's flagrant and unremitting violations of Judiciary Law §487 and 22 NYCRR §130-1.1, similarly applicable to *every* lawyer in this State." (2/20/02 motion, ¶12).

CONCLUSION

The foregoing demonstrates that Ms. Fischer's paltry six-page memorandum of law is fashioned on knowing falsification, deceit, and concealment, *without* denying or disputing ANY of the facts and law upon which my motion for leave to appeal rests. As such, I am entitled to the sanctions relief requested at ¶3 herein, in addition to the granting of the motion, so that fundamental standards of professional responsibility and the rule of law may be vindicated on this transcendingly important appeal.

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Sworn to before me this
3rd day of December 2002

Notary Public

TABLE OF EXHIBITS