SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 50E

ELENA RUTH SASSOWER, Coordinator of The Center for Judicial Accountability, Inc., Acting Pro Bono Publico,	:	
Petitioner,	:	DECISION AND ORDER
-against-	:	INDEX NO. 108551/99
COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF NEW YORK,	:	
Respondent.	:	

WILLIAM A. WETZEL, J.:

In this CPLR Article 78 proceeding, petitioner Elena Ruth Sassower, ("Petitioner") suing as the "coordinator" of the Center for Judicial Accountability, Inc. ("CJA"), seeks mandamus, prohibition, and a declaratory judgment, that:

(1) declares 22 NYCRR §§7000.3 and 7000.11, and Judiciary Law §§ 45, 41.6 and 43.1 to be unconstitutional;

(2) vacates the Commission's December 23, 1998 dismissal of petitioner's October 6, 1998 complaint against a judicial candidate for the Court of Appeals;

(3) compels removal of Commission member Harold Berger;

(4) compels the Commission to "receive" and "determine" petitioner's February 3, 1999 complaint against a Justice of the Appellate

Ex "C" 9

Division, Pet. Exh. F-6;

(5) directs the Governor to appoint a special prosecutor to investigate judicial corruption;

(6) refers the Commission to authorities for "appropriate criminal and disciplinary investigation," and

(7) imposes a $250 fine against the Commission pursuant to POL § 79. See Petition ("Pet."), Para. Fifth.

The respondent, appearing by the Attorney General of the State of New York, has filed a Motion to Dismiss dated May 24, 1999.

The petitioner filed a "Motion for Omnibus Relief "dated July 28, 1999, seeking inter alia, (1) to disqualify the Attorney General; (2) to impose a default judgment by nullifying an Order of Justice Lebedeff granting respondent an extension of time; (3) sanctions against the Attorney General and his staff, and; (4) referral for criminal action against staff members of the Attorney General.

The proceeding has been marked by petitioner's deluge of applications seeking recusal of each of the various assigned judges. For the most part, these applications have been based upon the 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. Petitioner further asserts a potpourri of grounds for recusal, and then particularizes its application as to this court in

a letter and attachments dated December 2, 1999, which contain specific allegations of impropriety.

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. Petitioner cannot however bootstrap a conflict where none exists merely by making accusations against a court. This court must and indeed has seriously considered the application for recusal and is acutely aware that it is not only actual conflicts which compel recusal, but also the appearance of conflicts. However, this court is also aware that the determination of the existence of an appearance of conflicts requires an objective basis, not simply a litigant's bald assertion. This court has no conflict, in fact or in "appearance."

Equally important as the obligation to recuse when appropriate is the obligation to decide the case when there is no legal basis for recusal. This matter has now been assigned to at least seven different judges of this court. The submitted papers exceed fourteen inches in height and required two court officers to deliver to chambers. There are individual "letters" from the petitioner which include upwards of ten exhibits and measure in excess of two inches, as well as a so-called "Omnibus motion" an inch thick. Although the original return date was May 14, 1999, heretofore this matter has not been considered on its merits.

When a court recuses itself without a proper basis, it undermines respect for

the judiciary, encourages forum-shopping, unnecessarily prolongs litigation, and unfairly "passes the buck" to other judges. Obviously, all of these ramifications are highly undesirable. This squandering of judicial resources must come to a halt. Since petitioner's assertions as to this court are devoid of merit, in law or in fact, the application for recusal is denied.

By refusing to recuse myself, I will undoubtedly join the long list of public officials and judges who are the objects of petitioner's relentless vilification. Nonetheless, my oath of office does not permit me to unnecessarily grant a baseless recusal motion merely to avoid this unwanted and unwarranted ridicule. The Second Circuit in U.S. v. Bayless, 1/21/00 N.Y.L.J. 25, (col. 4), at 29, (col. 6), cautioned that recusal is not intended to be "used by judges to avoid sitting on difficult or controversial cases."

The issue raised in this Article 78 proceeding is a matter which was previously resolved by Justice Cahn of this Court in his decision of July 13, 1995, in Sassower v. Commmission on Judicial Conduct, Index No. 109141/95. In that case, the same petitioner sought virtually the same relief requested herein, and the decision addressed the same issues. That petition was dismissed. Justice Cahn's decision is, in the first instance, res judicata as to the within petition. Further, it is sound authority in its own right for the dismissal of the petition. Finally, the doctrine of collateral estoppel applies.

On September 30, 1999 -- after this petition was filed-- Justice Lehner

decided Mantell v. Commission on Judicial Conduct, 181 Misc. 2d 1027 (Sup. Ct. N.Y. Co. 1999). Judge Lehner's decision is a carefully reasoned and sound analysis of the very issue raised in the within petition. This Court adopts Justice Lehner's finding that mandamus is unavailable to require the respondent to investigate a particular complaint. This Court notes that 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.

Our finite judicial resources are in great demand. The need to improve access to the courts for those with justiciable issues has been acknowledged by the recent creation of the Office of Deputy Chief Administrative Judge for Justice Initiatives directed by the Hon. Juanita Bing Newton. This important objective is seriously impeded by protracted, frivolous litigation.

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. Therefore, the petitioner Elena Sassower and The Center for Judicial Accountability, Inc. are enjoined from instituting any further actions or proceedings relating to the issues decided herein. In order to assure compliance, it is hereby ordered that any future actions by petitioner which raise any possible question as to a violation of this injunction should be referred to this court and are to be deemed "related matters" in order that a preliminary determination can be made as to whether they fall within the parameters of this injunction.

Authority for injunctive relief is found in Sassower v. Signorelli, 99 AD2d 358 (2nd Dept. 1984). In Sassower, the court was faced with the "use of the legal system as a tool of harassment." The court noted that while normally the doctrine of former adjudication serves as a remedy against repetitious litigation, frivolous claims can still be extremely costly to the defendant and "waste an inordinate amount of court time, time that this court and the trial court can ill-afford to lose." The Appellate Division concluded that where there is such an abuse of the judicial process, a court of equity may enjoin vexatious litigation. This court concludes that the petitioner is indeed engaged in vexatious litigation and therefore injunctive relief is necessary to best serve the interests of justice and the conservation of judicial resources.

For all of the above reasons, the respondent's motion to dismiss is in all respects granted. All of petitioner's other requests for relief are denied.

The foregoing constitutes the decision, order, and judgment of this court. The clerk is directed to enter judgment dismissing the petition.

Dated: New York, New York
January 31, 2000

JUSTICE OF THE SUPREME COURT
WILLIAM A. WETZEL