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TO: NEW YORK STATE ATTORNEY GENERAL ELIOT SPITZER
ATT: David Nocenti, Counsel
Mark Peters, Chief, "Public Integrity Unit"
William Casey, Chief of Investigations

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT
ATT: Commissioners
Gerald Stern, Administrator & Counsel

FROM: ELENA RUTH SASSOWER, COORDINATOR

RE: **Your ethical and professional duty to take steps to vacate for fraud the Appellate Division, First Department's December 18, 2001 decision in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York* (NY Co. 108551/99) -- and to secure the criminal prosecution of the five-judge appellate panel, in addition to initiation of disciplinary proceedings to remove them from the bench**

DATE: January 7, 2002

Once again, this is to put you on notice of your ethical and professional duty to take steps to vacate for fraud the fraudulent judicial decisions of which you are the beneficiaries. The latest of these is the Appellate Division, First Department's *per curiam*, seven-sentence December 18, 2001 decision & order in my above-entitled public interest Article 78 proceeding (Exhibit "A")[1], affirming the decision of Acting Supreme Court Justice William A. Wetzel [A-9-14]. Such appellate affirmance perverts the most basic adjudicative standards and obliterates anything resembling the rule of law. This would be *immediately* obvious had the five-judge panel made *any* findings as to the state of the record and identified *any* of my appellate arguments with respect thereto. Instead, by bald and misleading claims

[1] This seven-sentence count excludes the boilerplate announcement, in capital letters, in the decision's final sentence, "THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT."

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Ex "B-1" Ex "L-1"

and by citation to cases it does *not* discuss, the panel flagrantly falsifies the state of the record and knowingly misrepresents legal principles and their applicability. This, to "protect" the Commission and those complicitous in its corruption from the consequences of an adjudication based on the *uncontroverted* documented facts in the record and the *uncontroverted* law pertaining to those facts.

As such, the Appellate Division's decision – like the fraudulent decision of Justice Wetzel it affirmed – is a criminal act – and your duty is also to secure the criminal prosecution of the collusive and conspiring five appellate judges, *to wit*, Presiding Justice Eugene L. Nardelli, Angela M. Mazzarelli, Richard T. Andrias, Betty Weinberg Ellerin, and Israel Rubin. This is additional to securing disciplinary proceedings to remove these judges from the bench – which, pursuant to Judiciary Law §44.2, the Commission may initiate "on its own motion"[2].

The standard for removal, set forth in the Appellate Division's *own* caselaw, was presented, *without controversion*, at the outset of my Appellant's Brief (at p. 4), in summarizing my entitlement not only to reversal of Justice Wetzel's fraudulent decision, but to action by the Court to secure his removal from the bench:

> "'*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)."

This was further amplified by a footnote, stating:

> "*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)... '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

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[2] To avoid any delay in the Commission's *sua sponte* initiation of a judicial misconduct complaint against the five-judge appellate panel, pursuant to Judiciary Law §44.2, I am simultaneously filing this memorandum with the Commission, pursuant to Judiciary Law §44.1, as a *facially-meritorious* judicial misconduct complaint against them.. As the Commission has an obvious self-interest in this *facially-meritorious* complaint, the Commission should advise as to what steps it will take to ensure that it is fairly and impartially determined.

> 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)".

Thus, the five-judge appellate panel was fully aware of the consequences of its official misconduct herein.

To aid your review of this analysis of the corrupt December 18th appellate decision (Exhibit "A"), a Table of Contents follows:

I. THE COURT'S KNOWING AND DELIBERATE *FALSIFICATION* OF THE RELIEF REQUESTED BY MY THRESHOLD AUGUST 17TH MOTION, *DENIED WITHOUT REASONS OR FINDINGS* IN THE DECISION'S FINAL SENTENCE, MANIFESTS ITS CONSCIOUSNESS OF ITS "IMPROPER MOTIVES", "FRIENDSHIP[S]", AND "FAVORITISM"

The Court's conscious knowledge of its "improper motives", "friendship[s]", and "favoritism" is evident from its deliberate concealment in the seventh and final sentence of its decision (Exhibit "A") of the threshold and dispositive relief requested by my August 17th motion, which, *without reasons or findings*, it purports to deny.

The August 17th motion, assigned the designation M-4755 by the Clerk's Office, was NOT, as the seventh sentence purports, "a motion seeking leave to adjourn oral argument of this appeal and for other relief". NOWHERE does my August 17th motion seek "leave to adjourn oral argument".

The relief requested by my August 17th motion was to:

> "specially assign[] this appeal to a panel of 'retired or retiring judge[s], willing to disavow future political and/or judicial appointment' in light of the disqualification of this Court's justices, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, for self-interest and bias, both actual and apparent, and, if... denied, for transfer of this appeal to the Appellate Division, Fourth Department. In either event, or if neither is granted, for the justices assigned to this appeal to make disclosure, pursuant to §100.3F of the Chief Administrator's Rules, of the facts pertaining to their personal and professional relationships with, and dependencies on, the persons and entities whose misconduct is the subject of this lawsuit or exposed thereby".

This, in addition to seeking "permission for a record to be made of the oral argument of this appeal, either by a court stenographer, and/or by audio or video recording", was the whole of the first branch. The second branch was to strike the Attorney General's Respondent's Brief,

> "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), (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".

Based on such findings, this second branch also sought sanctions against the Attorney General and Commission, including disciplinary and criminal referral, as well as the Attorney General's disqualification from representing the Commission for violation of Executive Law §63.1 and conflict of interest rules.

Not only was this relief crystal clear from my August 17th notice of motion, but its threshold and dispositive nature was the very basis upon which I made my November 16th interim relief application to adjourn the November 21st oral argument pending adjudication of my unadjudicated August 17th motion[3]– which application was *unopposed*. It was also the basis for my *unopposed* November 19th interim relief application. The November 16st interim relief application was denied on November 19th, *without reasons or findings*, by the panel's Presiding Justice Nardelli. The November 19th interim relief application was denied on November 20th, *without reasons or findings*, by the Appellate Division's then Presiding Justice Sullivan. Both these denials were PRIOR to the November 21st oral argument – a fact I emphasized at the oral argument, where I protested that there was NO LAW to justify the Court proceeding with oral argument without first adjudicating my threshold August 17th motion, each of whose two particularized branches of relief I orally summarized (Exhibit "B", pp. 2-4)[4].

Consequently, there is nothing "merely erroneous" in the decision's seventh sentence, falsifying the relief sought by M-4755 -- and then, *without reasons or findings*, purporting to deny it. Indeed, based on the record, it must be deemed a tacit admission by the Court that had it identified the *actual* relief M-4755 sought,

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[3] The Court omits *any* identification as to the basis upon which M-4755 was allegedly "seeking leave to adjourn oral argument".

[4] There is no official record of the November 21st oral argument because, in denying my interim relief applications, Justices Nardelli and Sullivan also denied my requests therein for a record to be made of the oral argument, either stenographically or by audio/video taping. There is, however, an improvised record, consisting of the written statement from which I read at the oral argument – annotated by my reconstruction of what took place (Exhibit "B"). The Court received this improvised record under a November 30th letter, requesting permission to supplement the record pursuant to §600.11(f)(4) of the Court's rules (Exhibit "C"). According to the Court's Motions Clerk, Ron Uzenski, my November 30th letter "went up" on that date and the Court's disposition thereon should be in its December 18th decision. No disposition is reflected by the decision (Exhibit "A").

it would have been compelled to provide a reasoned decision, which it could not do without conceding my entitlement thereto.

My Appellant's Brief (at p. 38) highlighted, *without controversion*, the necessity that decisions on recusal be reasoned and address the specific facts set forth as warranting recusal. This, in the context of my argument concerning Justice Wetzel's denial of my recusal application, *without any findings* as to the grounds the application had presented and *without* even identifying those grounds.

> "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.
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> The law is clear... that 'failing to respond to a fact attested in the moving papers ... will be deemed to admit it....'"

Just days before the November 21st oral argument, the Court, in *Nadle v. L.O. Realty Corp.*, 2001 WL 1408240[5], expressly recognized that reasoned decisions assure litigants that "the case was fully considered and resolved logically in accordance with the facts and law" and, for the same reason, are "necessary from a societal standpoint". Both my *unopposed* November 16th interim relief application (¶¶22-25) and my November 21st oral argument (Exhibit "B", p. 4) emphasized the Court's *Nadle* decision.

As it is, the Court's decision does NOT deny or dispute *any* aspect of my factual or legal showing in support of my threshold August 17th motion. This is all the more significant as the record before the Court showed that, as to the first branch of my

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[5] Although the Court, in *Nadle*, expressly took the "opportunity" of its decision to serve an educational purpose and instruct the lower courts to support their rulings with reasons – the importance of which the New York Law Journal recognized by a November 14th front-page item – the decision is apparently NOT being published, at least not by New York Supplement (2nd Series). Despite the lapse of seven weeks since the Court rendered the November 13th decision, there is no text citation for it.

By contrast, within three weeks of the Court's December 18th decision herein – a decision serving no purpose but to mislead the public and legal community as to the feasibility of lawsuits against the Commission and the legal sufficiency of my lawsuit and the manner in which I advanced it -- it has already been published in New York Supplement (2nd Series) under the citation 734 NYS2d 68.

motion, the Commission – with "unparalleled expertise as to the standards for judicial disqualification and disclosure, with [a] myriad of caselaw examples at its disposal, including its own caselaw" – had NOT denied my demonstration of the Court's disqualification for apparent bias[6], that its opposition to my demonstration of the Court's disqualification for interest and actual bias[7] was fashioned on NO law and on *wilful and deliberate* falsification, distortion and omission of my substantiated factual allegations and, that my right to pertinent disclosure by members of the appellate panel was *undenied*[8]. The Court's knowledge of these facts is clear from my November 21st oral argument, where I specifically brought them to its attention (Exhibit "B", p. 4).

As to the second branch of my threshold August 17th motion – to strike the Attorney General's Respondent's Brief as a "fraud on the court", for sanctions, including disciplinary and criminal referral, and the disqualification of the Attorney General -- the record before the Court showed that my entitlement was not just *uncontroverted*, but essentially *undisputed*[9]. Indeed, the record showed that the Attorney General's opposition to the whole of my August 17th motion, on behalf of the Commission, was so completely "non-probative and knowingly false, deceitful and frivolous" as to entitle me to additional sanctions against both the Attorney General and Commission – which is what my October 15th reply affidavit expressly requested (¶¶2, 3).

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[6] In addition to the apparent bias grounds for disqualification set forth at ¶¶68-74 of my August 17th moving affidavit, is the subsequently discovered additional ground based on the fact that the Commission's Administrator was formerly employed at the Appellate Division, First Department as its "Director of Administration of the Courts" [¶¶31-32 of my October 15th reply affidavit].

[7] As identified by my August 17th motion (¶69 of my moving affidavit) – and undisputed by the Commission -- the grounds constituting the Court's disqualification for interest and actual bias also constitute grounds for its disqualification for apparent bias.

[8] *See* my October 15th affidavit: Exhibit "AA" thereto, pages 28-48, 56; my November 16th interim relief application (Exhibit "C" thereto, p. 7).

[9] *See* my October 15th reply affidavit: Exhibit "AA" thereto, pp. 11-13, 49-55.

II THE COURT'S FAILURE TO MAKE *ANY* FINDINGS AS TO MY THRESHOLD AUGUST 17th MOTION REFLECTS ITS KNOWLEDGE THAT FINDINGS WOULD ESTABLISH MY ENTITLEMENT TO THE RELIEF REQUESTED THEREIN, AS WELL AS TO THE RELIEF REQUESTED BY MY APPELLANT'S BRIEF

The echoes between my threshold August 17th motion -- involving the integrity of the appellate process -- and my underlying appeal -- involving the integrity of the judicial process -- were highlighted by my November 16th interim relief application (at ¶26) and my written statement at the November 21st oral argument (Exhibit "B", p. 5, fn. 5).

From the record before it, the Court knew that making findings as to whether it was disqualified for interest under Judiciary §14 would expose not only its own non-discretionary "legal disqualification", but the non-discretionary "legal disqualification" of Justice Wetzel. This, because the first two grounds in my threshold August 17th motion for the Court's disqualification for interest replicated grounds in my threshold application for Justice Wetzel's recusal. Thus, if the Court found, based on my first ground for its disqualification (¶¶8-14 of my moving affidavit), that it had a proscribed interest in the proceeding because its justices are all under the Commission's disciplinary jurisdiction, such finding would apply, *with even more force*, to Justice Wetzel, who had recently been the beneficiary of the Commission's unlawful dismissal of a *facially-meritorious* complaint against him [A-256-257, 311] – which could have been resubmitted by the complainant or revived by the Commission *sua sponte* were Justice Wetzel to have ruled that Judiciary Law §44.1 imposes on the Commission a mandatory duty to investigate *facially-meritorious* complaints[10]. Likewise, if the Court found, based on my second ground for its disqualification (¶¶15-31 of my moving affidavit), that it had a proscribed interest in the proceeding because its justices are varyingly dependent for redesignation and elevation on Governor Pataki[11], implicated in the corruption that is the subject of this lawsuit, such finding

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[10] Actually, Justice Wetzel had been the recent beneficiary of the Commission's unlawful dismissal of an ADDITIONAL series of three *facially-meritorious* complaints against him. My Appellant's Brief (p. 29, fn. 11) noted that the details were set forth at pages 29-30 of my February 23, 2000 letter to Governor Pataki. [My August 17th motion annexed a copy of that letter as Exhibit "F"].

[11] In a front-page story, the December 28th New York Law Journal reported that Governor Pataki had announced the redesignation of 22 appellate judges. Among these, Justice Andrias, who the Governor redesignated to a new five-year term, and Justice Ellerin, also redesignated by the Governor, after being certified by the Administrative Board for two years. Thereafter, in a front-page item in the December 31st Law Journal, it was reported that Justice Nardelli – the appellate panel's presiding justice – had, by operation of law, become the Appellate Division,

would apply *even more strongly* to Justice Wetzel, who was dependent on the Governor for each day he remained on the bench, his appointive term having long before expired [A-253-255, 310-311]. Plainly, too, if Justice Wetzel were disqualified for interest pursuant to Judiciary Law §14, his appealed-from decision could *not* be affirmed. It could only be voided, based on the treatise authority I quoted at the November 21st oral argument (Exhibit "B", p. 3) – authority also before Justice Wetzel on my application for his recusal [A-232].

From the record, the Court also knew that making findings as to my motion's second ground for its disqualification, based upon its dependency on Governor Pataki, and as to the third ground, based on its dependency on Chief Judge Kaye (¶¶32-48 of my moving affidavit), would expose the fraudulence of Justice Wetzel's appealed-from decision, making affirmance impossible for that reason as well. Findings as to these two grounds would require verifying the accuracy of my *undisputed* 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-52-54; A-189-194] and of my *undisputed* 13-page analysis of Justice Lehner's decision in *Mantell v. Commission* [A-321-334; A-299-307][12] – both of which I had provided to the Governor and Chief Judge. This, in turn, would expose the fraudulence of Justice Wetzel's decision, whose dismissal of my Verified Petition rested *exclusively* on the decisions of Justices Cahn and Lehner [A-12-13]. As highlighted by my Appellant's Brief (pp. 35, 60), Justice Wetzel's decision not only made *no* findings as to the accuracy of my two *undisputed* analyses, in the record before him, but *concealed* their very existence [A-13]. This is repeated in the Court's decision (Exhibit "A"), which makes *no* findings as to these two *undisputed* analyses [A-52-54; A-321-334], whose existence it also conceals.

First Department's Presiding Justice until the Governor names a permanent replacement. These facts, had they been disclosed, would have automatically disqualified Justices Andrias and Ellerin and, possibly Justice Nardelli, whose misconduct herein may have already been rewarded by the Governor's delaying his appointment of a new Presiding Justice to enable Justice Nardelli to have such temporary honor.

As to the long anticipated vacancy in the position of Presiding Justice, the Law Journal identified, at least as early as October 19th, that Justice Andrias "must be considered a contender" as he has "known the Governor since the two were students at Columbia Law School" (front-page item). This friendship, had it been disclosed, would have also disqualified Justice Andrias.

[12] Although I have heretofore referred to such analyses as *uncontroverted*, they are, in fact, *undisputed*. The record shows that the Attorney General and Commission have not only never denied or disputed the accuracy of these two analyses, they have refused to even acknowledge their existence (*see* page 60 of my Appellant's Brief and pages 3-5 of my Critique). The same is true of my 1-page analysis of the Court's appellate decision in *Mantell, infra* [Exhibit "R" to my August 17th motion].

From the record, the Court knew that making findings as to the accuracy of my *undisputed* 13-page analysis of Justice Lehner's fraudulent decision in *Mantell* [A-321-334] would necessarily expose the fraudulence of its own *Mantell* appellate decision, 277 AD2d 96, *lv denied* 96 NY2d 706. The importance of the *Mantell* appellate decision to the Court's decision on my appeal (Exhibit "A") is clear from the fact that of the seven cases it cites -- *all without discussion* -- the *Mantell* appellate decision is cited first and the only one cited without the prefatory "*see*". According to The Blue Book: A Uniform System of Citation (Harvard Law Review Association, 17th edition, 2000), "*see*" before a legal citation means that there is "an inferential step between the authority cited and the proposition it supports". In other words, "the proposition is not directly stated by the cited authority" (at pp. 22-23). Thus, the Court's decision on my appeal rests on only a single supposedly on-point case – its *Mantell* appellate decision[13].

The fraudulence of the *Mantell* appellate decision was the fourth ground upon which my August 17th motion sought the Court's disqualification – for actual bias in addition to interest (¶¶49-67 of my moving affidavit). As particularized, I made a motion in the *Mantell* appeal to prevent the "fraud on the court" therein being committed by the Attorney General, whose Respondent's Brief feigned the correctness of Justice Lehner's decision and resurrected the Commission's unsuccessful argument, not accepted by Justice Lehner, that Mr. Mantell lacked standing. In support of my motion, I annexed my *undisputed* 13-page analysis of Justice Lehner's decision, as well as an excerpt from Professor David Siegel's New York Practice, §136 (1999 ed., pp. 223-5), which, referencing *Matter of Dairylea Cooperative v. Walkley,* identified that the test for standing is a "liberal" and "expanding" one and that "[o]rdinarily only the most officious interloper should be ousted for want of standing"[14]. The *Mantell* appellate panel[15] denied my motion, *without reasons or findings*, in the last sentence of its four-sentence appellate decision[16], simplifying the motion as "seeking leave to intervene and for other

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[13] The Court's reliance on the *Mantell* appellate decision underscores my entitlement to intervene in the *Mantell* appeal – which was among the relief I sought on that appeal by formal motion – denied, *without reasons*, by the *Mantell* appellate panel, *infra.*

[14] This excerpt from New York Practice appears at pages 42-43 of my Critique of Respondent's Brief, *infra.*

[15] Justice Mazzarelli was a member of the *Mantell* appellate panel – a fact she should have disclosed. Indeed, because of her clear self-interest that the Court NOT make findings as to the accuracy of my two analyses establishing the fraudulence of the *Mantell* appellate decision and Justice Lehner's underlying decision – findings essential to both my August 17th motion and my appeal -- she was obligated to have disqualified herself.

[16] This four-sentence count excludes the boilerplate announcement, in capital letters, in the

related relief". This followed three conclusory sentences affirming Justice Lehner's decision, *without* reference to my *undisputed* 13-page analysis, including an ambiguous, factually false and misleading sentence purporting that Mr. Mantell lacked standing – for which legal proposition the *Mantell* appellate panel cited *no legal authority*.

As to the second branch of my August 17th motion – to strike the Attorney General's Respondent's Brief as a "fraud on the court", for sanctions, disciplinary and criminal referral, and disqualification of the Attorney General -- the record before the Court showed that were it to make findings, it would effectively be ruling on my entitlement to comparable relief denied by Justice Wetzel's appealed-from decision, *without reasons or findings* (Br. 35). This comparable relief, sought by my July 28, 1999 omnibus motion [A-195-197], was to disqualify the Attorney General for violation of Executive Law §63.1 and multiple conflicts of interest and to sanction him and the Commission, including by disciplinary and criminal referrals, for their fraudulent dismissal motion, *inter alia*, urging that my Verified Petition be dismissed based on Justice Cahn's decision [A-189-194]– notwithstanding they did *not* deny or dispute the accuracy of my 3-page analysis [A-52-54] showing it to be a judicial fraud and, thereafter, for additionally urging dismissal based on Justice Lehner's decision [A-299-307], notwithstanding their knowledge of that decision's fraudulence, including by my 13-page analysis [A-321-334], the accuracy of which they also did *not* deny or dispute (Br. 32-34).

III. THE COURT'S FAILURE TO MAKE *ANY* FINDINGS AS TO THE SECOND BRANCH OF MY THRESHOLD AUGUST 17th MOTION REFLECTS ITS KNOWLEDGE THAT FINDINGS WOULD ESTABLISH THE FRAUDULENCE OF THE BALD CLAIMS ON WHICH IT RELIES IN AFFIRMING JUSTICE WETZEL'S DECISION

The centerpiece of the second branch of my threshold August 17th motion was my 66-page May 3rd Critique of Respondent's Brief. This Critique constituted a virtual line-by-line analysis of Respondent's Brief, showing it to be fashioned on "*knowing and deliberate* falsification, distortion, and concealment of the material facts and law" and established that there was NO LEGITIMATE DEFENSE to the appeal. Most important of the Critique's 66 pages – whose accuracy was *undisputed* in the record before the Court[17] -- were pages 3-5 and 5-11, relating to the fraudulent

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decision's final sentence, "THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT."

[17] *See* my August 17th motion (¶92 of my moving affidavit); fn. 9 *supra*.

decisions of Justices Cahn and Lehner – and pages 40-47 relating to the fraudulent *Mantell* appellate decision and the inapplicability of a defense of lack of standing, urged in Point I of Respondent's Brief based on the *Mantell* appellate decision. The record shows I repeatedly referred to these pages of my Critique as its dispositive three "highlights", ultimately identifying them as not only dispositive of my entitlement to the granting of the second branch of my August 17th motion, but to the granting of the first branch for the Court's disqualification[18].

It is ***without*** making any findings as to the accuracy of my *undisputed* 66-page Critique, including its three highlights whose significance I also emphasized in my November 21st oral argument (Exhibit "B", p. 6), that the Court has crafted its decision from Respondent's Brief and, in particular, on its Point I (at pp. 14-15). This is evident from the conclusory claims in the decision's second and third sentences as to mandamus and standing to sue and by the legal citations in the decision's third, fourth, and fifth sentences to such inapt and arcane cases as *Valley Forge Christian College v. Americans United for Separation of Church and State* on the issue of standing, *Ocasio v. Fashion Institute of Technology* on the issue of recusal, and *Miller v. Lanzisera* on the filing injunction – citations clearly transported from Respondent's Brief (at pp. 15, 19, 20) – and, of course, by its reliance, in its second sentence on the *Mantell* appellate decision on the issue of mandamus. Additionally, the Court's decision, like Respondent's Brief (at pp. 14-22), shifts the order in which my Appellant's Brief (pp. 1, 36-52) presented the issue of Justice Wetzel's disqualification, moving it from its threshold position where it properly belongs. The illegitimate purpose of this shift is to enable the Court to less conspicuously divert attention from the question of the sufficiency of my application for Justice Wetzel's recusal. This, by inserting a two-sentence purported justification for affirming Justice Wetzel's dismissal of my Verified Petition.

The decision's purported justification for dismissing my Verified Petition in the second and third sentences – the only sentences combined into a paragraph -- flows from its materially misleading first sentence. The calculated deceit of these three sentences, as likewise of the decision's remaining four sentences, is resoundingly established by my *uncontroverted* Appellant's Brief[19] and by my *undisputed* 66-page Critique of Respondent's Brief, which, together with my August 17th motion, was expressly incorporated by reference in my Reply Brief (at p. 5). This is why the

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[18] *See* my August 17th motion (¶¶89, 92 of my moving affidavit), my Reply Brief (p. 5); my October 15th reply affidavit (at ¶¶ 37-40).

[19] Were Respondent's Brief to have been stricken, based on my 66-page Critique, my

Court makes no findings of fact and law as to either.

As to the decision's first sentence, announcing the Court's unanimous affirmance of Justice Wetzel's appealed-from decision [A-9-14], which it purports to summarize, pages 10-11, 61 of my Appellant's Brief and pages 40-47 of my Critique of Respondent's Brief ["highlight #3] detail the material deceit and prejudice caused by simplifying my Article 78 proceeding as one to "compel respondent Commission to investigate" – *which is precisely what the first sentence does*. Particularized by these pages is that my Verified Petition presents six Claims for Relief, raising constitutional challenges to a variety of Commission rules and statutory provisions – thus sharply limiting the applicability of the *Mantell* appellate decision (even were it not a judicial fraud) and any defense based on lack of standing. My November 21st oral argument also emphasized this for the Court (Exhibit "B", pp. 2, 6).

The first sentence is also materially misleading in making it appear that my Article 78 proceeding involves but a single judicial misconduct complaint. This, by referring, in the singular, to "[my] complaint". As pages 12-13 and 46-47 of my Critique detail, my Verified Petition presented TWO *facially-meritorious* judicial misconduct complaints – the second of which the Commission refused to even receive and determine, making mandamus available to compel the Commission *to receive and determine* that complaint.

Additionally, although this first sentence identifies that Justice Wetzel's appealed-from decision granted the Commission's dismissal motion, it materially omits that the decision also denied my omnibus motion [A-10, 14]. As identified by pages 19-21, 35, 53-54, 69 of my Appellant's Brief and pages 35-36 of my Critique, my omnibus motion demonstrated: (a) that the Commission's dismissal motion was *not* properly before the Court; (b) that, from beginning to end, the Commission's dismissal motion was fashioned on wilful and deliberate falsification and concealment of the material facts and controlling law – warranting sanctions against the Attorney General and Commission, including criminal and disciplinary referral, as well as the Attorney General's disqualification for violation of Executive Law §63.1 and multiple conflicts of interest; and (c) that I was entitled to conversion of the Commission's dismissal motion to summary judgment in my favor.

Justice Wetzel's wrongful denial of my omnibus motion, *without reasons or findings*, was a key issue on this appeal. My entitlement to its granting, based on the record, was the fourth of my "Questions Presented" by my Appellant's Brief (p. 1) and my November 21st oral argument expressly identified my entitlement to the summary judgment therein sought (Exhibit "B", p. 2). All this is concealed by the

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Appellant's Brief would have been *unopposed*.

balance of the decision, which never even identifies the omnibus motion to exist. Indeed, the closest reference is in the decision's fifth sentence, where the Court refers to "voluminous... motion papers" as a basis for sustaining Justice Wetzel's filing injunction against me and the *non-party* Center for Judicial Accountability, Inc. The "voluminous... motion papers" are none other than my omnibus motion. These are my *only* "motion papers", apart from my Verified Petition[20].

The first sentence also materially omits the pertinent fact that Justice Wetzel's appealed-from decision imposed, *sua sponte*, a filing injunction on me and the *non-party* Center for Judicial Accountability, Inc. – an imposition highlighted by pages 35, 61-68 of my Appellant's Brief and pages 11-12, 62-66 of my Critique. That the injunction should have been identified in this prefatory first sentence is evident from the decision's fifth sentence, where the Court sustains the injunction it has not previously identified by citing, with an inferential "*see*", *Miller v. Lanzisera*. In *Miller v. Lanzisera*, the prefatory background paragraphs expressly identify that the lower court had "granted that part of plaintiff's cross motion seeking to preclude defendant from filing further motions or proceedings". Similarly, in the two cases cited in *Miller v. Lanzisera* as pertaining to imposition of injunctions, *Harbas v. Gilmore*, 244 AD2d 218, and *Sud v. Sud*, 227 AD2d 319 -- both Appellate Division, First Department cases -- each begins with prefatory paragraphs identifying the lower court's imposition of an injunction.

As to the decision's second sentence, purporting that "[t]he petition to compel [the Commission's] investigation of a complaint was properly dismissed since [the Commission's] determination whether to investigate a complaint involves an exercise of discretion and accordingly is not amenable to mandamus", the Court directly cites its own *Mantell* appellate decision. Pages 10-11, 46 of my Critique of Respondent's Brief [highlights #2, #3] – like my 13-page analysis of Justice Lehner's decision [A-329] on which they rely -- cited HIGHER AUTHORITY: the

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[20] In this regard, the record shows, contrary to what the Court purports at the outset of this first sentence, that Justice Wetzel did not deny my "recusal motion". Rather, as reflected by pages 1, 30, 35, 51-52 of my Appellant's Brief, I made a letter-application to Justice Wetzel [A-250-290], requesting that if he did not disqualify himself based on the facts therein set forth that he make pertinent disclosure and afford me time in which to embody same in a formal motion for his recusal. Justice Wetzel denied such letter-application, *without findings*, and *without* the requested disclosure in the appealed-from decision [A-9-14].

Likewise, there is no basis for Court's reference to "recusal motions" in the decision's fifth sentence upholding Justice Wetzel's injunction. As summarized at pages 64-66 of my Appellant's Brief and page 64 of my Critique of Respondent's Brief, all the lower court judges who recused themselves did so, *sua sponte*, with the exception of Acting Supreme Court Justice Ronald Zweibel, whose recusal granted my meritorious *oral* application therefor.

New York Court of Appeals, whose decision in *Matter of Nicholson*, 50 NY2d 597, 610-611 (1980), long ago interpreted that the Commission has NO discretion but to investigate *facially-meritorious* complaints pursuant to Judiciary Law §44.1:

> "...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law 44, subd 1)", *Matter of Nicholson*, 50 NY2d 597, 610-611 (emphasis added).

Page 46 of my Critique also cited to a published essay in the August 20, 1998 New York Law Journal by the Commission's Administrator, part of my Verified Petition [A-29], reflecting that Judiciary Law §44.1 "REQUIRES the Commission to investigate complaints that are valid on their face" (emphasis added) [A-59-60].

Moreover, pages 2-5, 8-11 of my Critique [highlights #1, #2] detailed that the two *Mantell* decisions, Justice Lehner's and the appellate affirmance, are judicial frauds, established as such by my analyses of each. Reinforcing this – and putting before the Court my *undisputed* 1-page analysis of the *Mantell* appellate decision[21] -- was my August 17th motion, whose fourth ground for the Court's disqualification for interest and actual bias (¶¶49-67 of my moving affidavit) revolved around these two fraudulent *Mantell* decisions.

My November 21st oral argument identified the fraudulence of both these *Mantell* decisions, as established by my analyses thereof (Exhibit "B", p. 6).

As to the decision's third sentence purporting that I "lack[] standing to sue the Commission" because I have "failed to demonstrate that [I] personally suffered some actual or threatened injury as a result of the putatively illegal conduct", the Court conceals that this was NOT a ground upon which Justice Wetzel dismissed my Verified Petition[22], fails to provide *any* record references for what it is talking about, and fails to discuss any of the three cases which it cites with an inferential "*see*" and does *not* discuss, "*Valley Forge Christian Coll. v. Am. United for Separation of Church and State*, [], *Socy. of the Plastics Indus. v. County of Suffolk*, [], *Matter of Dairylea Coop. v. Walkley*, []". Pages 40-47 of my Critique [highlight #3] expose, with record references and by discussion of legal authority, the inapplicability and bad-faith of a defense based on lack of standing – and I so stated

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[21] My *undisputed* 1-page analysis of the *Mantell* appellate decision is Exhibit "R" to my August 17th motion.

[22] Justice Wetzel's dismissal of my Verified Petition was based, *exclusively*, on Justice Cahn's decision and Justice Lehner's decision, neither purporting there was no standing to sue the Commission.

at the November 21st oral argument (Exhibit "B", p. 6). Additionally, pages 16 and 48 of my Critique identify that Justice Wetzel had rejected a lack of standing defense, urged upon him by the Commission, just as Justice Lehner had rejected such defense, which the Commission had urged upon him in *Mantell*[23]. Indeed, even a non-lawyer, like myself, reading *Society of Plastics Industries v. County of Suffolk* can discern how bogus and deceitful a defense based on lack of standing is to *the facts of this case*. This is further evidenced by the Court's failure to come forth with *any* findings of fact and law on the standing issue.

As to the decision's fourth sentence, affirming Justice Wetzel's denial of my recusal application as "a proper exercise of [his] discretion", citing, *without* discussion and by an inferential "*see*", *People v. Moreno*, after first declaring that "[t]he fact that [Justice Wetzel] ultimately ruled against petitioner has no relevance to the merits of petitioner's application for his recusal", for which, *without* discussion and by an inferential "*see*", it cites *Ocasio v. Fashion Institute of Technology*, the deceit of these two bald assertions is exposed by pages 36-69 of my Appellant's Brief and pages 47-61 of my Critique. These pages not only demonstrate Justice Wetzel's flagrant "abuse of discretion" in denying my meritorious recusal application, *without findings and without even identifying the grounds for recusal asserted therein*, but his wilful cover-up of a record showing his disqualification for interest under Judiciary Law §14 – a disqualification which is NON-DISCRETIONARY. Indeed, pages 54-56 of my Critique reflect that *People v. Moreno* recognizes that Judiciary Law §14 is NOT a matter of "discretion", but is a "mandatory prohibition".

Additionally, page 50 of my Appellant's Brief pointed out that *People v. Moreno* – as likewise a raft of other cases and treatise authority to which I cited -- have held that a judge's "abuse of discretion" in failing to recuse himself is established where his "bias or prejudice or unworthy motive" is "shown to affect the result". My 70-page Appellant's Brief provided an *uncontroverted* fact-specific, law-supported recitation as to how Justice Wetzel manifested his bias, prejudice, and unworthy motive by his appealed-from decision -- a decision which

> "not only departs from cognizable adjudicative standards in substituting characterizations for factual findings, but [which] in *every* material respect, falsifies, fabricates, and distorts the record of the proceeding to deliberately assassinate [my] character and deprive [me] of the relief to which the record resoundingly entitles [me]." (Appellant's Brief, p. 4,

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[23] No defense based on standing was raised by the Commission in *Doris L. Sassower v. Commission*.

emphasis in the original).

Moreover, contrary to the Court's inference, *Ocasio* does *not* hold that a judge's rulings would never have "relevance" to establishing his disqualification – a fact pages 59-60 of my Critique reflect.

Of course, apart from my entitlement to Justice Wetzel's disqualification, was my entitlement to disclosure by him, as expressly requested in my recusal application [A-258-259]. The first and second of the "Questions Presented" by my Appellant's Brief (at p. 1) featured the disclosure issue, with page 51 of my Appellant's Brief underscoring that even where the Court had upheld a lower court's failure to recuse as a proper exercise of discretion, it had nonetheless "recognized the salutary significance of 'full disclosure'". Clearly, for the Court to have made findings of law as to Justice Wetzel's disclosure obligations in response to my application for his recusal would have implicated its own parallel disclosure obligations in response to the first branch of my August 17th motion. *See* footnotes 11 and 15, *supra.*

As to the decision's fifth sentence, purporting that Justice Wetzel's "imposition of a filing injunction against both petitioner and the Center for Judicial Accountability was justified given petitioner's vitriolic ad hominem attacks on the participants in this case, her voluminous correspondence, motion papers and recusal motions in this litigation and her frivolous requests for criminal sanctions"[24], the

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[24] The Court's panoply of supposed reasons materially differs from those in Justice Wetzel's appealed-from decision.

The Court materially omits Justice Wetzel's pretense that my Article 78 proceeding had a "history" and "progeny" [A-13], with his inference that *Doris L. Sassower v. Commission* was part thereof: Justice Wetzel having purported that I was the petitioner therein, seeking virtually the same relief [A-12] – and thereupon dismissing my Verified Petition on grounds of *res judicata* and collateral estoppel based on Justice Cahn's decision. [*see* pages 55-58, 66 of my Appellant's Brief.]

The Court also adds to its panoply a reason *not* specified by Justice Wetzel's decision [A-9-14], *to wit*, my allegedly "frivolous requests for criminal sanctions". The record before Justice Wetzel established, by overwhelming documentary proof, his mandatory duty under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct to refer the Commission and Attorney General for criminal prosecution – which I repeatedly requested. The Court's description of these requests as "frivolous" is not only a flagrant falsification of the record, but a clear attempt to obstruct and impede the success of my independent efforts to obtain these criminal prosecutions, as well as criminal prosecutions of Justices Cahn, Lehner, and Wetzel for their fraudulent judicial decisions. Such independent efforts, consisting of my criminal complaints, copies of which are part of the record, are expressly identified and particularized at page 47 of my Appellant's Brief and further reflected by Exhibit "H" to my August 17th motion. Plainly, my success in securing these criminal prosecutions would lead to further criminal prosecutions. Among those to be criminally prosecuted for their collusion in the systemic

Court conceals that the Center for Judicial Accountability, Inc. is a *non-party* and makes *no findings* as to the particulars of my supposedly offending conduct, *no findings* that such alleged misconduct, in nature and scope, fits within cognizable standards for such draconian punishment, and *no findings* that Justice Wetzel observed due process requirements for its imposition. Pages 61-68 of my Appellant's Brief and pages 62-65 of my Critique of Respondent's Brief expose why the Court has made no such findings. As detailed, the record establishes that my litigation conduct always met:

> "the very highest of evidentiary standards... in documenting the issues pertinent to this lawsuit: (1) [the Commission's] corruption – the gravamen of the proceeding; (2) [my] entitlement to the Attorney General's disqualification from representing [the Commission] by reason of his violation of Executive Law §63.1 and multiple conflicts of interest; (3) the Attorney General's litigation misconduct, entitling [me] to sanctions against him and [the Commission], 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*." (Appellant's Brief, pp. 65-66]

Further detailed is that because Justice Wetzel had not the slightest factual basis for his filing injunction, he dispensed with ALL due process: imposing the injunction, *sua sponte*, *without notice*, *without opportunity to be heard*, and *without factual findings* – and that, *as a matter of blackletter law*, denial of notice and opportunity to be heard is so fundamental a due process violation that even were there facts in the record to support the injunction, *which there are not*, it would have to be vacated on that ground alone.

The Court's decision conceals EVERY due process violation detailed by pages 61-68 of my Appellant's Brief and ALL my arguments relative thereto. Among these arguments, that because imposition of a filing injunction is a far more severe sanction than imposition of costs and fees under 22 NYCRR §130-1.1, it requires comparable, if not greater, due process, *to wit*, notice, opportunity to be

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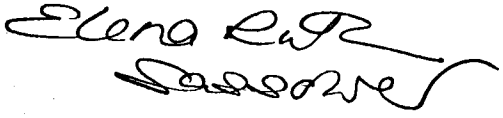
governmental corruption here at issue: Governor Pataki and Chief Judge Kaye, whose complicity and official misconduct was the basis for the second and third grounds for the Court's disqualification for interest in my August 17th motion (¶¶15-31, 32-48 of my moving affidavit). Additional criminal prosecutions would include the Court for its fraudulent *Mantell* appellate decision -- and for its fraudulent decision herein. These two appellate decisions, representing the knowing and deliberate corruption of the appellate process by sitting judges, are – like the fraudulent decisions they affirmed -- criminal acts.

heard, and findings. Also, my argument that the Court of Appeals' decision in *AG Ship Maintenance v. Lezak*, 69 NY2d 1 (1986), and the subsequently-promulgated 22 NYCRR §130-1.1 have circumscribed the inherent power of judges from using filing injunctions as a punishment for frivolous conduct, and certainly not without explaining why 22 NYCRR §130-1.1 would not be adequate to punish such conduct. As highlighted by page 68 of my Appellant's Brief, the most obvious reason for Justice Wetzel's resort to the inherent power sanction of a filing injunction is because 22 NYCRR §130-1.1 fixes "standards and procedures" requiring notice, opportunity to be heard, and a reasoned decision.

As for the Court's citation, with an inferential "*see*" to *Miller v. Lanzisera*, the Court does not identify the proposition for which it is being cited. Since *Miller v. Lanzisera* is a Fourth Department case, such proposition is presumably *not* in the caselaw of either the First Department or the Court of Appeals – and is one which the Court is itself loathe to articulate. Indeed, the proposition is so repugnant that even the Fourth Department had *no* caselaw, legal authority, or argument to support it, *to wit*, that a court may impose a filing injunction against a party *without* any finding that he has engaged in frivolous conduct.

As to the decision's sixth sentence, purporting that the Court has "considered [my] remaining contentions" and found them "unavailing", the Court conceals what these supposedly "unavailing" "remaining contentions" are. It also falsely implies that it has considered some of my other "contentions". These other "contentions" are *nowhere* identified by the decision, which makes *no findings of fact or law* with respect to a single one.

The most superficial review of my appellate "contentions", presented by my Appellant's Brief, by my Reply Brief, and by my August 17th motion (incorporated by reference in my Reply Brief (at p. 5)), reveals my entitlement to the full relief requested by these record-based, law-supported documents[25] -- and the fraudulence of this sixth sentence, as likewise the decision's other sentences.



[25] *See* "Conclusion" to my Appellant's Brief (p. 70); "Conclusion" to my Reply Brief (p. 6); August 17th notice of motion; October 15th reply affidavit, ¶¶2, 3.