

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 Opposing Memorandum
of Law on
DISQUALIFICATION/
DISCLOSURE MOTION**

-against-

Motion #02/581

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 herein.

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 Assistant Solicitor General Carol Fischer's memorandum of law in opposition to my May 1, 2002 motion for disqualification of, and disclosure by, this Court's judges.

3. Ms. Fischer's opposing memorandum of law, on behalf of Respondent-Respondent New York State Commission on Judicial Conduct, is, "*from beginning to end*", based on knowing and deliberate falsification, distortion, and concealment

of the material facts and law” – and I so notified Ms. Fischer’s ultimate superior at the Attorney General’s office, Attorney General Eliot Spitzer, by a May 21, 2002 letter (Exhibit “A”) – with separate copies for Solicitor General Caitlin Halligan, Deputy Solicitor General Michael Belohlavek, the Commission, as well as for Ms. Fischer herself¹.

4. Noting that Ms. Fischer’s opposing memorandum PHYSICALLY attached her March 22, 2001 Respondent’s Brief, whose fraudulence was the subject of the second branch of my August 17, 2001 motion to strike it as a “fraud on the court”, I stated,

“As you know, the Appellate Division, First Department’s December 18, 2001 decision and order falsified the relief sought by my August 17, 2001 motion, whose first branch was for its disqualification and for disclosure, and denied the motion, *without reasons or findings*. My entitlement to both branches of the motion is the threshold and decisive issue on my appeal of right to the Court of Appeals.” (emphasis in the original).

5. I, therefore, advised Mr. Spitzer that unless Ms. Fischer’s May 17, 2002 opposing memorandum were withdrawn I would have

“no choice but to burden the Court of Appeals with a motion for relief comparable to that in the second branch of my August 17, 2001 motion, *to wit*, to strike the May 17, 2002 Opposing Memorandum as a “fraud on the court”, for sanctions against [him] and culpable members of [his] staff and the Commission *personally*, including disciplinary and criminal referral, and for [his] disqualification from representing the Commission by reason of [his] violation of Executive Law §63.1 and multiple conflicts of interest.” (emphasis in the original).

¹ See four receipt stamps from the Attorney General’s office and one from the Commission on the face of the letter.

6. The only response I received was a May 23, 2002 letter from Mr. Belohlavek (Exhibit "B"). Purporting that the issues raised by my May 21, 2002 letter had "already been resolved against [me] by the Appellate Division, First Department", he stated that Ms. Fischer's May 17, 2002 opposing memorandum was "an appropriate response" and "we have no obligation to, or intention of, withdrawing that memorandum."

7. Five days later, I received a May 28, 2002 letter from Ms. Fischer, responding to the Court's May 17, 2002 *sua sponte* jurisdictional inquiry. Such letter replicated, even more aggressively, the deceit of her May 17, 2002 opposing memorandum. This is detailed by my June 7, 2002 affidavit in support of the Court's jurisdiction, whose 19 pages provide a virtual line-by-line Critique of Ms. Fischer's May 28, 2002 letter. In the interest of judicial economy, I incorporate that affidavit-Critique by reference.

8. As to Ms. Fischer's May 17, 2002 opposing memorandum, annexed is a 31-page Critique (Exhibit "C"), constituting a virtual line-by-line analysis of it. Demonstrated thereby is the truth of what my May 21, 2002 letter to Mr. Spitzer said, *to wit*, that Ms. Fischer's opposing memorandum is, "*from beginning to end*, based on knowing and deliberate falsification, distortion, and concealment of the material facts and law".

9. Both my annexed Critique and incorporated-by-reference affidavit-Critique will be the basis for my upcoming motion to strike Ms. Fischer's May 17,

2002 opposing memorandum and May 28, 2002 letter, as “frauds on the court”, as well as for the further relief identified by my May 21, 2002 letter to Mr. Spitzer (Exhibit “A”).

10. Reinforcing my entitlement to sanctions and disciplinary and criminal referral as to Mr. Spitzer, *personally*, and as to the culpable Commission members and staff, will be my correspondence with them relative to their duty to provide the Court with statements *under penalties of perjury*. I emphasized this duty in my May 3, 2002 letter to Mr. Spitzer (Exhibit “D-1”, p. 2)², to which my May 21, 2002 letter to him refers (Exhibit “A”, p. 3). In pertinent part, I stated:

“In view of the transcending importance of my *pro bono* appeal to the People of this State,...your duty is to provide the Court with your *own* statement, *under penalties of perjury*, as to the state of the record – beginning with the accuracy of [my] 19-page analysis [of the December 18, 2001 decision] – whose accuracy you did NOT deny or dispute before the Appellate Division in opposing my reargument motion and motion for leave to appeal.

Likewise...your duty is to put before the Court your *own sworn statement* responding to my enclosed motion to disqualify the Court’s judges -- particularly insofar as my moving affidavit relates to the Law Department’s fraudulent defense tactics in the three cases described in CJA’s \$3,000 public interest ad, “*Restraining ‘Liars in the Courtroom’ and on the Public Payroll*” (New York Law Journal, 8/27/27, pp. 3-4: Exhibit “C-1” to the motion) – the accuracy of which description you have had more than ample time to fully investigate. This, in addition to supplying the Court with an affidavit from your client -- the state agency with the foremost

² As my May 3, 2002 letter reflects, it followed upon Mr. Spitzer’s May 1, 2002 “Law Day” speech, “*The Crisis of Accountability*”, delivered before this Court and an assembled audience of which I was a member. For the Court’s convenience, a copy of the speech, accessed from the Attorney General’s website, is annexed (Exhibit “D-2”).

expertise in matters of judicial disqualification and disclosure.”
(emphases in the original).

11. To a similar effect my May 8, 2002 letter to the Commission (Exhibit “E”), which stated:

“As with Attorney General Spitzer, your duty – and that of Chairman Berger AND the Commission members – is to provide the Court with your *own* statements *under penalties of perjury*, as to the serious and substantial issues presented by my disqualification/disclosure motion and by my Jurisdictional Statement in support of my appeal of right.”

12. So that the Attorney General and Commission would be able to review the voluminous documentation substantiating my May 1, 2002 motion, I provided them with a precise 29-page inventory, under a May 8, 2002 coverletter (Exhibit “F”), offering to “deliver...forthwith” those documents not already in their possession.

13. Their answer to these three letters (Exhibits “D-1”, “E”, “F”) was Ms. Fischer’s May 17, 2002 opposing memorandum of law, *unaccompanied* by any sworn statements and purporting, *inter alia*, that my May 1, 2002 motion is “conclusory and unsupported”, and “based on wild speculation that has no basis in reality and is devoid of record support”. This, they not only refused to withdraw following my May 21, 2002 letter (Exhibit “A”), but then compounded by Ms. Fischer’s derivative May 28, 2002 letter to the Court on the jurisdictional issue.

14. The fact that the Attorney General and Commission feel free to engage in the egregious misconduct before this Court now documented by my annexed Critique (Exhibit "C") and my affidavit-Critique further substantiates that portion of my May 1, 2002 motion as rests on the appearance of this Court's bias. No other conclusion is possible but that they believe the Court is not a "fair and impartial" tribunal and will let them "get away with anything".



ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Sworn to before me this
7th day of June 2002


Notary Public

TABLE OF EXHIBITS

- Exhibit "A":** Elena Sassower's May 21, 2002 letter to Attorney General Eliot Spitzer
- Exhibit "B":** Deputy Solicitor General Michael Belohlavek's May 23, 2002 letter to Elena Sassower
- Exhibit "C":** Elena Sassower's Critique of Ms. Fischer's May 17, 2000 opposing memorandum of law
- Exhibit "D-1":** Elena Sassower's May 3, 2002 letter to Attorney General Spitzer
- "D-2":** Attorney General Spitzer's May 1, 2002 "Law Day" speech, *"The Crisis of Accountability"*, delivered at the Court of Appeals
- Exhibit "E":** Elena Sassower's May 8, 2002 letter to the New York State Commission on Judicial Conduct
- Exhibit "F":** Elena Sassower's May 8, 2002 letter to Assistant Solicitor General Carol Fischer, transmitting substantiating inventories