CENTER for JUDICIAL ACCOUNTABILITY, INC.

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White Plains, New York 10605-0069

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Elena Ruth Sassower, Coordinator

BY HAND

August 6, 1999

RECEIVED BY: J. Wigley for DAVID NOCENTI
08/06/99 TIME: 2:00 p.m.

Attorney General Eliot Spitzer
25th Floor
120 Broadway
New York, New York 10271

ATT: David Nocenti, Counsel to Attorney General Spitzer

RE: Petitioner's July 28, 1999 Motion for Omnibus Relief
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, #99-108551

Dear Mr. Nocenti:

Following up our telephone conversation on Monday, July 26th, transmitted herewith is a duplicate copy of my Affidavit and Memorandum of Law in the above-entitled Article 78 proceeding[1]. These documents should be immediately inspected, not only by yourself, but by Attorney General Spitzer, *personally*, since my Notice of Motion seeks sanctions against Mr. Spitzer, *personally*, as well as disciplinary and criminal referral of him [at paragraphs (5) and (6)], based on the litigation fraud and misconduct particularized by my Affidavit and Memorandum.

Such litigation fraud and misconduct continues the identical *modus operandi* of Mr. Spitzer's predecessors, both Republican and Democratic, as recounted in "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (New York Law Journal, 8/27/97, pp. 3-4), CJA's $3,000 public interest ad with which you stated you were unfamiliar[2]. Mr. Spitzer, however, is *fully familiar* with that ad and was so on January 27th at the City Bar, when I publicly questioned him as to what he was going to do in face of its allegations that "the Attorney General's office uses fraud to defend state judges and

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[1] Our conversation together is recounted at ¶102 of my Affidavit.

[2] The ad is Exhibit "B" to the Verified Petition in my Article 78 proceeding and is, additionally, included among the following exhibits to my Affidavit herein: Exhibit "B", "Exhibit "D", Exhibit "F". Yet a further copy is annexed to this letter, for your convenience.

Ex "A"

the Commission on Judicial Conduct sued in litigation". Mr. Spitzer's public promise was that "anything that is submitted to us, we will take a look at"[3].

The voluminous substantiating materials I provided Mr. Spitzer *before* January 27th, *on* January 27th, and *after* January 27th have been sitting, collecting dust, in the office of Joe Palozzola, Assistant to Mr. Spitzer's Chief of Staff. As detailed by my Affidavit (¶¶40-53), Mr. Spitzer has not followed through on his public promise to me because he is compromised by personal and professional relationships with those involved in his predecessors' corrupt litigation practices or benefitting from those practices. Meanwhile, Mr. Spitzer has yet to make good on yet another public promise he made on January 27th -- establishing a "public integrity unit".

The reason Mr. Spitzer has failed to set up such a unit, despite his public promise on January 27th that it was then being established, is identified in CJA's March 26th ethics complaint against Mr. Spitzer, *personally*, filed with the New York State Ethics Commission. As set forth in that complaint (at p. 6)[4], Mr. Spitzer's "public integrity unit" "could not credibly 'clean up' corruption elsewhere in state government, without first 'cleaning up' the corruption in the Attorney General's office" that has already been the subject of two prior ethics complaints against it, filed with the State Ethics Commission: CJA's September 14, 1995 and December 16, 1997 ethics complaints. Like the March 26th ethics complaint, those two prior ethics complaints are among the volume of materials sitting in Mr. Palozzola's office. Mr. Spitzer has had those two complaints since December 24, 1998, when they were hand-delivered to his law office to support CJA's request, *inter alia*, that he rescind his appointment of Richard Rifkin as Deputy Attorney General for State Counsel, based on Mr. Rifkin's official misconduct in connection with those complaints as Executive Director of the Ethics Commission.

You stated to me that Mr. Rifkin is among the four members of the Attorney General's "Employee Conduct Committee", which deals with conflict of interest issues at the Attorney General's office and entertains complaints from the general public. Please consider the enclosed Affidavit and Memorandum of Law, detailing Mr. Spitzer's conflict of interest in this Article 78 proceeding and seeking his disqualification based thereon, to be an ethics complaint against him. Please also consider them as an ethics complaint against Mr. Rifkin, as well as against litigation staff and supervisory personnel in the Attorney General's office, who, beholden to Mr. Spitzer and Mr. Rifkin for their positions, have engaged in, or countenanced, the litigation fraud and misconduct in this Article 78 proceeding, with knowledge that Mr. Spitzer and Mr. Rifkin are self-interested in these proceedings.

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[3] *See* January 27th transcript (pp. 13-14), annexed as part of Exhibit "E" to my Affidavit [Exhibit "B" thereto].

[4] As reflected in footnote 4 on that page, Mr. Spitzer has a professional/personal relationship with Respondent's Chairman, Henry T. Berger, who helped establish his narrow election victory.

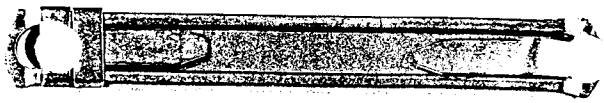
Please note that my omnibus motion is returnable on Tuesday, August 17th -- on which date the Court will hear argument on the motion. In view of its seriousness, Mr. Spitzer should plan to *personally* attend and account for his misconduct -- and that of his staff -- in this proceeding. I invite him to do so. In the event Mr. Spitzer is unable to appear, he should furnish the Court with a sworn statement, to be presented by yourself, as his counsel.

Yours for a quality judiciary,

Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner *Pro Se*

Enclosures
cc: Justice Ronald Zweibel
Joe Palozzola, Assistant to Attorney General Spitzer's Chief of Staff



NYS SUPREME COURT RECEIVED

AUG 6 1999

I.A.S. MOTION SUPPORT OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

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

Petitioner,

-against-

COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF NEW YORK,

Respondent.

----------x

SUPT.

Index # 99-108551

NOTICE OF MOTION FOR OMNIBUS RELIEF

Joseph Wigley
FOR DAVID NOCENTI
08/06/99 2:00 p.m.

MANAGING ATTY'S OFC. NYS SUPREME COURT RECEIVED 99 AUG -6 PM 1:47

PLEASE TAKE NOTICE that, upon the annexed Affidavit of Petitioner *Pro Se* ELENA RUTH SASSOWER, sworn to on July 28, 1999, the exhibits annexed thereto, her supporting Memorandum of Law, dated July 28, 1999, the Affidavit of Doris L. Sassower, sworn to on July 28, 1999, the Notice of Petition and Verified Petition, sworn to on April 22, 1999, and upon all the papers and proceedings heretofor had, Petitioner will move this Court ~~at Part 68, Room 1023, 111 Centre Street~~, New York, New York on August 17, 1999 at 9:30 a.m., or as soon thereafter as the parties or their counsel can be heard, for an order:

The Submission Part Room 130 60 Centre Street ES

(1) disqualifying the Attorney General from representing Respondent for non-compliance with Executive Law §63.1 and for multiple conflicts of interest;

(2) declaring a nullity and vacating the post-default extension of time granted by Justice Diane Lebedeff on Respondent's application pursuant to CPLR §3012(d), after she had recused herself and without adhering to the provisions of CPLR §7804(e) or the specific requirements of CPLR §3012(d), which Respondent did not satisfy;

[redacted] - 6 1999

Documents received in D.A.I.S Office by Jackie D. on 8/6/99 for Tom Wornom

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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

Petitioner,

-against-

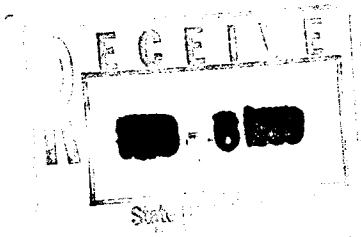
COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent.

Index # 99-108551

**PETITIONER'S MEMORANDUM OF LAW
IN OPPOSITION TO RESPONDENT'S DISMISSAL MOTION
& IN SUPPORT OF PETITIONER'S MOTION
FOR DISQUALIFICATION OF THE ATTORNEY GENERAL,
SANCTIONS, A DEFAULT JUDGMENT, AND OTHER RELIEF**

Joseph Wigley FOR DAVID NOCENTI
08/06/99 2:00 p.m.



ELENA RUTH SASSOWER
Petitioner *Pro Se*
Box 69, Gedney Station
White Plains, New York 10605-0069
(914) 421-1200

Documents received in D.A.'s Office - by Jackie D. on 8/6/99

New York Law Journal

AUGUST 27, 1997

[at page 3]

RESTRAINING "*LIARS IN THE COURTROOM*" AND ON THE PUBLIC PAYROLL

On June 17th, The New York Law Journal published a Letter to the Editor from a former New York State Assistant Attorney General, whose opening sentence read "Attorney General Dennis Vacco's worst enemy would not suggest that he tolerates unprofessional or irresponsible conduct by his assistants after the fact". Yet, more than three weeks earlier, the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization, submitted a proposed Perspective Column to the Law Journal, detailing the Attorney General's knowledge of, and complicity in, his staff's litigation misconduct -- before, during, and after the fact. The Law Journal refused to print it and refused to explain why. Because of the transcending public importance of that proposed Perspective Column, CJA has paid $3,077.22 so that you can read it. It appears today on page 4.

[at page 4]

RESTRAINING "*LIARS IN THE COURTROOM*" AND ON THE PUBLIC PAYROLL

-- a $3,077.22 ad presented, in the public interest, by the Center for Judicial Accountability, Inc. --
(continued from page 3)

In his May 16th Letter to the Editor, Deputy State Attorney General Donald P. Berens, Jr. emphatically asserts, "the Attorney General does not accept and will not tolerate unprofessional or irresponsible conduct by members of the Department of Law."

A claim such as this plainly contributes to the view -- expressed in Matthew Lifflander's otherwise incisive Perspective Column "*Liars Go Free in the Courtroom*" (2/24/97) -- that the State Attorney General should be in the forefront in spearheading reform so that the perjury which "pervades the judicial system" is investigated and deterrent mechanisms established. In Mr. Lifflander's judgment, "the issue is timely and big enough to justify creation of either a state Moreland Act Commission investigation by the Governor and the Attorney General, or a well-financed legislative investigation at the state or federal level", with "necessary subpoena power". Moreover, as recognized by Mr. Lifflander and in the two published letter responses (3/13/97, 4/2/97), judges all too often fail to discipline and sanction the perjurers who pollute the judicial process.

In truth, the Attorney General, our state's highest law enforcement officer, lacks the conviction to lead the way in restoring standards fundamental to the integrity of our judicial process. His legal staff are among the most brazen of liars who "go free in the courtroom". Both in state and federal court, his Law Department relies on litigation misconduct to defend state agencies and officials sued for official misconduct, including corruption, where it has *no* legitimate defense. It files motions to dismiss on the pleadings which falsify, distort, or omit the pivotal pleaded allegations or which improperly argue *against* those allegations, without *any* probative evidence whatever. These motions also misrepresent the law or are unsupported by law. Yet, when this defense misconduct -- readily verifiable from litigation files -- is brought to the Attorney General's attention, he fails to take any corrective steps. This, notwithstanding the misconduct occurs in cases of great public import. For its part, the courts -- state and federal -- give the Attorney General a "green light."

Ironically, on May 14th, just two days before the Law Journal published Deputy Attorney General Berens' letter, CJA testified before the Association of the Bar of the City of New York, then holding a hearing about misconduct by state judges and, in particular, about the New York State Commission on Judicial Conduct. The Law Journal limited its coverage of this important hearing to a three-sentence blurb on its front-page news "Update" (5/15/97).

Our testimony described Attorney General Vacco's defense misconduct in an Article 78 proceeding in which we sued the Commission on Judicial Conduct for corruption (N.Y. Co. #95-109141). Law Journal readers are already familiar with that public interest case, spearheaded by CJA. On August 14, 1995, the Law Journal printed our Letter to the Editor about it, "*Commission Abandons Investigative Mandate*" and, on November 20, 1996, printed our $1,650 ad, "*A Call for Concerted Action*".

The case challenged, *as written and as applied*, the constitutionality of the Commission's self-promulgated rule, 22 NYCRR §7000.3, by which it has converted its mandatory duty under Judiciary Law §44.1 to investigate facially-meritorious judicial misconduct complaints into a discretionary option, unbounded by *any* standard. The petition alleged that since 1989 we had filed eight facially-meritorious complaints "of a profoundly serious nature -- rising to the level of criminality, involving corruption and misuse of judicial office for ulterior purposes -- mandating the ultimate sanction of removal". Nonetheless, as alleged, each complaint was dismissed by the Commission, *without* investigation, and *without* the determination required by Judiciary Law §44.1(b) that a complaint so-dismissed be "on its face lacking in merit". Annexed were copies of the complaints, as well as the dismissal letters. As part of the petition, the Commission was requested to produce the record, including the evidentiary proof submitted with the complaints. The petition alleged that such documentation established, "*prima facie*, [the] judicial misconduct of the judges complained of or probable cause to believe that the judicial misconduct complained of had been committed".

Mr. Vacco's Law Department moved to dismiss the pleading. Arguing *against* the petition's specific factual allegations, its dismissal motion contended -- *unsupported* by legal authority -- that the facially irreconcilable agency rule is "harmonious" with the statute. It made no argument to our challenge to the rule, *as applied*, but in opposing our Order to Show Cause with TRO falsely asserted -- *unsupported* by law or *any* factual specificity -- that the eight facially-meritorious judicial misconduct complaints did not have to be investigated because they "did not on their face allege judicial misconduct". The Law Department made no claim that any such determination had ever been made by the Commission. Nor did the Law Department produce the record -- including the evidentiary proof supporting the complaints, as requested by the petition and further reinforced by separate Notice.

Although CJA's sanctions application against the Attorney General was fully documented and uncontroverted, the state judge did not adjudicate it. Likewise, he did not adjudicate the Attorney General's duty to have intervened on behalf of the public, as requested by our formal Notice. Nor did he adjudicate our formal motion to hold the Commission in default. These threshold issues were simply obliterated from the judge's decision, which concocted grounds to dismiss the case. Thus, to justify the rule, *as written*, the judge advanced his own interpretation, falsely attributing it to the Commission. Such interpretation, belied by the Commission's own definition section to its rules, does nothing to reconcile the rule with the statute. As to the constitutionality of the rule, *as applied*, the judge baldly claimed what the Law Department never had: that the issue was "not before the court". In fact, it was squarely before the court -- but adjudicating it would have exposed that the Commission was, as the petition alleged, engaged in a "pattern and practice of protecting politically-connected judges...shield[ing them] from the

disciplinary and criminal consequences of their serious judicial misconduct and corruption".

The Attorney General is "the People's lawyer", paid for by the taxpayers. Nearly two years ago, in September 1995, CJA demanded that Attorney General Vacco take corrective steps to protect the public from the combined "double-whammy" of fraud by the Law Department and by the court in our Article 78 proceeding against the Commission, as well as in a prior Article 78 proceeding which we had brought against some of those politically-connected judges, following the Commission's wrongful dismissal of our complaints against them. It was not the first time we had apprised Attorney General Vacco of that earlier proceeding, involving perjury and fraud by his two predecessor Attorneys General. We had given him written notice of it a year earlier, in September 1994, while he was still a candidate for that high office. Indeed, we had transmitted to him a full copy of the litigation file so that he could make it a campaign issue -- which he failed to do.

Law Journal readers are also familiar with the serious allegations presented by that Article 78 proceeding, raised as an essential campaign issue in CJA's ad "*Where Do You Go When Judges Break the Law?*". Published on the Op-Ed page of the October 26, 1994 New York Times, the ad cost CJA $16,770 and was reprinted on November 1, 1994 in the Law Journal, at a further cost of $2,280. It called upon the candidates for Attorney General and Governor "to address the issue of judicial corruption". The ad recited that New York state judges had thrown an Election Law case challenging the political manipulation of elective state judgeships and that other state judges had viciously retaliated against its "judicial whistle-blowing", *pro bono* counsel, Doris L. Sassower, by suspending her law license immediately, indefinitely, and unconditionally, *without* charges, *without* findings, *without* reasons, and *without* a pre-suspension hearing, -- thereafter denying her *any* post-suspension hearing and *any* appellate review.

Describing Article 78 as the remedy provided citizens by our state law "to ensure independent review of governmental misconduct", the ad recounted that the judges who unlawfully suspended Doris Sassower's law license had refused to recuse themselves from the Article 78 proceeding she brought against them. In this perversion of the most fundamental rules of judicial disqualification, they were aided and abetted by their counsel, then Attorney General Robert Abrams. His Law Department argued, *without* legal authority, that these judges of the Appellate Division, Second Department were not disqualified from adjudicating their own case. The judges then granted their counsel's dismissal motion, whose legal insufficiency and factual perjuriousness was documented and uncontroverted in the record before them. Thereafter, despite repeated and explicit written notice to successor Attorney General Oliver Koppell that his judicial clients' dismissal decision "was and is an outright lie", his Law Department opposed review by the New York Court of Appeals, engaging in further misconduct before that court, constituting a deliberate fraud on that tribunal. By the time a writ of certiorari was sought from the U.S. Supreme Court, Mr. Vacco's Law Department was following in the footsteps of his predecessors (AD 2nd Dept. #93-02925; NY Ct. of Appeals: Mo. No. 529, SSD 41; 933; US Sup. Ct. #94-1546).

Based on the "hard evidence" presented by the files of these two Article 78 proceedings, CJA urged Attorney General Vacco to take immediate investigative action and remedial steps since what was at stake was not only the corruption of two vital state agencies -- the Commission on Judicial Conduct and the Attorney General's office -- but of the judicial process itself.

What has been the Attorney General's response? He has ignored our voluminous correspondence. Likewise, the Governor, Legislative leaders, and other leaders in and out of government, to whom we long ago gave copies of one or both Article 78 files. No one in a leadership position has been willing to comment on either of them.

Indeed, in advance of the City Bar's May 14th hearing, CJA challenged Attorney General Vacco and these leaders to deny or dispute the file evidence showing that the Commission is a beneficiary of fraud, without which it could *not* have survived our litigation against it. None appeared -- except for the Attorney General's client, the Commission on Judicial Conduct. Both its Chairman, Henry Berger, and its Administrator, Gerald Stern, conspicuously avoided making *any* statement about the case -- although each had received a personalized written challenge from CJA and were present during our testimony. For its part, the City Bar Committee did not ask Mr. Stern *any* questions about the case, although Mr. Stern stated that the sole purpose for his appearance was to answer the Committee's questions. Instead, the Committee's Chairman, to whom a copy of the Article 78 file had been transmitted more than three months earlier -- but, who, for reasons he *refused* to identify, did *not* disseminate it to the Committee members -- abruptly closed the hearing when we rose to protest the Committee's failure to make such inquiry, the importance of which our testimony had emphasized.

Meantime, in a §1983 federal civil rights action (*Sassower v. Mangano, et al*, #94 Civ. 4514 (JES), 2nd Cir. #96-7805), the Attorney General is being sued as a party defendant for subverting the state Article 78 remedy and for "complicity in the wrongful and criminal conduct of his clients, whom he defended with knowledge that their defense rested on perjurious factual allegations made by members of his legal staff and wilful misrepresentation of the law applicable thereto". Here too, Mr. Vacco's Law Department has shown that there is no depth of litigation misconduct below which it will not sink. Its motion to dismiss the complaint falsified, omitted and distorted the complaint's critical allegations and misrepresented the law. As for its Answer, it was "knowingly false and in bad faith" in its responses to *over 150* of the complaint's allegations. Yet, the federal district judge did not adjudicate our fully-documented and uncontroverted sanctions applications. Instead, his decision, which obliterated any mention of it, *sua sponte*, and *without* notice, converted the Law Department's dismissal motion into one for summary judgment for the Attorney General and his co-defendant high-ranking judges and state officials -- where the record is wholly devoid of *any* evidence to support anything but summary judgment in favor of the plaintiff, Doris Sassower -- which she expressly sought.

Once more, although we gave particularized written notice to Attorney General Vacco of his Law Department's "fraudulent and deceitful conduct" and the district judge's "complicity and collusion", as set forth in the appellant's brief, he took no corrective steps. To the contrary, he tolerated his Law Department's further misconduct on the appellate level. Thus far, the Second Circuit has maintained a "green light". Its one-word order "DENIED", *without* reasons, our fully-documented and uncontroverted sanctions motion for disciplinary and criminal referral of the Attorney General and his Law Department. Our perfected appeal, seeking similar relief against the Attorney General, as well as the district judge, is to be argued **THIS FRIDAY, AUGUST 29TH**. It is a case that impacts on every member of the New York bar -- since the focal issue presented is the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*. You're all invited to hear Attorney General Vacco *personally* defend the appeal -- if he dares!

We agree with Mr. Lifflander that "what is called for now is action". Yet, the impetus to root out the perjury, fraud, and other misconduct that imperils our judicial process is not going to come from our elected leaders -- least of all from the Attorney General, the Governor, or Legislative leaders. Nor will it come from the leadership of the organized bar or from establishment groups. Rather, it will come from *concerted* citizen action and the power of the press. For this, we do not require subpoena power. We require only the courage to come forward and publicize the readily-accessible case file evidence -- *at our own expense, if necessary*. The three above-cited cases -- *and this paid ad* -- are powerful steps in the right direction.

CENTER for JUDICIAL ACCOUNTABILITY, Inc.

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Tel: **914-421-1200** *Fax*: **914-428-4994**
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Governmental integrity cannot be preserved if legal remedies, designed to protect the public from corruption and abuse, are subverted. And when they are subverted by those on the public payroll, including by our State Attorney General and judges, the public needs to know about it and take action. That's why we've run this ad. Your tax-deductible donations will help defray its cost and advance CJA's vital public interest work.