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BY FAX: 212-748-5920 15 pages
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August 17, 1999

Judge Ronald A. Zweibel
Acting Justice of the Supreme Court
of the State of New York
100 Centre Street, Room 1731
New York, New York 10013

RE: Tuesday, August 17, 1999 Court Calendar
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 (N.Y. Co. #99-108551)

Dear Justice Zweibel:

This letter confirms my notification to your law secretary, Lisa Rubin, shortly before 4:00 p.m. yesterday of the Attorney General's consent to my suggested adjourned date of Friday, October 1, 1999 for oral argument on my motion for omnibus relief and on Respondent's dismissal motion.

Such stipulated adjournment was pursuant to the procedure advised by Ms. Rubin for dispensing with the necessity of appearances by the parties and/or their counsel at today's calendar call, at which, she stated, the Court would automatically adjourn argument in order to review the submitted motions, not transmitted by the Clerk's Office until today.

This letter also seeks clarification as to whether, by the Court's statement at the June 14th conference that it wanted "everything in writing", it also meant my already-presented oral application for its disqualification. Ms. Rubin advised me that I should seek such clarification in a letter to the Court.

Both these procedural issues, as discussed with Ms. Rubin last week, are more fully set forth in my August 16th letter to the Attorney General, to which the Court is an indicated recipient. A copy is annexed hereto as Exhibit "A". I respectfully refer the Court to that August 16th letter for its

Ex "D"

discussion of, and record citations for, my June 14th oral application for its disqualification and for disclosure of all facts bearing upon its lack of impartiality, the burden of which rests on the Court.

Additionally, this letter seeks an extension of time for my reply to the Attorney General's Memorandum opposing my dismissal motion, faxed to me at approximately 5:00 p.m. on Friday, August 13th. Although my reply was to be due today in conjunction with the anticipated argument, I am not requesting an extension to the new October 1st adjourned date for argument. Rather, I am only seeking an extension to September 10th, the first Friday after Labor Day.

As I discussed yesterday with Ms. Rubin, the Attorney General has not only not agreed to my request for his consent to this extension request, embodied in my August 16th letter *to him* (Exhibit "A", p. 2), but has sought to deceive and mislead the Court on the subject. This may be seen from Assistant Attorney General Olson's responding August 16th letter, which is addressed *to the Court* (Exhibit "B"), without prior communication with me. You will recall that the last time Ms. Olson wrote the Court, by letter dated May 25th, she also sought to deceive it -- a fact particularized by my uncontroverted May 28th letter 1.

After consenting to my suggested October 1st date for argument, Ms. Olson's August 16th letter states:

> "*We do not*, however, *see the need* to extend petitioner's time to file a *sur-reply*." (emphases added).

As Ms. Olson well knows, because she is the Assistant Attorney General most directly handling this case and signed the August 13th Memorandum, the extension I am seeking is NOT for a "sur-reply", but to reply, as of right (CPLR 2214(b)).

Ms. Olson's August 16th letter further seeks to mislead the Court on this subject by concealing that her August 13th Memorandum has been submitted in opposition to my omnibus motion. She does this by deceptively referring to it as "respondent's memorandum in reply", when its full title is:

> "RESPONDENT'S REPLY MEMORANDUM IN FURTHER SUPPORT OF A MOTION TO DISMISS *AND IN OPPOSITION TO PETITIONER'S MOTION FOR 'OMNIBUS RELIEF'*" (emphasis added)

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1 Ms. Olson's May 25th letter is Exhibit "M" to my Affidavit in support of my omnibus motion. My May 28th letter is Exhibit "N" thereto.

In fact, of the three issues the August 13th Memorandum purports to address, ALL relate to relief sought by my omnibus motion. This is reflected by the subheadings of its "Argument" section. These are:

> "A. *Plaintiff's (sic) Motion* to Disqualify the Attorney General"(at p. 2,emphasis added);
>
> "B. *Plaintiff's (sic) Motion* to Vacate Justice Lebedeff's Order Granting Respondent An Extension To Respond To the Petition" (at p. 4, emphasis added);
>
> "C: *Petitioner's Motion* for Sanctions" (at p. 7, emphasis added).

As pointed out by my August 16th letter (Exhibit "A", p. 2), it is because the August 13th Memorandum is so thoroughly "fraudulent and deceitful" in its opposition to my omnibus motion that an extensive reply will be required.

It was my hope that a reply might have been dispensed with altogether. This would have required Ms. Olson's superiors in the Attorney General's office to respect fundamental rules of professional responsibility and statutory law regulating lawyer conduct and legal submissions, such as those extensively quoted at pages 5-12 of my 99-page Memorandum of Law in support of my omnibus motion. Had they had such respect -- as well as respect for the integrity of this Court, which they also plainly do not have – they would have withdrawn the dismissal motion, disavowed representation of Respondent, and come forward to assist me in championing the public's rights herein. This, because the scores of record references in my Memorandum prove *precisely* what I told the Court at the June 14th conference, *to wit*, that the Attorney General's dismissal motion "is, from beginning to end, filled with falsification, concealment, omission, misrepresentation, distortion" because Respondent has "no legitimate defense" to the allegations of the Verified Petition (p. 22, lns. 8-17). Instead, Ms. Olson's superiors have tolerated and permitted her to repeat in her August 13th Memorandum the *identical* pattern of defense misconduct as in the Attorney General's May 24th dismissal motion, whose supporting Memorandum she also signed. It is my intention to demonstrate this in my reply, with the same meticulous care and respect for the integrity of the judicial process as I demonstrated in my aforesaid 99-page Memorandum.

The Court should be aware that not a single one of my Memorandum's record references and legal citations is denied or disputed by Ms. Olson's August 13th Memorandum, which also does not deny or dispute a single fact-specific allegation of my 55-page supporting affidavit (albeit a couple are distorted beyond recognition). This is a measure of the kind of irrefutable, substantive

presentation the Court can expect in my reply, whose purpose is to enable it to perform its duty in rendering justice, including meeting its "Disciplinary Responsibilities" under Part 100.3(C) of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct so as to safeguard the judicial process, here defiled by our State's highest law enforcement officer and the public agency charged with enforcing judicial standards. As cited at pages 5-6 of my Memorandum, these "Disciplinary Responsibilities" require the Court to "take appropriate action" against "a lawyer [who] has committed a substantial violation of the Code of Professional Responsibility". In the circumstances at bar, where what is before the Court in Ms. Olson's August 13th Memorandum, as in her May 24th dismissal motion, are "fraud and deceit upon the Court and Petitioner, as well as the crimes of, *inter alia*,...filing of false instruments, conspiracy, obstruction of justice and official misconduct", "appropriate action" would be, as *expressly* requested by my Notice of Petition, "immediate trial of...the sanctionable misconduct of Respondent and the Attorney General"(¶4), "sanctions and...costs, pursuant to Part 130-1.1 of the Chief Administrator's Rules against Respondent, its members and culpable staff, and against Attorney General Spitzer personally and his culpable Assistant Attorneys General for their litigation misconduct" (¶5), and referral of "Respondent's members and culpable staff and Attorney General Spitzer personally and his culpable Assistant Attorneys General for disciplinary and criminal action based on their litigation misconduct" (¶6).

In this context, it must be noted that among Ms. Olson's flagrant deceits in her August 13th Memorandum is her claim (at pp. 2, 8), by way of a procedural objection, that my sanctions application is "not noticed" in my Notice of Motion and that I have "failed to designate" it. She then follows up this false factual assertion with misleading legal authority to claim that, therefore, "such [sanction] relief may not be granted" (at p. 8). She cites (at p. 2) CPLR 2215, having to do with notice of cross-motions, and (at p. 8) *Matter of Barquet v. Rojas-Castillo*, 216 A.D.2d 463 (2d Dept. 1995), based thereon. However, I have not only *not* moved by cross-motion, but three of the seven branches of relief in my Notice of Motion relate, *specifically*, to my request for sanctions against, and disciplinary and criminal referral of, the Attorney General and Respondent for litigation misconduct.

Two of these three branches, ¶5 and ¶6, were directly brought to the attention of Attorney General Spitzer by letter to his counsel, David Nocenti, dated August 6th (Exhibit "C"), which I hand-delivered on that date to the Attorney General's Executive Office, along with a copy of my Notice of Motion, Memorandum of Law and Affidavit in support of my omnibus motion. This transmittal followed my telephone conversation with Mr. Nocenti on July 26th, recounted at ¶102 in my Affidavit, emphasizing the necessity of Mr. Spitzer's supervisory involvement and his culpability under New York's Disciplinary Rules of the Code of Professional Responsibility.

It was in face of my August 6th written notice to Mr. Nocenti (Exhibit "C"), for Attorney General Spitzer, documentarily establishing the Attorney General's fraudulent defense conduct herein, that Ms. Olson was permitted to submit the August 13th Memorandum. Likewise, it was in face of written notice to Mr. Nocenti, by my August 16th letter, addressed and faxed to him (Exhibit "A"), that such Memorandum "continues, unabated, the Attorney General's fraudulent and deceitful advocacy" (at p. 2), that Ms. Olson was permitted to submit her August 16th letter to the Court (Exhibit "B"), disingenuously purporting "*not...[to] see the need* to extend [my] time to file a sur-reply" (emphasis added).

Finally, as to Ms. Olson's self-serving claim that the "reason" her August 13th Memorandum "did not comment on the issue" of my oral application for the Court's disqualification was because it was not a "written motion", Ms. Olson should have set that forth in her Memorandum if that were the case. My Memorandum of Law in support of my omnibus motion, on its very first page, referenced, as a threshold issue, the Court's disqualification. Ms. Olson surely knew – and, if not, her client, the Commission on Judicial Conduct, should have told her – that, irrespective of whether a recusal application is oral, a judge is not free to disregard it and, additionally, has a duty to disclose facts bearing upon his lack of impartiality, independent of any application for his recusal. (Chief Administrator's Rules Governing Judicial Conduct, Section 100.3(c) "Disqualification", and Section 100.3(d) "Remittal of disqualification")

Based on Ms. Olson's demonstrated record of deceit and deviousness, it is more than likely that until my August 16th letter (Exhibit "A"), she never gave any thought to whether the Court's "direction" was meant to apply to my already-made oral application for its recusal. Since my August 16th letter makes evident that the Court will not be able to skirt the recusal issue by permanently "not making any decision" on it – which is what Ms. Olson's silence in the August 13th Memorandum was designed to facilitate – she now seeks "time to serve and file a response" to a written recusal motion, in the event the Court treats my August 16th letter as such written motion or grants me "leave to file such a motion".

I have no objection to the Court's granting Ms. Olson's request. Indeed, notwithstanding Respondent's failure to heretofore interpose any comment on the recusal issue, my August 16th letter did not seek to have the Court deem Respondent to have waived its right to be heard. Quite the contrary. My August 16th letter stated as follows:

> "I, therefore, take the opportunity of this letter to invite Attorney General Spitzer, whose publicly proclaimed mission is 'to help restore confidence in government', to personally set forth his position, as 'the People's Lawyer' on my oral recusal application,

> based upon the appearance and actuality of the Court's self-interest in this proceeding, including by reason of its dependency on Governor Pataki for reappointment for its expiring term." (Exhibit "A", pp. 2-3)

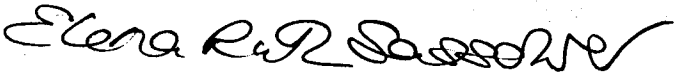
And

> "Since your client, the Commission on Judicial Conduct purports to concern itself with the appearance and actuality of judicial bias and to prosecute justices based thereon, it should also be heard on the issue of my application for the Court's disqualification on that ground and for its disclosure of other disqualifying facts." (Exhibit "A", p. 3)

Such comment as the Attorney General and Respondent may offer should include comment upon my response to the Court's inquiry, at the conclusion of the June 14th conference, as to "what category of judge do you think would be appropriate to resolve this matter, since Court of Claims judges are up for reappointment?" (p. 22, lns. 18-21). I would, however, like to expand my response. Beyond appointed and elected judges whose terms are not nearing expiration, which is what I stated to the Court (p. 22, ln. 22 – p. 23, ln. 16), are two additional categories of judges: (1) judges not seeking to be reappointed or re-elected at the expiration of their terms; and (2) already-retired judges. Both these categories of judges should, additionally, be prepared to disclaim any interest in receiving further judicial and/or political appointments.

Lastly, as to Ms. Olson's inference that "leave" of Court is required for a recusal motion, I would remind her that a litigant's right to a fair and impartial tribunal is recognized as a fundamental right, of constitutional magnitude.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Petitioner *Pro Se*

cc: David Nocenti, Counsel to Attorney General Spitzer [By Fax: 212-416-8942]
Assistant Attorneys General Carolyn Cairns Olson and Michael Kennedy
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New York State Commission on Judicial Conduct [By Fax: 212-949-8864]
All prospective intervenors, as listed on Notice of Right to Seek Intervention