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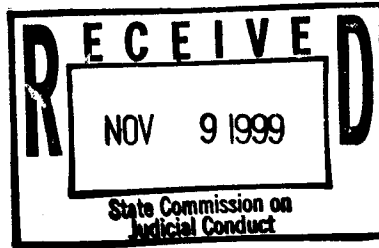
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Elena Ruth Sassower, Coordinator

BY CERTIFIED MAIL/RRR Z-294-568-943

November 5, 1999

Judge Barbara R. Kapnick  
Acting Justice, Supreme Court of the State of New York  
80 Centre Street, Room 308  
New York, New York 10013



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RE: Request for a Conference: 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. #99-108551)

- (1) Recusal and Special Assignment (pp. 2-6)
- (2) Supplementing the Omnibus Motion (pp. 6-7)
- (3) Ascertaining the Intentions of the Proposed Intervenors (pp. 7-9)

Dear Justice Kapnick:

I am the Petitioner in the above-entitled Article 78 proceeding against the New York State Commission on Judicial Conduct, which was assigned to you on Monday, November 1st. This letter follows my telephone conversation on that date with your IAS Part Clerk, George Ajjan, who advised that I should place my request for a conference in writing. Yesterday and today, November 4<sup>th</sup> and 5<sup>th</sup>, I informed Mr. Ajjan that I was preparing such written request

By this letter, I request a conference. A conference is essential in view of the procedural history of this case. *Four* judges have already recused themselves, Acting Supreme Court Justice Diane Lebedeff (5/17/99), Acting Supreme Court Justice Walter Tolub (5/20/99), Acting Supreme Court Justice Ronald Zweibel (10/8/99), and Acting Supreme Court Justice Franklin Weissberg (10/29/99). Additionally, and unknown to me until yesterday, Administrative Judge Stephen Crane made an oral direction (5/24/99) taking the case away from a *fifth* judge, Supreme Court Justice Carol Huff, to whom it had been randomly assigned following Justice Tolub's recusal, and specifically directing it to Justice Zweibel.

Motions are already pending -- including my threshold July 28<sup>th</sup> omnibus motion, which I wish to supplement. That motion, *inter alia*, seeks to disqualify the New York State Attorney General from representing the Commission, to impose sanctions and costs upon him, his culpable staff, the Commission and its culpable staff and to refer them for disciplinary and criminal investigation for their litigation misconduct, including their fraudulent dismissal motion.

Additionally, though not a motion, is my April 22<sup>nd</sup> Notice of Right to Seek Intervention, served upon public agencies and officers charged with the duty to protect the public: the New York State Attorney General -- as "the People's Lawyer" -- the Manhattan District Attorney, the New York State Ethics Commission, and the U.S. Attorney for the Southern District of New York. None of the proposed intervenors have notified the Court of their intentions with respect to that Notice -- although in the six months since the proceeding was commenced they have received repeated entreaties from me to intervene and to launch disciplinary and criminal investigations of the Attorney General and Commission for the litigation misconduct particularized by my omnibus motion -- copies of which they each have.

#### Recusal and Special Assignment

It is respectfully submitted that the threshold issue for discussion at the conference is whether this Court, too, should recuse itself. As the most cursory examination of the file reveals, this is a politically explosive case. It not only exposes the corruption of the Commission on Judicial Conduct and the active complicity of its attorney, the State Attorney General, including Eliot Spitzer *personally*, but the corruption of the "merit selection" process to the Court of Appeals by the State Commission on Judicial Nomination, State bar association leaders, the Governor, and the Chairman of the State Senate Judiciary Committee. Specifically, it exposes their fraud in connection with the nomination and confirmation of the Court of Appeals' newest judge, Albert Rosenblatt.

Because this case -- *if* decided on the facts and law -- will embroil in scandal so many powerful, high profile persons and critical governmental offices, including all those listed on CJA's May 5, 1997 memorandum -- which is Exhibit "A" to the Verified Petition -- it requires a judge not vulnerable to political pressures. Those most vulnerable are judges nearing the expiration of their terms in office and seeking re-election or re-appointment. They are clearly dependent on political

leaders who control the judicial selection processes – leaders jeopardized by this case or having personal and professional relationships with persons who are.

It appears from your efforts to obtain this year's Democratic nomination for the Supreme Court (Exhibit "A") that you are not waiting until 2001, the expiration of your elective term as a Civil Court judge, to secure your future on the bench -- and that you are setting your sights on "higher" judicial office. The record herein already contains my argument as to the disqualification of *any* judge, appointive or elective, whose term of office is nearing expiration and who is "not planning to retire and prepared to disclaim any interest in receiving further judicial and/or political appointments". The argument is part of my oral application for Justice Zweibel's recusal<sup>1</sup>, made at the initial June 14<sup>th</sup> conference before him, and supplemented at page 6 of my August 17<sup>th</sup> letter to Justice Zweibel<sup>2</sup>.

The threshold significance of recusal is highlighted in my October 1<sup>st</sup> letter to Justice Zweibel, to which relevant pages of a treatise on judicial disqualification are appended, including pages relating to the Court's "Burden to Disclose Grounds for Disqualification" (at pp. 578-582). For your convenience, a copy of that letter is annexed hereto (Exhibit "B"). Also annexed is a copy of the transcript of the October 8<sup>th</sup> court appearance at which Justice Zweibel recused himself so that the all important "appearance" of impartiality might be preserved (Exhibit "C").

I believe that Justice Weissberg, who was assigned the case following Justice Zweibel's recusal, recused himself for the same reason as Justice Zweibel – each have appointive terms to the Court of Claims expiring in 2001<sup>3</sup>.

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<sup>1</sup> The transcript of my June 14<sup>th</sup> oral recusal application is annexed as Exhibit "O" to my July 28<sup>th</sup> Affidavit in support of my omnibus motion. See pp. 8-17, 22-23 thereof.

<sup>2</sup> My August 17<sup>th</sup> letter to Justice Zweibel is annexed as Exhibit "D" to my September 24<sup>th</sup> Reply Affidavit.

<sup>3</sup> Following assignment of this case to Justice Weissberg on Monday, October 25<sup>th</sup>, I telephoned his Part Clerk and Chambers, requesting a conference and inquiring as to whether Justice Weissberg was intending to seek reappointment upon the expiration of his term in 2001. I stated that if Justice Weissberg were seeking reappointment, he suffered from the same disqualification as Justice Zweibel. On Wednesday, October 27<sup>th</sup>, I was told to put my request in writing. My letter to Justice Weissberg, largely identical to this letter, was all but completed when, upon calling the Clerk's office on Monday, November 1<sup>st</sup>, I was told that he had recused himself, by order dated Friday, October 29<sup>th</sup>, and that the case had been assigned to this Court.

Plainly, a conference would afford the Court the opportunity to confront the threshold disqualification issue, as is its duty under Section 100.3E of the Chief Administrator's Rules Governing Judicial Conduct ("Disqualification"). The Court will be able to question me as to the systemic governmental corruption which this case exposes, its CRIMINAL ramifications on New York's highest echelons of political power, and the public perception that this Court will be subjected to enormous political pressures and enticements as a result<sup>4</sup>. Certainly, the conference would be a convenient forum for the Court to make disclosure, pursuant to Section 100.3F of the Chief Administrator's Rules Governing Judicial Conduct ("Remittal of disqualification"), as to facts bearing upon its impartiality. Indeed, Justice Lebedeff, the first judge assigned to this Article 78 proceeding, used the occasion of the parties' initial appearance before her on May 17<sup>th</sup> to disclose a potentially disqualifying personal and professional relationship -- based upon which, after questioning me, she recused herself<sup>5</sup>. As with Justice Lebedeff, a conference will have the beneficial result of speedily clarifying relationships or other interests requiring the Court's recusal. These interests include those created by judicial misconduct complaints against the Court filed with the Commission -- as to which the Court may have knowledge -- or its knowledge of judicial misconduct complaints against judicial colleagues with whom the Court has friendships or is dependent professionally<sup>6</sup>.

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<sup>4</sup> See, *inter alia*, "Becoming A Judge: Report on the Failings of Judicial Elections in New York State" (1988) by the New York State Commission on Government Integrity, collected in a volume of its reports entitled, Government Ethics Reform for the 1990's, Fordham University Press, 1991, and, in particular pp. 282-283 "Even the Renominatin of a Sitting Judge Can Be Subject to Politics" and pp. 286-287 "Judges May Be Keenly Aware of Their Re-Election Chances When Deciding Politically Sensitive Cases".

<sup>5</sup> The transcript of that May 17<sup>th</sup> appearance before Justice Lebedff is annexed as Exhibit "K" to my July 28<sup>th</sup> affidavit in support of my omnibus motion.

<sup>6</sup> I do not know the reason for Justice Tolub's recusal. However, in addition to his struggle to secure re-election to the bench, featured by The New York Times in a May 22nd article, "From Judge to Pawn in a Grudge Match" (Exhibit "D") -- highlighting the political considerations in securing the Democratic nomination -- he may have recalled that he had been the subject of at least one judicial misconduct complaint with the Commission, dated April 14, 1990, based, *inter alia*, on his failure to recuse himself and to meet his ethical duty of disclosure. Such facially-meritorious complaint which, upon information and belief, the Commission dismissed without investigation, had been filed by my judicial whistle-blowing father, George Sassower, who had sent him a copy.

As I set forth before Justice Lebedeff on May 17<sup>th</sup> (Tr. pp. 12-13), as well as before Justice Zweibel on June 14<sup>th</sup> (Tr. pp. 9-10), there is reasonable question whether *any* judge under the disciplinary jurisdiction of the Commission can be fair and impartial in a case such as this. No judge can be expected to want to revitalize a corrupted Commission when the consequence will be to increase the likelihood that legitimate complaints against him and his fellow judges will be the subject of investigation, rather than – as they presently are – dumped *without* investigation.

Consequently, it is my view that arrangements must be made for this case to be assigned to a retired or retiring judge, willing to disavow an intention of judicial and/or political appointment. According to Chief Clerk Frank Pollina, with whom I spoke on November 4<sup>th</sup>, proper procedure would be for an application to be made to Administrative Judge Crane.

The imperative for special assignment of this Article 78 proceeding has been reinforced by concurrent and supervening events: another Article 78 proceeding against the Commission, *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #99-108655), commenced last April, just days after my own, and about which I was completely unaware until a front-page article about its dismissal appeared in the October 5<sup>th</sup> New York Law Journal (Exhibit "E") Indeed, immediately upon seeing the October 5<sup>th</sup> article, I contacted Mr. Mantel, obtained from him a copy of the decision and arranged to come to his office and duplicate his litigation file.

Based upon my review of the decision and file in Mr. Mantel's Article 78 proceeding, I can affirmatively state that Mr. Mantel's case was "thrown" by a fraudulent September 30, 1999 decision of Supreme Court Justice Edward Lehner. This is now the second Article 78 proceeding against the Commission "thrown" since the Article 78 proceeding *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141) was "thrown" by the fraudulent July 13, 1995 decision of Supreme Court Justice Herman Cahn.

The fraudulence of Justice Cahn's decision is particularized by the analysis annexed as Exhibit "A" to the Verified Petition – and whose truth and accuracy is attested to by ¶FOURTEENTH of the Verified Petition – and not denied or disputed by the Commission or anyone else (¶THIRTEENTH). This includes *all* the proposed intervenors, each of whom have copies of the file of the prior Article 78 proceeding.

At the conference, I intend to present an analysis of Justice Lehner's fraudulent decision in Mr. Mantell's Article 78 proceeding to support an oral application that the Court refer my Article 78 proceeding to Judge Crane with a recommendation for special assignment – lest it become the third Article 78 proceeding “thrown” by a fraudulent judicial decision of a Supreme Court, New York County Justice, protecting the Commission.

**Supplementing the Omnibus Motion**

I believe it appropriate to supplement my omnibus motion. Among other things, I wish to furnish an analysis of the file in Mr. Mantell's Article 78 proceeding, together with a copy of the file itself, in further support of those branches of my omnibus motion as seek the Attorney General's disqualification and sanctions against him and the Commission for litigation misconduct. This, to show that the Attorney General's misconduct in this proceeding served as a template for his litigation misconduct in Mr. Mantell's concurrent proceeding.

As illustrative, substantial portions of the false and deceitful May 24<sup>th</sup> Memorandum of Assistant Attorneys General Carolyn Cairns Olson and Michael Kennedy, supporting the Commission's dismissal motion herein, were replicated *verbatim* or with minor changes in a June 23<sup>rd</sup> Memorandum of Assistant Attorney General Constantine Speres, supporting the Commission's motion to dismiss Mr. Mantell's proceeding. This includes the initial paragraph of footnote 1 of the May 24<sup>th</sup> Memorandum herein (Exhibit “F-1”) – which is footnote 1 of the June 23<sup>rd</sup> Memorandum in Mr. Mantell's proceeding (Exhibit “F-2”). In both, the Attorney General falsely purported that Executive Law §63 and *Sassower v. Signorelli*, 99 A.D. 2d 358 (2d Dept. 1984) – each presented *without* discussion – entitles the Commission to his representation<sup>7</sup>. That the Attorney General's office knew this to be false when Mr. Speres interposed the June 23<sup>rd</sup> Memorandum in Mr. Mantell's proceeding may be seen from my statements at the June 14<sup>th</sup> court conference in the presence of Ms. Olson about both Executive Law §63.1 and *Sassower v. Signorelli* (Tr. pp. 18-21).

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<sup>7</sup> My analysis of footnote 1 of the May 24<sup>th</sup> Memorandum supporting the Commission's dismissal motion appears at pp. 33-37 of my July 28<sup>th</sup> Memorandum of Law supporting my omnibus motion.

It may be that the reason these two concurrent Article 78 proceedings against the Commission, involving similar issues, were handled by different Assistant Attorneys General was to reduce the culpability of the Assistant Attorney General handling Mr. Mantell's proceeding, who would be making representations therein that either already were – or were likely to be – exposed as frivolous and fraudulent in my proceeding. In that connection, on October 8<sup>th</sup>, shortly before I and Ms. Olson appeared before Justice Zweibel (Exhibit "C"), I asked Ms. Olson about Mr. Mantell's proceeding. She would not respond to my question as to the Attorney General's procedure for assigning attorneys to related cases, nor as to why she had not been assigned to handle Mr. Mantell's concurrent proceeding. She did, however, admit that she was fully familiar with it and that "absolutely" she knew that substantial portions of Mr. Speres' dismissal motion therein were *verbatim* identical to her dismissal motion herein.

#### **Ascertaining the Intentions of the Proposed Intervenors**

Because the record of this Article 78 proceeding resoundingly establishes that the Commission has had NO legitimate defense to the allegations of my Verified Petition and that the Attorney General has defended the Commission, in violation of Executive Law §63.1 and conflict of interest rules, with litigation misconduct reaching a level of criminality<sup>8</sup>, the Court's mandatory "Disciplinary responsibilities" under Section 100.3D of the Chief Administrator's Rules Governing Judicial Conduct, require it to "take appropriate action". It is respectfully submitted that such action must include inquiring as to the intentions of the proposed intervenors – public agencies and officers charged with the duty to protect the public. Each have full copies of the record herein, including the omnibus motion, and have been presented with my repeated entreaties that they intervene, if for no other reason than to safeguard the integrity of the judicial process. Additionally, in formal disciplinary and criminal complaints, they have also been asked to investigate the systemic governmental corruption exposed by this case, beginning with the litigation misconduct of the Attorney General and Commission herein, part of their *modus operandi* of thwarting meritorious legal challenges.

The record before the Court already contains copies of my correspondence with Attorney General Spitzer's counsel, David Nocenti, and with the Commissioners

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<sup>8</sup> See pp. 8-10 of my July 28<sup>th</sup> Memorandum of Law in support of my omnibus motion for legal citations.

of the State Ethics Commission pertaining to my omnibus motion<sup>9</sup> and the necessity of disciplinary inquiry. Subsequent correspondence is annexed hereto:

**Exhibit "G":** CJA's October 21st letter to Thomas Wornam, Deputy Chief of the Special Prosecutions Unit of the Manhattan District Attorney, constituting a criminal complaint against the Attorney General and Commission on Judicial Conduct, including for their litigation misconduct herein;

**Exhibit "H":** CJA's October 21st letter to Andrew Dember, Chief of the Public Corruption Unit of the U.S. Attorney for the Southern District of New York, constituting a criminal complaint against the Attorney General and Commission on Judicial Conduct, including for their litigation misconduct herein;

**Exhibit "I":** CJA's October 25th letter to Mr. Nocenti, as well as to Peter Pope and William Casey, the chief and chief investigator, respectively, of Mr. Spitzer's "Public Integrity Unit", transmitting copies of CJA's October 21<sup>st</sup> criminal complaints to the Manhattan District Attorney and U.S. Attorney and inquiring as what investigative and corrective steps the Attorney General would be taking consistent with his duty as "the People's Lawyer" and as required by New York's Disciplinary Rules of the Code of Professional Responsibility;

**Exhibit "J":** CJA's October 27th letter to the Commissioners of the State Ethics Commission, initiating a new ethics complaint against the Attorney General and Commission on Judicial Conduct for their litigation misconduct in the Article 78 proceeding *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #99-108655).

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<sup>9</sup> See my September 24<sup>th</sup> reply affidavit in support of my omnibus motion: (1) Exhibit "A": my August 6th letter to Mr. Nocenti; (2) Exhibit "E": Mr. Nocenti's September 1<sup>st</sup> letter to me; (3) Exhibit "G": CJA's September 15<sup>th</sup> letter to the NYS Ethics Commission, constituting a supplement to CJA's March 26<sup>th</sup> ethics complaint against the Attorney General and Commission on Judicial Conduct based on their litigation misconduct herein. [CJA's March 26<sup>th</sup> ethics complaint is Exhibit "E" to my July 28<sup>th</sup> affidavit in support of my omnibus motion.]



November 5, 1999

The only response has been from Thomas Wornam, Deputy Chief of the Manhattan District Attorney's Special Prosecutions Unit, whose October 29<sup>th</sup> letter to CJA (Exhibit "K-2") is established to be a dishonest cover-up when compared with the record of this proceeding, underlying CJA's October 21<sup>st</sup> criminal complaint (Exhibit "G"). Indeed, its dishonesty is exposed by CJA's October 29<sup>th</sup> and November 4<sup>th</sup> letters to Mr. Wornam (Exhibits "K-1" and "K-3", respectively).

Based on the record herein, the Court has the right to expect that it will not have to bear the burden of addressing the fraudulent conduct of the Attorney General and Commission alone. I respectfully submit that the Court should invite the proposed intervenors to attend the conference and account for their nonfeasance and misfeasance in connections with my intervention requests and CJA's filed ethics and criminal complaints. This includes explaining what steps they have taken -- or will be taking -- to ensure *independent* evaluation of their duty in light of their flagrant conflicts of interest, as detailed by my correspondence with them<sup>10</sup>. In the event the proposed intervenors, with perhaps a thousand or more lawyers between them, are unable to appear, the Court should request that they provide a sworn statement as to their intentions -- including whether, as CJA has requested in its disciplinary and criminal complaints, they will be referring the complaints to the Public Integrity Section of the U.S. Justice Department's Criminal Division.

Yours for a quality judiciary,



ELENA RUTH SASSOWER

Petitioner *Pro Se*

cc: New York State Attorney General  
New York State Commission on Judicial Conduct  
Proposed intervenors

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<sup>10</sup> As to the conflict of interest of Attorney General Spitzer, *see, inter alia*, ¶¶8, 40-52 of my July 28<sup>th</sup> affidavit in support of my omnibus motion and Exhibit "A" to my September 24<sup>th</sup> reply affidavit, p. 2; As to the conflict of interest of the Ethics Commissioners, *see* Exhibit "G" to my September 24<sup>th</sup> reply affidavit, *inter alia*, pp. 6-7; As to the conflict of interest of the Manhattan District Attorney: *see* Exhibit "G" herein: pp. 5-7; As to the conflict of interest of the U.S. Attorney for the Southern District of New York, *see* Exhibit "H" herein: pp. 2-3, 18-20.

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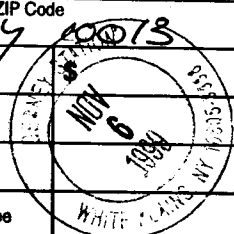
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