

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

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ELENA RUTH SASSOWER, Coordinator of :
The Center For Judicial Accountability, :
Inc., Acting Pro Bono Publico, :

Petitioner, :

-against- :

Index No.: 99-108551

COMMISSION ON JUDICIAL CONDUCT :
OF THE STATE OF NEW YORK, :

Respondent. :
-----X

RESPONDENT'S MEMORANDUM IN
SUPPORT OF A MOTION TO DISMISS

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Preliminary Statement

This memorandum is respectfully submitted on behalf of
respondent Commission on Judicial Conduct of the State of New York
(the "Commission") in support of the Commission's motion to dismiss
this Article 78 proceeding pursuant to CPLR 7804(f) and
3211(a)(3), (2), (5) and (7).¹

* { ¹ Any challenge that petitioner may raise to the authority of
the Attorney General to represent the Commission in this proceeding
is frivolous. The Commission is entitled to such representation
and the Attorney General is statutorily authorized to defend this
proceeding. Executive Law §63(1); Sassower v. Signorelli, 99
A.D.2d 358 (2d Dep't 1984).

Moreover, in the so-called "Notice of Right to Seek
Intervention" dated April 22, 1999, petitioner cites CPLR 1012,
(continued...)

In this CPLR Article 78 proceeding, petitioner Elena Ruth Sassower, ("petitioner") suing as the "coordinator" of the Center for Judicial Accountability, Inc. ("CJA"), seeks mandamus, prohibition, and a declaratory judgment, that:

(1) declares 22 NYCRR §§7000.3 and 7000.11, and Judiciary Law §§ 45, 41.6 and 43.1 to be unconstitutional;

(2) vacates the Commission's December 23, 1998 dismissal of petitioner's October 6, 1998 complaint against a judicial candidate for the Court of Appeals²;

¹(...continued)

which provides, in subd. (b), that, when the constitutionality of a state statute is raised in an action, the Attorney General may intervene in support of the statute's constitutionality. See also Exec. Law §71. Since the petition here challenges the constitutionality of various provisions of the Judiciary Law, any "intervention" by the Attorney General would be for the purpose of opposing petitioner's claims.

In sum, petitioner has no standing to challenge the Attorney General's determination to represent the Commission in this proceeding and any challenge to this determination should be rejected. As similarly noted by the Appellate Division in Kilcoin v. Wolansky, 75 A.D.2d 1 (2d Dep't 1980), aff'd 52 N.Y.2d 995 (1981), any motion to disqualify the Attorney General from representing the Commission in this case, suggests "something more than a concern over the Attorney General's ethical position. Rather, it bespeaks [petitioner's] continuing effort to harass and punish" the Commission for its refusal to initiate formal investigation of the Appellate Division Justices who participated in the determination to suspend her mother, Doris Sassower, from the practice of law. Id. 75 A.D.2d at 12, note 1.

² A copy of petitioner's October 6, 1998 letter complaint is
(continued...)